

**COMMONWEALTH OF MASSACHUSETTS
MASSACHUSETTS STATE LOTTERY COMMISSION**

In re: *Appeal of John Pierce*

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DECISION AND RECOMMENDATION

INTRODUCTION

Claimant, John Pierce (“Mr. Pierce”), appeals the decision of the Massachusetts State Lottery Commission (the “Lottery”) denying his lottery prize claim for a 2016 \$2,000,000 50X Cashword instant ticket, ticket number 108-727517-063. The undersigned Hearing Officer recommends that the Lottery **AFFIRM** the Lottery’s decision because Mr. Pierce failed to validate the ticket before the last day to redeem per 961 C.M.R. 2.38(2).

PROCEDURAL BACKGROUND

In the early part of 2019, approximately one year before the beginning of the COVID-19 Pandemic¹ (“Pandemic”), Mr. Pierce purchased a 2016 \$2,000,000 50X Cashword instant ticket, ticket number 108-727517-063 (“ticket”), at a price point of Ten Dollars (\$10) with a prize value of two thousand (\$2,000) dollars. *See* Exhibit 4; Tr. at 40:6-21.

The Lottery closed its offices at the start of the Pandemic, on or about March 15, 2020. *See* Tr.11:11-16. The Lottery resumed business operations in or around April 2020 and re-started its process for mail-in prize claims by posting the dates and criteria for claim appointments and

¹ The parties stipulated at the hearing that the word “Pandemic” means from March 15, 2020, through December 31, 2020. *See* Tr. 6:9-24; Tr. 7:1-11.

walk-in claims on its website on or about April 1, 2020. *See* Exhibit 8; *see also* Tr. 11:17-24; Tr. 12:1- 5; Tr. 29:21-24; Tr. 30:1-24; Tr. 31:1-12.

The Lottery provided instructions to the public on its website on how to submit mail-in prize claims prior to and throughout the Pandemic. *See* Tr. 12:6-11. The Lottery began to accept walk-in claims for prizes of one thousand (\$1,000) and above on or about July 7, 2020. *See* Exhibit 7; Tr. 28:18-24; Tr. 29:1-2.

Mr. Pierce never reviewed the Lottery website for information on redemption of his ticket from when he purchased the ticket through the date of his claim on January 14, 2021. *See, e.g.*, Tr. 42:13-17. Mr. Pierce also did not call the Lottery at any time from when he purchased the ticket through the date of his claim on January 14, 2021. *See* Tr. 41:4-19.

On October 31, 2019, the Lottery published in the Legal Notice section of its website the announcement date (the date the game was terminated and taken out of the agent locations), and the last day to redeem the ticket (the last day that any current prizes for that ticket can be claimed). *See* Exhibit 9; Tr. 32:2-12; Tr. 32:1- 17. The website stated that “[a]ll claims for prizes must be received by the Lottery prior to 5:00 p.m. October 30, 2020.” (emphasis added). *See* Tr. 32:18-24; Tr. 33:1-4.

Mr. Pierce had nearly a year to claim his \$2,000.00 prize, i.e., from the Lottery’s October 31, 2019 announcement date to October 30, 2020, the final day to redeem. *See* Exhibit 9; Tr. 31:13-24; Tr. 32:1-12. Moreover, Mr. Pierce had the opportunity to cash his ticket from the time of purchase in early 2019 until October 30, 2020. *See id.* However, Mr. Pierce only sought to redeem his ticket after October 30, 2020. *See* Tr. 36:2-20. Mr. Pierce did not recall the exact date. *See* Tr. 40:6-21. In any event, Mr. Pierce’s attempt to redeem his \$2,000.00 prize was rejected due to the expiration of the ticket.

On January 14, 2021, Mr. Pierce then filed a claim with the Lottery arguing that his decision to hold onto the winning ticket during the Pandemic was justified, and therefore, he is entitled to his winnings of \$2,000.00. *See* Exhibit 1; Tr. 11:23-24; Tr. 12:1-8. On March 3, 2021, the Lottery denied his claim. *See* Exhibit 3. Mr. Pierce then filed an appeal on March 29, 2021. *See* Exhibit 2.

Mr. Pierce appeals the Lottery's denial of his winning ticket, 2016 \$2,000,000 50X Cashword instant ticket, ticket number 108-727517-063, with a prize value of \$2,000.00. *See* Exhibits 2 and 3.

A prehearing conference took place via zoom video conference on February 22, 2022. Tr. 5:17-24. In accordance with the prehearing conference order, a week before the hearing on March 17, 2022, both parties notified the undersigned hearing officer and each other regarding anticipated witnesses and documents for the hearing. *Id.* at 6:1-5.

A hearing convened on March 24, 2022, via zoom video conferencing. During the hearing, Mr. Pierce was sworn in and testified on his own behalf. Attorney Christian Gonsalves ("Attorney Gonsalves") represented the Lottery. The Lottery presented one witness, Supervisor of Clams and Validation, Collen Wasik ("Ms. Wasik"), who was sworn in and testified on behalf of the Lottery. The following documents were marked as exhibits and entered as evidence without objection:

1. Exhibit 1: Claim form
2. Exhibit 2: Pierce Appeal letter dated 3/29/21
3. Exhibit 3: Lottery denial letter 3/3/21
4. Exhibit 4: Ticket No. 108-727517-063
5. Exhibit 5: Lottery regulations 961 CMR 2.38

6. Exhibit 6: Administrative Bulletin No. 619
7. Exhibit 7: Email 3/4/22, Helen Ryan grand prize coordinator
8. Exhibit 8: Mass Lottery website 3/8/22
9. Exhibit 9: Legal notice 2 million 50X Cashword
10. Exhibit 10: *Ruggiero v State Lottery Commission*, 21 Mass. App. Ct 686 (1986)

The parties were allowed the opportunity to provide written submissions to the hearing officer within thirty (30) days after receipt of the hearing transcript. On April 22, 2022, Attorney Gonsalves submitted a post-hearing brief on the Lottery's behalf. Mr. Pierce did not submit any post-hearing materials.

FACTUAL FINDINGS

I. THE INSTANT TICKET

At the hearing, the Lottery introduced Mr. Pierce's ticket. *See* Exhibit 6. To play the game, a player must do the following:

1. Scratch the YOUR LETTERS box to reveal 20 letters. Scratch the corresponding letters on BOTH CASHWORD PUZZLES. If the player uncovers two (2) or more complete words across either or both CASHWORD puzzles, the player wins the corresponding prize(s) found in the PRIZE KEY. Only the highest corresponding prize can be won per puzzle. Each puzzle is played separately.
2. Letters combined to form a complete "word" must appear in an unbroken horizontal (left to right) sequence or vertical (top to bottom) sequence of letters within either \$2,000,000 50X CASHWORD puzzle.
3. Only letters within the \$2,000,000 50X CASHWORD puzzles that are matched with YOUR LETTERS can be used to form a complete "word."
4. In both \$2,000,000 50X CASHWORD puzzles, every lettered square within an unbroken horizontal or vertical sequence must be matched with YOUR LETTERS to be considered a complete "word." Words within words are not eligible for a prize.
5. A complete "word" must contain at least three letters.

6. The three (3) small letters outside the YOUR LETTERS box are for validation purposes and cannot be used to play \$2,000,000 50X CASHWORD.

7. PRIZE MULTIPLIER: If the player wins either or both of the CASHWORD puzzles, the player is to scratch the PRIZE MULTIPLIER box to reveal a 1X, 2X, 5X, 10X, or 50X. The player's prize is multiplied by the number revealed in the PRIZE MULTIPLIER box.

See, e.g., Massachusetts Lottery website, <https://www.masslottery.com/games/draw-and-instants/2M-50X-cashword-2021> (last viewed on May 23, 2022).

In this instance, Mr. Pierce's ticket resulted in a prize value of \$2,000.00 *See* Exhibit 4.

II. MR. PIERCE'S CLAIM

Mr. Pierce purchased the ticket in the early part of 2019 (he did not recall the specific date). *See* Exhibit 4; Tr. at 40:6-21. After his purchase, Mr. Pierce placed the ticket in a drawer at his home.

He testified that he believed that the Lottery was closed during the Pandemic, and thus, decided to hold onto the ticket along with a few other tickets. *See* Tr. 41:4-24; Tr. 42:1-7. Mr. Pierce testified that he did not believe his ticket had expired, as the Cashword game was still being sold in certain Massachusetts' stores. *See* Tr. 36:21-24; Tr. 37:1-17. Mr. Pierce did not contact the Lottery to learn the rules or process to redeem his Ticket from the ticket purchase date in early 2019, to the date of his claim on January 14, 2021. *See, e.g.,* Tr. 39:14-19; Tr. 41:9-24; Tr. 42:1-17.

Mr. Pierce testified that he first learned that the ticket was no longer valid when he went to the Lottery office located in Braintree, Massachusetts to try to redeem the ticket sometime after October 30, 2020. *See* Tr. 36:2-20. Mr. Pierce testified that the Pandemic was an unusual

time, and that he would have gone to the Lottery earlier if he had known that the last day to redeem the ticket was on October 30, 2020. *See* Exhibit 9. *See* Tr. 43:9-17.

After he was notified that his ticket expired, Mr. Pierce regularly contacted the Lottery to assist with his ticket dispute. *See* Tr. 39:24; Tr. 40:1-15. Mr. Pierce then filed a claim on January 14, 2021. *See* Exhibit 1; Tr. 11:23-24; Tr. 12:1-8. The Lottery denied his claim on March 3, 2021. *See* Exhibit 3. Mr. Pierce then filed an appeal on March 29, 2021. *See* Exhibit 2.

Mr. Pierce argues that his decision to hold onto the winning ticket during the Pandemic was justified, and therefore, he is entitled to his winnings of \$2,000.00. *See* Tr. 39:7-24; Tr. 40:1-5.

DISCUSSION

I. APPLICABLE LAW

Massachusetts courts have consistently held that the relationship between a Lottery player and the Lottery is one based in contract where the terms of the contract are the rules of the game. *See Jacobs v. State Lottery Comm'n*, 60 Mass. App. Ct. 303, 308 (2004). The Appeals Court in *Bretton v. State Lottery Comm'n*, wrote that “[b]y purchasing a ticket the plaintiff entered into a contractual agreement with the commission and is deemed to have reasonable notice of the pertinent regulations and rules of the game.” 41 Mass. App. Ct. 736, 741 (1996); *see also DePasquale v. Ogden Suffolk Downs, Inc.*, 29 Mass. App. Ct. 658, 661 (1990) (finding that bettors are presumed to know the rules of the games they are playing and are subject to those rules). Instant ticket players such as Mr. Pierce are advised in numerous ways - such as the ticket back, claim forms, and the Lottery's website - that the games are subject to Lottery Commission rules. *See, e.g.*, Exhibit 4. The rules include state laws and Lottery regulations. *See* Exhibit 5.

A. Mr. Pierce Was, or Should Have Been, Aware of the Lottery Rules Applicable to the Game.

Mr. Pierce is charged with knowledge of the rules printed on his ticket. Indeed, Mr. Pierce signed his ticket acknowledging that he accepted the Lottery's rules as stated on the ticket. *See* Tr. 23:8-24; Exhibit 4. On the ticket back there is a "NOTICE" section that informs players that the ticket is void if not in conformance with Lottery regulations. The "NOTICE" section also states that all prizes must be claimed within 1 year of the announced end of game.

In its post-hearing brief, the Lottery cites *Ruggiero v. State Lottery Comm'n* where the Court upheld the Lottery's denial of a player's prize claim on an instant ticket. 21 Mass. App. Ct 686 (1986). In *Ruggiero*, the court reasoned that "[a]ccording to the rules stated on the back of the ticket, a defective or invalidated ticket is void." "Those rules do not appear to us to be unreasonable or unfair." *Id.* "They appear in simple language and in a location on the card where they are likely to be read." *Id.* "A person playing a game such as the Instant Holiday Jackpot Game ought to know there are rules for playing it and that his rights are limited by those rules" *Id. at* 689.

Mr. Pierce and the Lottery entered a contract at the time of Mr. Pierce's purchase of the ticket. *See* Exhibit 4. The ticket informed Mr. Pierce that as a player, he is subject to the rules and the regulations and that he had to claim his prize within one (1) year of the announced end of game - the termination date the Lottery removes the ticket from stores. *See* Tr. 16:19-24; Tr. 17:1-8; *see also* Exhibit 4. By signing the ticket, Mr. Pierce is charged with actual or constructive knowledge of the rules applicable to the game. *Jacobs v. State Lottery Comm'n*, 60 Mass. App. Ct. at 308.

B. Mr. Pierce's Ticket is Void Because he Failed to Validate by October 30, 2020.

Under the ticket "Notice" section on the ticket back it states that the ticket is "void if not in conformance with Lottery regulations" and "if the ticket fails any lottery validation requirement." *See* Exhibit 4. The ticket also states that "[a]ll prizes must be claimed within 1

year of the announced end of game”. *Id.* At the ticket bottom, it states that “[a]ll holders, tickets, and transactions subject to Lottery Commission rules as published in the Massachusetts Register and the Administrative Bulletin issued thereunder.” *id.*

Here, Mr. Pierce was required to submit his ticket prior to the expiration of the claim period – i.e., “within one year of the end of the particular game.” *See* 961 C.M.R. 2.38(2). The claim period found in the Administrative Bulletin No. 619 at section 5 states that “[a]ll instant prizes must be claimed within one (1) year of the announced end of game. The right to any prize not claimed within the claim period specified will be forfeited.” *See* Exhibit 6; Tr. 25:22-24; Tr. 26:1-6.

In this instance, the Lottery’s website in the Legal Notice section posted the ticket announcement date on October 31, 2019, which stated that the last day to redeem a prize was on October 30, 2020. *See* Exhibit 9; Tr. 31:13-24; Tr. 32:1- 17. The website also stated that “[a]ll claims for prizes must be received by the Lottery prior to 5:00 p.m. October 30, 2020.” *See* Tr. 32:18-24; Tr. 33:1-4.

Mr. Pierce is charged with knowledge of all these rules and requirements for validating his ticket. Although the Lottery was closed for a brief period during the Pandemic, the Lottery reopened for mail-in claim redemption by April 2020, and walk-in claim redemption by July 2020. Furthermore, Mr. Pierce never contacted the Lottery to inquire about how he could submit a claim for his prize prior to the ticket’s expiration. By his own admission, he “threw [the ticket] in the drawer” well before the Pandemic and did not attempt to cash the ticket until after the last day to redeem. Tr. 40:7-21. If Mr. Pierce had contacted the Lottery, he would have learned that the Lottery resumed business operations in or around April 2020. *See* Tr. 11:17-24; Tr. 12:1- 5. The Lottery also provided instructions to the public on its website with respect to how to submit

mail-in prize claims prior to and throughout the Pandemic. *See* Exhibits 7 and 8; *See* Tr. 12:6-11; Tr. 28:18-24; Tr. 29:1-2; Tr. 29:21-24; Tr. 30:1-24; Tr. 31:1-12.

Consequently, Mr. Pierce is subject to the terms on the ticket. He is also bound by Lottery rules and regulations. Thus, the ticket is void as a matter of contract law.

CONCLUSION & RECOMMENDATION

The Hearing Officer concludes that Mr. Pierce failed to validate the ticket before the last day to redeem per 961 C.M.R. 2.38(2). Accordingly, the Hearing Officer recommends that the March 3, 2021 decision of the Massachusetts State Lottery Commission be **AFFIRMED**.

Respectfully submitted,

The Hearing Officer,

/s/ Nicole J. Coccozza

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DATED: July 1, 2022