

**COMMONWEALTH OF MASSACHUSETTS
Massachusetts State Lottery Commission
Boston, Massachusetts**

In re: Appeal of Yousef Jaafar

Appearance for the State Lottery Commission:	Gregory Polin, Esq. General Counsel State Lottery Commission 150 Mount Vernon Street, Suite 300 Dorchester, MA 02125
Appearance for Yousef Jaafar	Mark D. Donovan, Esq. Considine and Furey, LLP One Beacon Street, 22d Floor Boston, MA 02108

RECOMMENDED FINDINGS AND DECISION

The Claimant, Yousef Jaafar (“Mr. Jaafar”) has appealed the decision of the Executive Director of the Massachusetts State Lottery (“Lottery”) denying his claim to recover on an instant game ticket from the 2018 “50X” game with a prize value of \$1,000.00. Because the weight of the evidence shows that Mr. Jaafar acquired this ticket through an assignment prohibited by law, the Hearing Officer recommends that the Massachusetts State Lottery Commission (“MSLC”) affirm the Executive Director’s decision.

PROCEDURAL BACKGROUND AND EVIDENCE PRESENTED

Mr. Jaafar’s claim for a \$1,000.00 prize from the 2018 “50X” game (the “50X Ticket”), filed on or about October 22, 2018, was referred for investigation to the Lottery’s Compliance and Internal Audit and Investigations Department (“Compliance Department”). After that investigation, on May 20, 2019, the claim was denied on the basis that Mr. Jaafar was not a proper claimant for the 50X Ticket. Mr. Jaafar appealed that denial, and on June 11, 2019, pursuant to 961 CMR 2.38(7), an informal hearing was held on his appeal. The decision of the designee of the Executive Director of the Lottery (“Executive Director”), issued July 10, 2020

(the “Executive Director’s Decision”), affirmed the denial of the claim. Mr. Jaafar appealed that denial, and the hearing on this appeal was held on November 19, 2020, in accordance with G. L. c. 10 and c. 30A, 801 C.M.R. 1.02, and 961 C.M.R. 2.13.

Because of the public health emergency orders then in effect, the hearing on this matter was conducted by videoconference. Gregory Polin, Esq., appeared on behalf of the Lottery, Mark D. Donovan, Esq., appeared on behalf of Mr. Jaafar. There was a brief prehearing conference prior to the hearing. At the hearing, Maureen McHugh and Elizabeth Pottier testified on behalf of the Lottery, and Mr. Jaafar testified in his own behalf. Post-hearing memoranda were submitted by the parties on January 7, 2021.

Exhibits

- Exhibit 1. Lottery ticket 187-069376-076, Claim Form, Validation Slips, dated October 22, 2018 (winner’s Social Security number and similar IDs redacted) (3 pp.).
- Exhibit 2. Memorandum recommending denial of Mr. Jaafar’s claim, from Maureen McHugh to Brian Taylor, dated December 6, 2018 (identity of Lottery Agent and sales location redacted) (2 pp.).
- Exhibit 3. Spreadsheet, Yousef Jaafar Claims, dated January 2, 2018, through October 31, 2018 (Mr. Jaafar’s Social Security number redacted) (14 pp.).
- Exhibit 4. Claim denial letter, from Melissa Peura, Paralegal, to Mr. Jaafar, dated May 20, 2019 (1 p.).
- Exhibit 5. Appeal filed by Yousef Jaafar, received at the Lottery on May 24, 2019 (1 p.).
- Exhibit 6. Denial of Claim, letter to Mr. Jaafar from Gregory Polin, General Counsel, MSLC, dated July 10, 2020 (1 p.).
- Exhibit 7. Appeal of Denial of Claim, by letter to Gregory Polin, General Counsel, MSLC, from Mark D. Donovan, Esq., on behalf of Mr. Jaafar, August 5, 2020 (1 p.).
- Exhibit 8. Spreadsheet detailing odds of winning on the Instant game tickets paid to Mr. Jaafar from January 2, 2018, through October 31, 2018 (9 pp.).
- Exhibit 9. Photograph of Lottery ticket no. 187-069376-076 (1 p.).
- Exhibit 10. Photograph of Lottery Claim Form, Lottery ticket no. 187-069376-076 (1 p.).

Findings of Fact

1. On or about October 22, 2018, at the Lottery's office at One Ashburton Place, Boston, Massachusetts, Mr. Jaafar presented for payment a winning instant game ticket from the 2018 "50X" game with a prize value of \$1,000.00. The 50X Ticket displays a unique series of numbers that show that it is from game number 187 and book number 069376, and that it is ticket number 076. Tr. 15:16-16:9, 57:22-58:4, and 59:1-10; Exhibits 1, 9 and 10.
2. The 50X Ticket also states: "All holders, tickets and transactions subject to Lottery Commission rules as published in the Massachusetts Register and the Administrative Bulletin issued thereunder." Exhibits 1 and 9.
3. Mr. Jaafar completed the Lottery Claim Form, on which he certified that the information he was providing was true and accurate. Additionally, he declared under the pains and penalties of perjury that, "the name, address and taxpayer identification number identify me as the sole recipient of this payment and that I am not claiming this prize to assist another in avoidance of financial obligations." Exhibits 1 and 10, Tr. 16:10 – 17:6 and Tr. 58:8-24.
4. The 50X Ticket had been torn in half; this meant that the ticket had to be reviewed by the Lottery's Compliance Department before any payment could be made on it. Tr. 18:14-20 and Tr. 59:3-10.
5. Lottery Compliance Analyst Maureen McHugh investigated Mr. Jaafar's claim. Ms. McHugh had been employed by the Lottery for over twenty years; her duties include investigating issues regarding individual claims, such as stolen or lost tickets. She also investigates allegations of rule violations by agents, audits the tickets reclaimed after a game ends, and audits the procedures for drawings. Tr. 14:20 – 15:2, Tr. 18:21-19:8, and Tr. 27:20 – 28:8, Exhibit 2.
6. Although torn, the ticket could still be authenticated as a valid winning ticket, with a \$1,000.00 prize. Tr. 31:4-13.

7. Before meeting with Mr. Jaafar, Ms. McHugh determined that the book of tickets that included the 50X Ticket was activated on October 5, 2018, and identified the location of the Lottery Sales agent who had activated the book. Exhibit 2, Tr. 19:11-15.
8. On December 5, 2018, Ms. McHugh met with the owner of the store where Mr. Jaafar's 50X Ticket had been sold. Although in testimony Ms. McHugh referred to date of this meeting as December 5, 2019, that date is contradicted by her memorandum of December 6, 2018, which includes a summary of the meeting. Further, the memorandum was directed to Brian Taylor, Assistant Executive Director of Compliance, whose response on December 19, 2018, also shows that Ms. McHugh was describing a meeting held in 2018. Tr. 22:8-16, Exhibit 2.
9. At that meeting, Ms. McHugh asked the store owner about two winning instant game tickets that had been sold at that location, both of which had been torn in half when presented at a Lottery claims office. One of these two tickets was the 50X Ticket presented by Mr. Jaafar; the claimant for the second ticket had reported that the female employee who sold them the ticket had initially thought that the ticket was not a winner, and that she had torn it in half. Exhibit 2, Tr. 22:8-20.
10. The owner told Ms. McHugh that she did not recognize Mr. Jaafar. She also said that although there are other employees at the store, she was the only woman who worked there, and she had not torn either ticket in half. Tr. 22:8-20; Exhibit 2.
11. The next day, December 6, 2018, Ms. McHugh met with Mr. Jaafar and asked him where he had purchased the 50X Ticket. Mr. Jaafar told her that he had purchased it at a 7-Eleven in Chelsea, but that he could not recall the address. With respect to the rip in his ticket, he told her that it had ripped in his jacket pocket. Tr. 19:13-20:3; Exhibit 2.
12. Ms. McHugh told Mr. Jaafar that the 50X Ticket was not sold at a 7-Eleven, but he offered no other explanation for where he might have bought it. Tr. 20:10-14 and 59:16-60:5.
13. About five minutes after Ms. McHugh had concluded her meeting with Mr. Jaafar, he returned and asked to speak with her again. He then told her that he bought tickets from many locations across Massachusetts, and could not recall the location where he had

purchased this one. Further, he denied that he was cashing it for someone else. Ms. McHugh took that statement to mean that he was saying that he purchased the 50X Ticket from a Lottery agent. Tr. 20:15-21, Tr. 22:21 – 23:17, and Tr. 60:1-11; Exhibit 2.

14. Ms. McHugh reviewed the claims for \$600 or more that had been filed by Mr. Jaafar from January 2, 2018, through October 31, 2018, and thereby identified a second concern about Mr. Jaafar's claim. She prepared a spreadsheet, marked here as Exhibit 3, that shows for each claim the date the claim was submitted, the gross and net payment, and where each Lottery ticket was purchased. Tr. 20:22-21:7, Exhibit 3.
15. In all, Exhibit 3 shows that over that ten-month period, Mr. Jaafar presented and was paid for a total of 551 claims totaling \$842,427.75. The great majority of these claims were for \$1,000.00, but the gross amounts ranged from \$609.50 to \$100,000.00. Most of the tickets were purchased in the Greater Boston area, but the range of the purchases extended from Cape Cod to the New Hampshire border. Exhibit 3.
16. Ms. McHugh considered Mr. Jaafar's cashing history to be unusual, and found it improbable that he had purchased all the tickets on which he had submitted claims. Tr. 25:19 - 26:8.
17. After meeting with Mr. Jaafar, Ms. McHugh sent a written memorandum to Mr. Taylor, in which she described her investigation and recommended that the claim be denied. She did not believe that he had purchased the 50X Ticket from a Lottery sales agent, and therefore concluded that he was not a proper claimant. On December 19, 2018, Mr. Taylor approved Ms. McHugh's recommendation that the claim be denied, and noted his approval on her memorandum. Exhibit 2.
18. This recommendation was thereafter referred to Lottery Paralegal Melissa Peura for review. On May 20, 2019, Ms. Peura notified Mr. Jaafar that the claim had been denied based on the Compliance Department's recommendation. Exhibits 3 and 4.
19. Mr. Jaafar timely filed an appeal of the claim denial. An informal hearing was held on his appeal on or about June 11, 2019, pursuant to 961 CMR 2.38(7), and a Director's Decision issued on July 10, 2020, denying Mr. Jaafar's claim. Mr. Jaafar filed a timely appeal of the Director's Decision. Exhibits 5, 6 and 7.

20. In preparation for this hearing, Elizabeth Pottier, Internal Auditor for the Lottery, created a spreadsheet identifying and describing the 551 prizes claimed by Mr. Jaafar during the ten-month period of January 2, 2018, through October 31, 2018, the same period addressed by Exhibit 3. Ms. Pottier's spreadsheet also showed the odds for winning each game. It was marked here as Exhibit 8. Tr. 44:23 – 54:12.
21. One hundred and three of the prizes Mr. Jaafar claimed during that ten-month period were for draw games, and 448 were for instant games. Exhibit 8 displays the name of each instant game conducted by the Lottery during that period, and the odds of winning a prize of \$1,000 or more on each game. Those odds ranged from 1:839.69 (Game #37, \$10K a week for life), to 1:1,008,000 (Games #007, #103, #126, #152, #185, #197 and #198). On the games in which Mr. Jaafar claimed tickets, the odds of winning a prize of \$1,000 or more ranged from 1:839.69 (Game #37) to 1:91,636 (Game #156). Exhibit 8.
22. Based on the odds of winning the various games on which Mr. Jaafar was paid for at least one winning ticket, Ms. Pottier calculated that number of tickets that, statistically, Mr. Jaafar would have had to have purchased to achieve the results he did. Tr. 51:4 – 53:10, Exhibit 8.
23. Ms. Pottier explained the items on her chart, using as an example Game #25, an instant ticket game that cost \$20 per ticket. The odds of winning a prize of \$1,000 or more in that game were 1,106 to one, and the overall payout for the game was 80.4 percent. Exhibit 8, p 1., Tr. 48:7-49:14.
24. Mr. Jaafar had claimed 19 winning tickets in Game #25, for which he would have, statistically, needed to purchase over 21,000 tickets ($19 \times 1106.72 = 21,027.7$). Because the great majority of instant game prizes are for less than \$600, the total expected win amount is much larger than the amount attributable solely to the larger prizes; for Game #25, Mr. Jaafar's expected winnings, including prize amounts of less than \$600 dollars, would have been over \$338,000.00. Tr. 49:3 - 49:14, Exhibit 8.
25. Overall, Ms. Pottier calculated that for Mr. Jaafar to purchase enough tickets to, statistically, result in the number of winning instant game tickets of \$1,000 or more that

he submitted for Game #25 alone, he would have had to have purchased over 21 thousand tickets, at a cost of approximately \$420,000. Tr. 48:7 -49:14.

26. With respect to Game #187, the 50X Game, the odds of winning a prize of \$1,000 or more were 1:4,795, the ticket price was \$5.00, and the overall payout for the game was 76.5 percent. Mr. Jaafar cashed eleven tickets from that game. Statistically, he would have needed to purchase over 50 thousand tickets to achieve that result, at a cost of over \$263,000. Exhibit 8.
27. Leaving aside all draw games, Ms. Pottier calculated that for Mr. Jaafar to have purchased, over the course of the ten months covered by her spreadsheet, enough tickets to, statistically, result in the 448 winning instant game tickets of \$1,000 or more that he submitted for all games, he would have had to have purchased nearly 1.5 million tickets, at a cost of just under \$11.5 million. Tr. 50:19 – 52:7, Exhibit 8.
28. Based on Ms. Pottier's calculations, to purchase this number of tickets in ten months, Mr. Jaafar would have had to purchase over 4,900 tickets per day, every day, at a rate of 206 tickets per hour, 24 hours every day. Tr. 52:19 – 53:10, Exhibit 8.
29. Mr. Jaafar testified that when he met with Ms. McHugh, she asked him where he purchased the 50X Ticket and how it had become torn. He told her that he could not tell her where he purchased it because he plays all over the state, and that the ticket ripped in his pocket. Tr. 59:11 – 60:11.
30. Asked on cross examination whether he had purchased the 50X Ticket from a Lottery sales agent, Mr. Jaafar's first answer was not yes or no; but he instead replied, "I have purchased many tickets. I play all over the state." Tr. 65:1-2.
31. On further questioning, Mr. Jaafar answered 'yes' to the question of whether he purchased the 50X Ticket from a Lottery sales agent, and testified that he had not tried to cash it on behalf of someone else. Tr 65:3-25.
32. Asked whether he had purchased from a Lottery sales agent all of the 551 tickets for which he claimed prizes during the first ten months of 2018, Mr. Jaafar answered that to

the best of his recollection, he had, and that he could not recall having purchased them from someone who was not. Tr. 66:2-11.

33. Mr. Jaafar's testimony with respect to his overall purchasing patterns lacks credibility.

Luck is, of course, a significant factor in any lottery, and one need only purchase a single instant game ticket to have a chance of winning the jackpot prize. Lottery instant game tickets, however, are printed with a finite number of winners, and the odds of winning scaled to ensure that there is both an attractive payout to players, and revenue generated for the Massachusetts cities and towns. The more often one plays, the more likely the player's results will approach the mean. Even if one were to assume that Mr. Jaafar were twice as lucky as the average player and purchased only half the number of tickets Ms. Pottier calculated, it defies logic that Mr. Jaafar would have been able to find enough time to eat, sleep, and purchase over 2,400 tickets per day. It is even more difficult to believe that rather than make these purchases at a few convenient locations, he would have the time to purchase them from multiple agents in cities and towns scattered across eastern Massachusetts.

34. Accomplishing this feat would even more astonishing given that customers would not have been permitted to use debit cards to purchase instant tickets, so Mr. Jaafar would have had to also take time to conduct his banking, and to carry such substantial amounts of cash that his withdrawals would likely trigger longstanding reporting requirements under federal banking laws. See, The Financial Recordkeeping and Reporting of Currency and Foreign Transactions Act of 1970 (31 U.S.C. 5311 *et seq.*) (commonly called the Bank Secrecy Act). In all, his testimony that he purchased all tickets from Lottery sales agents defies credibility.

35. Further, had Mr. Jaafar in fact bought enough tickets to produce, statistically, the over 500 winning tickets of over \$1,000.00 that he had cashed, the probable small prize winnings would have given him expected taxable winnings of over nine million dollars, an amount nearly ten times the total value of the \$1,000 prizes he claimed. Yet, at no point did Mr. Jaafar offer evidence that his tax filings reflected any such income.

Exhibit 8.

36. Accordingly, I find that considered as a whole, the weight of the evidence supports the conclusion that Mr. Jaafar did not purchase most, if not all, of the Lottery tickets he cashed from licensed Lottery sales agents.
37. Mr. Jaafar's testimony is also unpersuasive on the question of whether he purchased the 50X Ticket at issue here from a Lottery sales agent. It is understandable that a person who had purchased several tickets from different Lottery sales locations might not recall which tickets were purchased from which. However, after Ms. McHugh told Mr. Jaafar that the ticket had not been purchased from a 7-Eleven in Chelsea, he did not respond with a short list of possibilities, offer to check his calendar to retrace where he made purchases, or take any other steps to narrow down the possibilities of where he might have purchased that ticket. As the ticket was only activated on October 5, 2018, the purchase could not have been made more than two months before his meeting with Ms. McHugh. Instead, Mr. Jaafar gave an evasive answer, in fact the same evasive answer that he gave at this hearing: that he bought tickets all over the state. Exhibit 2, Tr. 19:13-20:15, Tr. 60:1-11.
38. Mr. Jaafar's evasion more logically supports the evidence Ms. Pottier presented: that the odds of winning so many high-value prizes are so low that not only would the cashier need to purchase many thousands of tickets, but that it would be humanly impossible for one person to purchase enough tickets to obtain so many winning tickets. Exhibit 8.
39. Mr. Jaafar's assertion that he bought the 50X Ticket from a Lottery sales agent is particularly difficult to accept given the evidence regarding the claims Mr. Jaafar presented from October 22 to October 26, 2018, the week in which Mr. Jaafar filed the claim for the 50X Ticket. Over the course of four days Mr. Jaafar was paid for 23 claims over \$600. Twenty-one were for claims of \$1,000 or more, and one of those was for \$10,000. The tickets he cashed had been purchased in 15 different cities and towns, and had been purchased from 23 different stores. While most of the purchases had been made from stores inside the Route 128 beltway, the purchase locations extended from Tyngsboro to Franklin. Exhibit 3, pp. 13-14.
40. Those four days of claims, standing alone, exceed the annual threshold of twenty claims that would qualify one as a high-frequency prize winner. As that standard was established

based on the improbability of achieving such a result over the course of one year, it is evidence here that the result is not solely due to chance. Eliminating three claims that appear to be from a Keno or a draw game, two of which were for under \$1,000, leaves 20 claims for winning Instant Game tickets of \$1,000 or more. They collectively represent over four percent of the total number of instant game prizes Mr. Jaafar claimed in the first ten months of 2018 ($20/448 = .044643$). Based on Ms. Pottier's overall estimate of odds, but without weighting the results to reflect the odds of the specific games won with those tickets, I find that, statistically, Mr. Jaafar would have needed to purchase approximately 65,000 tickets to achieve such results ($1,497,733 * 0.0469 = 66,863.08$). Even if one assumes that those tickets were purchased over the course of two weeks, the time per day needed to purchase that many tickets would closely approximate the breakdown Ms. Pottier produced: over 200 tickets per hour, every hour, every day. Exhibits 3 and 8, 961 C.M.R. 2.03, *see also* Tr. 19:11-15.

41. Accepting Mr. Jaafar's testimony would also require one to believe that a customer who purchased thousands of tickets a day would not quickly become a well-known and welcome figure to the Lottery sales locations he frequented. Were he such a frequent and high-volume customer, several Lottery sales agents might have been able to help him confirm whether he had purchased tickets from them at about the time he purchased the 50X Ticket, and at least narrow down the possibilities.
42. For all the reasons stated above, the Hearing Officer finds that Mr. Jaafar's testimony that he purchased the 50X Ticket from a Lottery sales agent lacks credibility.
43. There is no evidence on this record to suggest that the 50X Ticket was assigned to Mr. Jaafar in accordance with any of the limited exceptions enumerated in G.L. c. 10, § 28 and 961 C.M.R. 2.28.
44. Accordingly, the Hearing Officer finds that, considered as a whole, the weight of the evidence supports the conclusion that Mr. Jaafar did not purchase the 50X Ticket at issue here from a licensed Lottery sales agent.

ANALYSIS AND CONCLUSIONS OF LAW

I. Introduction

The parties agree that a Lottery ticket is a contractual arrangement that is governed by statute and regulation, but disagree about the precise terms of that contract, and result that must follow from the application of those laws. Counsel for Mr. Jaafar has argued that a Lottery ticket is a bearer instrument, and that there is no legal basis to deny Mr. Jaafar's claim. Lottery regulations, he argues, do not allow a claim to be denied because of statistical improbability, nor because of the bearer's failure to identify where he purchased a ticket, nor how he acquired it. Counsel for the Lottery argues that the law governing the Lottery limits transferability of lottery tickets and assignment of winning Lottery tickets, and that the Lottery has shown, by a preponderance of the evidence, that Mr. Jaafar obtained the ticket through improper means. Thus, he argues, Mr. Jaafar's claim should be denied.

II. The Contractual Arrangement between the Lottery and its Customers Limits the Assignment of Rights to Lottery Prizes

It is well-established that a Lottery ticket represents a contractual arrangement between the Lottery and its customers; and that the terms of that contract are set by statute, Lottery regulations, and Lottery rules. *Ruggiero v. State Lottery Comm'n*, 21 Mass. App. Ct. 686, 689 (1986) (as Lottery rules constituted contractual arrangement, player not entitled to collect on ticket that failed validation requirement), *see also, Jacobs v. State Lottery Comm'n*, 60 Mass. App. Ct. 303, 308 (2004) (prize amount was limited by the terms of the contract printed on the ticket). "By purchasing a ticket the plaintiff entered into a contractual arrangement with the commission and is deemed to have reasonable notice of the pertinent regulations and rules of the game." *Bretton v. State Lottery Comm'n*, 41 Mass. App. Ct. 736, 741 (1996).

Although Massachusetts law generally permits assignment of contract rights, those rights cannot be assigned when assignment is forbidden by statute, by the terms of the contract, or when public policy would preclude it, *e.g.*, when substitution would materially change the duty or risk of the obligator. *Rubenstein v. Royal Ins. Co. of Am.*, 45 Mass. App. Ct. 244, 246 (1998), citing *American Employers' Ins. Co. v. Medford*, 38 Mass. App. Ct. 18, 22 (1995) and *Garber's Auto Rental Inc. v. Genoa Packing Co.*, 2 Mass. App. Ct. 298, 301–302 (1974).

Such is the case with the assignments of rights to Lottery prize money. General Laws c. 10, § 28 (“Section 28”) unambiguously prohibits and invalidates all assignments of rights to lottery prize money. *Singer Friedlander Corp. v. State Lottery Comm’n*, 423 Mass. 562, 563 (1996). Further, the four limited exceptions provided in Section 28 (1) – (3) must be construed narrowly, including the types of assignments that may be judicially-approved. *Singer Friedlander Corp. v. State Lottery Comm’n*, 423 Mass. 562, 564 (1996). In relevant part, Section 28 states:

The right of any person to a prize drawn is not assignable except under the following limited circumstances:

(1) Payment of any prize drawn may be paid to the estate of a deceased prize winner or to the IV-D agency under chapter 119A.¹

(2) Payment of any prize drawn may be made to any person under an appropriate judicial order.

(3) The commission may, by regulations adopted under section 24, permit assignment of prizes for purposes of paying estate and inheritance taxes, or to a trust the beneficiaries of which are the prize winner, his mother, father, children, grandchildren, brothers, sisters or spouse.

...

(14) An assignment in violation of this section shall be invalid. The commonwealth, the commission, the director, and the agents and employees of the commission shall not be liable to make payments pursuant to an invalid assignment.

The Court construed these exemptions narrowly: In analyzing closely the second exemption – which permits payment to any person under an appropriate judicial order – the Court stated that it would defy logic for the clause to be interpreted as in a way “[to make] the general rule a conditionally permissive one rather than a prohibitive one”, and concluded that, “The prohibition of prize assignments, rather than the allowance of assignments, must be assumed to constitute the legislative policy here.” *Singer*, 423 Mass. at 566. Section 28 is unambiguous: Prize assignment may only be made under limited circumstances; absent those circumstances, that assignment is

¹ Section 1 of G.L. c. 119A provides that “[t]he department of revenue shall be the single state agency within the commonwealth that is designated the IV-D agency pursuant to Title IV, Part D of the Social Security Act and hereinafter in this chapter shall be referred to as the IV-D agency.” The referenced portions of the Social Security Act establish provisions to enforce the child support obligations of noncustodial parents. 42 U.S.C.A. § 651.

invalid; and the Commonwealth, the MSLC, the Executive Director, and the agents and employees of the MSLC are not liable to make payments pursuant to such an assignment.

Those requirements are echoed in Lottery regulation 961 C.M.R. 2.28, which restates the statutory prohibition on assignment and the limited exceptions to that prohibition. In relevant part, it provides:

- (1) No person entitled to a prize may assign his or her right to claim it except:
 - (a) that payments of a prize may be made to the estate of a deceased prize winner or to another according to law by an appropriate judicial order from a court of competent jurisdiction;
 - (b) for the purposes of paying estate and inheritance taxes,
 - (c) to a trust, the beneficiaries of which are restricted to the prize winner, his or her mother, father, children, adopted children, grandchildren, brothers, sisters, or spouse.
- (2) Each prize winner or someone in his or her behalf and acceptable to the Director in order to claim a prize, agrees to sign a claim form which will incorporate by reference the following provisions: the discharge of the Director and the Commission, its sales agents and representatives, of all further liability upon payment of the prize, and permission to use the winner's name and photograph for publicity purposes. The Director reserves the right to modify or amend the claim form to include other aspects of a prize winner's payments. . . In the event that there is a dispute or it appears that a dispute may occur relative to any prize, the Director may, in his or her discretion, refrain from making payment of the prize pending the determination or instructions by the Commission or by a court of competent jurisdiction relative to the same. In order for a winner to claim a prize, the winning ticket must be signed by the owner thereof or his or her proper legal representative . . . The Director may waive any or all of the requirements of 961 CMR 2.28 except those required by law.

961 C.M.R. 2.28.

Lottery regulations are thus clear that prizes may not be assigned except under a narrow set of circumstances, and there is no evidence presented here that would show that Mr. Jaafar acquired the 50X Ticket through one of the limited exceptions under which Section 28 permits a Lottery ticket to be assigned.

The Court's strict interpretation of Section 28 is also consistent with the overall Legislative intent to ensure the integrity of the Lottery itself, and the proper apportionment of its revenues. *Harvard Crimson, Inc. v. President and Fellows of Harvard Coll.*, 445 Mass. 745, 749 (2006)

(statute must be interpreted to effectuate its intent, as ascertained from all its parts and the subject matter to which it relates). See, e.g., G.L. c. 10, § 28A (ensuring that prior to disbursement of a prize in excess of \$600.00, MSLC ensures payment of any past due child support or taxes owed to the Commonwealth), G.L. c. 10, § 28B (requiring the MSLC to notify the Department of Transitional Assistance, the Executive Office of Health and Human Services, the Office of Medicaid and the Department of Revenue, each month, of all persons who were the holders of a winning ticket in excess of \$600 in the prior month). “The prohibition against unpermitted assignments was, no doubt, intended to prevent the creation of a secondary, unregulated market in winning tickets, a legitimate legislative goal.” *Welford v. Nobrega*, 30 Mass. App. Ct. 92, 103 (1991), *aff’d* 411 Mass. 798 (1992) (recognizing trust executed by co-owners of prize, for their own benefit, as valid under Section 28).

The arguments that Mr. Jaafar has offered cannot prevail over this express statutory prohibition. First, although a Lottery ticket is, in general, treated as a bearer instrument, the Lottery has a concurrent responsibility to ensure that prizes are only paid when consistent with controlling law. The certification on the claim form cannot be the end of the Lottery’s responsibility when it is presented with a claim that presents an inconsistency. 961 C.M.R. 2.39. A torn or otherwise mutilated ticket presents a risk of fraud, and automatically triggers a referral to the Compliance Department. 961 C.M.R. 2.07. Here, Ms. McHugh was also presented with the coincidence of two torn tickets, claimed by two different individuals, but sold at the same Lottery sales location. That circumstance suggests that at some point both tickets had been in the hands of a single person, and Ms. McHugh’s investigation properly considered whether Mr. Jaafar had purchased the ticket from a third party. Her review of Mr. Jaafar’s cashing history then became a factor in her determination, as did the credibility of his statements with respect to how he acquired the ticket.

While Mr. Jaafar is also correct that 961 CMR 2.43 mandates suspension from cashing for high-frequency cashers rather than forfeiture of the prize, that regulation cannot be interpreted to override a statutory prohibition against assignment. Further, the Lottery has not sought to deny Mr. Jaafar’s claim because of his cashing history. Rather, his cashing history is such that his testimony about his purchases from Lottery sales agents became difficult, if not impossible, to credit. While the torn ticket that triggered this investigation may not itself constitute grounds for

a denial of a claim, his lack of credibility on the question of how he acquired the ticket combined with the extremely high improbability that he purchased all those winning tickets from a Lottery sales agent do provide such grounds.

RECOMMENDATION

For all the reasons set forth above, the Hearing Officer concludes that Mr. Jaafar acquired the 50X Ticket through an assignment that violated G.L. c. 10, § 28 and 961 C.M.R. 2.28(1). The Hearing Officer therefore recommends the Massachusetts State Lottery Commission so find and rule, and that it affirm the decision of the Lottery's Executive Director.

A handwritten signature in black ink, appearing to read 'Susan G. Anderson', with a stylized flourish at the end.

Susan G. Anderson, Esq.
Hearing Officer
Department of the State Treasurer
One Ashburton Place, 12th Floor
Boston MA 02108

Dated: March 4, 2022