

**Massachusetts State Lottery Commission  
07/21/2020 Meeting Minutes**

*Massachusetts State Lottery Commission*

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**Official Meeting Minutes**

DATE: Tuesday, July 21, 2020

TIME: 10:30 a.m.

**All Attendees Participated Remotely through Cisco Webex Conferencing System**

MEMBERS PRESENT: Deborah Goldberg, Treasurer and Receiver General  
William J. McNamara, Comptroller  
Spencer Lord, Special Counsel, Executive Office of Public Safety and Security, designee of Secretary Thomas A. Turco III

MEMBERS ABSENT Anthony Salvidio, Commissioner  
Meghan Liddy, Commissioner

ALSO PRESENT: Michael Sweeney, Executive Director, Lottery  
Edward Farley, Chief Marketing Officer, Lottery  
Didier Bertola, Chief Financial Officer, Lottery  
Judy Moore, Senior Executive Assistant, Lottery  
Gregory Polin, General Counsel, Lottery  
Christian Teja, Director of Communications, Lottery  
  
Delwin Dickinson, Senior Consultant Advizex  
Joshua Fredette, Senior Program Engagement Manager, Overture Partners, LLC  
  
Jeffrey Shapiro, Esq., Deputy Comptroller, Chief Operating Officer  
Brad Mullen, Senate Ways and Means  
  
James MacDonald, First Deputy Treasurer  
Chandra Bork, Chief of Staff, Treasury  
Susan Anderson, Designated Hearing Officer, Treasury  
Cassandra Chung, Paralegal, Treasury  
Lizandra Gomes, Deputy Chief of Staff, Treasury  
Alethea Harney, Communications Director, Treasury  
Emily Kowtoniuk, Deputy Legislative Director, Treasury  
Steve Moore, Deputy Legislative Director, Treasury  
Alicia Wi, Legal Intern, Treasury

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Glenn Feinberg  
Stephen McGarry, Appellant  
Victor Ortiz, Director of Problem Gambling Services Massachusetts,  
Department of Public Health  
Jonathan Shaer, Executive Director, New England Convenience Store &  
Energy Marketers Association (NECSEMA)  
Chelsea Turner, Connecticut Lottery Corporation  
Colin Young, State House News Service  
Jennifer Wankling, Senior Manager, Pollard Banknote  
Phil Wettengel, O'Neil and Associates

**I. Opening of Meeting**

Treasurer Deborah Goldberg opened the Commission meeting at 10:33 a.m.

Treasurer Goldberg stated:

Pursuant to the Commonwealth's Open Meeting Law, Massachusetts General Laws, Chapter 30A, Section 20, as the Chair of the Massachusetts State Lottery Commission, I would like to advise that any person may make a video or audio recording of this open meeting. However, I am obligated to inform attendees of any recording at the beginning of the meeting, so I ask that those who are making any recording identify themselves now as doing so.

Judy Moore, Senior Executive Assistant, Lottery, identified herself as making a recording to assist in the preparation of the meeting minutes.

Treasurer Goldberg then made the following statement:

Pursuant to the Massachusetts Open Meeting Law, Massachusetts General Laws, Chapter 30A, section 20, all of the Commissioners will be participating remotely for this meeting because physical attendance is unreasonably difficult.

Normally, the Commissioners are able to participate remotely only when a quorum of the members are physically present at the meeting location, however, the Commission is relying on Governor Baker's March 12th Executive Order that allows remote participation by all members of a public body and suspends the requirement that a quorum of the body and the chair be physically present at the specified meeting location.

Commissioners, we are all participating by a conference call. Commissioners, please let us know if you have any sort of technical difficulty. The Commissioners may participate in any votes scheduled to take place at today's meeting. All votes must be taken by roll call.

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**II. Approval of the Minutes from June 23, 2020**

Treasurer Goldberg asked the Commission to accept the minutes from the Massachusetts State Lottery Commission (“Commission”) meeting held on June 23, 2020. Commissioner William McNamara made a motion to accept the minutes of the meeting and Special Counsel Spencer Lord seconded the motion.

Treasurer Goldberg, recognizing there was no further discussion, moved the motion to a roll-call vote. Commissioner William McNamara: yes; Special Counsel Spencer Lord: yes; and Treasurer Goldberg: yes. The minutes were approved at 10:36 a.m.

**III. Executive Director’s Report**

**a. Sales Update**

**b. Marketing Update**

**Fiscal Year 2020 Summary**

Executive Director Michael Sweeney noted that the Lottery’s 2020 fiscal year began July 1, 2019 and ended June 30, 2020 and he reported estimated revenues of \$5.252 billion, which is the third highest annual total in the Lottery’s 49-year history. This estimated total is approximately \$257 million lower than the record of \$5.509 billion set in the 2019 fiscal year. Referring to the current pandemic, Executive Director Sweeney asserted that under normal conditions, the Lottery would have had an excellent opportunity to break that record.

Executive Director Sweeney stated that overall sales in the months of March, April, and May decreased by a combined \$244.6 million as compared to the same period of fiscal year 2019. Keno sales decreased by \$76.2 million as compared to fiscal year 2019, almost all, if not all, of such decrease was in direct relation to the current pandemic. Instant Ticket sales decreased by \$27.2 million as compared to fiscal year 2019 and Executive Director Sweeney attributed this decrease to the impact of the pandemic. He added that due primarily to smaller jackpots, Mega Millions and Powerball sales decreased by a combined \$141.0 million as compared to fiscal year 2019. (Mega Millions: \$78.6 million decrease, Powerball: \$62.4 million decrease). Executive Director Sweeney announced that the Lottery anticipates returning an estimated \$979 million in net profit to the Commonwealth. Last fiscal year, the Lottery produced a record net profit of \$1.104 billion.

Executive Director Sweeney remarked that the Lottery has had a phenomenal record over the last five years, setting various records in the area of sales, in particular products and overall products, and in profit. He added that given the unprecedented situation that developed in March, and the need to reengineer and reformulate how the Lottery is operated, which included everything from distribution to interaction with customers, the \$979 million profit number is the number that he was most proud of. He congratulated the team at the Lottery for their flexibility and willingness to change how things operate.

The estimated fiscal year 2020 prize payout is 73.61 percent as compared to 72.38 percent for fiscal year 2019.

He concluded that the finalized financial statement of operations for fiscal year 2020 is expected to be completed by the end of September.

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**Lottery Sales Update**

Executive Director Sweeney reported that the overall unadjusted sales for June 2020 were down \$9.0 million as compared to June 2019. He noted that the estimated June 2020 net profit and prize payout figures do not include accruals for prizes won that have not yet been paid. Due in part to a \$23 million decrease in instant ticket grand prize claims (\$21 million in instant ticket grand prize claims in June 2020 as compared to \$44 million in June 2019).

The estimated net profit for June 2020 was \$50.9 million as compared to \$52.3 million in June 2019. After subtracting a 2-day average net profit figure of \$3.3 million due to a shift in the calendar that resulted in 2 more days being included in the net profit figure for June 2020, the adjusted change for June 2020 versus June 2019 is an estimated \$4.7 million decrease in net profit. The Prize payout for June 2020 was an estimated 76.06 percent as compared to 76.31 percent in June 2019.

Executive Director Sweeney provided a June 2020 sales breakdown and revealed that 3 out of 9 products experienced sales increases in June 2020 as compared to June 2019. Instant Ticket sales were up \$12.3 million, Numbers Game sales were up \$3.6 million, and Mass Cash sales were up \$147,009. He stated that Keno sales, as compared to June 2019, were down \$21.0 million.

**Five Year Comparison Chart**

Executive Director Sweeney informed the Commission that the prize payout as a percentage of sales was at 73.5 percent.

**Gross Sales Results June Sales**

Discussing the Gross Sales Results of June fiscal year 2020 versus June fiscal year 2019 Unadjusted Non-Fiscal Year, Executive Director Sweeney announced that instant tickets sales experienced a good month noting that demand has been high. The Lottery's distribution office has been working overtime since the beginning of May in order to ensure that adequate supplies are available to retail partners. Keno sales were down 26 percent, a gap that the Lottery will continue to watch into the new fiscal year. Executive Director Sweeney anticipated that for the foreseeable future, there will be a level or higher demand for instant tickets and conversely, with some restaurants and bars not reopening and others operating with limited capacity, there will be a lingering negative impact on Keno sales. He anticipated a back and forth pull with sales, which could be high because of instant ticket sales, but low if sales continue to reduce in games such as Keno.

Discussing Gross Sales Results Year to Day for fiscal year 2020 versus fiscal year 2019 Unadjusted Non Fiscal Year, Executive Director Sweeney reported that prior to the pandemic the Lottery was on track for a very strong year, which would have challenged all sales and profit records. Overall, instant ticket sales were down approximately 1 percent. Mega Millions and Powerball sales were driven down by the lack of jackpots, and sales for a few decent jackpots were suppressed due to pandemic related disruptions to public movement and economic activity.

Executive Director Sweeney stated that as the impact of the virus is monitored, Keno will be the game to watch. Throughout Massachusetts, as well as the surrounding states, those coming into Massachusetts often buy lottery products. He noted that the Lottery would monitor the virus's

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impact on Lottery's retailers, in particular restaurants and bars, who are trying to reopen or those that simply will not be reopening. Executed Director Sweeney indicated that he thought that Keno sales could be negatively impacted potentially for a two to three year period. He stated that the Lottery will be monitoring this and will work on finding solutions to mitigate the losses.

**Weekly Sales Since March 1**

Executive Director Sweeney provided an overview on the effects that the COVID-19 State of Emergency has had on Lottery sales. Referring to a "Weekly Sales Since March 1" chart, Executive Director Sweeney provided a recap on the weekly sales for instant tickets and Keno as well as total sales from all games beginning March 7<sup>th</sup>, which was the last full normal week for Lottery sales.

Executive Director Sweeney highlighted the figures from the height of the pandemic to the height of the shutdown and the public's compliance. He remarked that there was a slight recovery for Keno during the summer months as players began to socialize more, but he cautioned that it was nowhere near the level of sales prior to the pandemic. He stated that most of the other products have started to recover, just as other businesses, but nothing is close to normal, particularly for a business that does not offer direct on-line sales. Businesses that had an established on-line channel have done significantly well during the last three months and will continue to do so as consumers shift behaviors because of the pandemic.

**Current Lottery Operations**

Executive Director Sweeney provided a brief overview of current Lottery operations. He commented that the Braintree, Dorchester, New Bedford, Springfield, and Worcester claim centers are open from 8:45 a.m. to 7:15 p.m. for prize claims over \$600 and up to \$100,000, using split shifts. The Lottery has had to utilize overtime, but Executive Director Sweeney believes it has been well worth it. An internal team was formed to frame out how to open the Lottery offices in a manner that will both service and protect customers as well as Lottery team members. The lines have been significant but manageable. All prizes over \$100,000 are being processed in Dorchester. The Woburn offices are open from 8:45 a.m. to 4:30 p.m. for prize claims over \$600 and up to \$100,000.

The Lottery is continuing to process mail in prize claims of up to \$50,000 and it has extended the expiration date for tickets that are due to expire between March 19 and September 29, 2020 to September 30, 2020.

The Lottery is also continuing to operate with essential personnel only on-site. Members from areas such as budget, legal, and finance report to the office on an as needed basis to conduct operations for a limited period of time. He complimented the union as well as all Lottery team members for their flexibility and their continued patience as obstacles are worked out.

Executive Director Sweeney stated that the Lottery has transitioned to split shifts in order to comply with public health guidelines and keep team members safe, and telecommuting for employees who are able to work from home. He added that this has been functioning well.

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**Number of Prize Claims Processed**

Executive Director Sweeney reported that toward the end of March, there was essentially a complete shutdown and the Lottery experienced an upsurge in mail-in claims. He added that retail partners were always able to process claims of \$599.00 and below. The Lottery put a cashing system in place and was able to assist those individuals with prizes of \$20,000 and above which was moved to \$10,000 and above. He added that if the lines were manageable and acceptable, the Lottery allowed individuals with any level of prize claims to be able to get into line. He reported that there was a spike in June and the Lottery processed about 4,000 claims per week, which under normal circumstances would be considered a strong week. Since the last week of June, the Lottery has been processing well over 7,000 claims, which is helping to meet the normal demand and take a significant bite out of the backlog that began to build from about mid-March through the end of May. He anticipated that if the Lottery can continue the pace of processing about 7,000 claims per week through the summer, the backlog will be eliminated. He concluded that the Lottery has done a phenomenal job.

**Value of Prize Claims Processed**

Executive Director Sweeney reported that since March 22<sup>nd</sup>, the Lottery has processed more than 29,000 prize claims totaling \$121.6 million. He noted that there was a significant spike in the value of the claims that were processed, with a large number being \$50,000 and \$100,000 claims. He stated that it was important to the Lottery to get that money to the winners as well as into the economy.

**Mass. Lottery Intercept Program**

Executive Director Sweeney stated that although it is often overlooked, the Lottery does intercepts for the Commonwealth. This is done particularly on the tax side and sometimes involves back child support. He remarked on the impact that the pandemic has had on the month of April, which showed just 17 intercepts, mostly from mail-ins, which brought in about \$8,786. He described the intercepts from January at \$307,027 and February at \$247,300 as typical. He stated that this is another reason why it's important that the Lottery is in business, it is good for the Commonwealth as well as the individuals who are owed this money, particularly if it involves back child support.

**Season Ticket Sales**

Executive Director Sweeney reported that the Lottery has been working diligently to upgrade the process of season ticket sales. He reported on the improved sales of season tickets because of the authorization to process on-line sales. As the Lottery was able to change the mode of operation and modernize the system, he reported a \$1.3 million dollar increase since online sales began in January 2020. Customers who play the Massachusetts State Lottery are just like the customers in every other segment of the economic engine that drives the country. They are comfortable with, and want to engage with, products on-line. Using on-line season ticket sales as an example, he provided numbers that showed the potential profit and revenue to the cities and towns if the Lottery was allowed to fully operate on-line. He stated that despite some initial difficulties, a \$1.3 million jump in one year is pretty significant and well worth the investment, time, and effort. He

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complimented Assistant Executive Director of Finance Didier Bertola as well as his team for doing a wonderful job in managing this process.

Assistant Executive Director Bertola added that customers appreciate the opportunity to now have their tickets emailed to them so that they have an instant record of their purchase. In the past, with the old process, they had to wait two to three weeks to receive their tickets. Customers now have the option to make a purchase outside of normal business hours just the same as they would when making purchases from most businesses. Assistant Executive Director Bertola described the new process as a huge success.

**Woburn Annex**

Executive Director Sweeney reported that because of the size and layout, it was almost impossible to utilize the Lottery's Woburn office for general cashing purposes due to the current health requirements and need for social distancing. He added that the Woburn office serves a large portion of North Shore Massachusetts. The Lottery worked with the Division of Capital Asset Management and Maintenance (DCAMM) to obtain a leasing arrangement that provided an alternative space. Executive Director Sweeney complimented DCAMM for working nights and weekends to find a solution. DCAMM was able to find a location in Woburn with the existing landlord and close in proximity to the existing Woburn location. The new office is a good size and will be utilized for approximately thirty days, with the option to extend the time if needed. This space allowed the Lottery to have at least 24 customers inside and out of the elements. The Lottery's entire team did an excellent job of designing the layout and floor markers to comply with public health guidelines. He described it as a stunning success.

**Department of Public Health Problem Gambling Services**

Executive Director Sweeney announced that the Director of Problem Gambling Services with the Massachusetts Department of Public Health ("DPH"), Victor Ortiz, was in attendance at the meeting. Executive Director Sweeney added that the Lottery works with DPH and he informed the Commission that there is a new Problem Gambling Help line that has gone into effect to service the Commonwealth. He stated that the Lottery is in the process of updating the new number wherever possible and invited Director Ortiz to address the Commission.

Director Ortiz thanked Executive Director Sweeney and expressed his appreciation to the Lottery. He stated that the Lottery has had a long history of involvement and partnerships associated with problem gambling. He stated that this is a new opportunity for the Commonwealth to be proud of and he thanked the team at the Lottery in sharing the responsibilities in mitigating the problems associated with gambling.

Director Ortiz stated that previously, DPH funded two separate helplines – one for problem gambling and one for substance use. After a very competitive procurement process, that was based on evidence, data, and the results of a 2019 helpline evaluation, the DPH was able to integrate the Problem Gambling helpline with the substance abuse hotline, and as a result, will now be able to screen about 18,000 to 20,000 substance abuse callers for problem gambling. This service will be fully bilingual and available 24/7. This will also allow additional services to those seeking help for problem gambling to be directed to outpatient treatment services. He described this as an outstanding opportunity and is excited to continue to work with the Massachusetts State Lottery

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moving forward. He extended his gratitude to Executive Director Sweeney for being a staunch supporter in living up to the tradition of continued commitment to problem gambling.

Moving forward, the Helpline Services for Problem Gambling Treatment Services will be administered by Health Resources in Action (“HRiA”), providing gambling helpline services to improve access, referrals, and care to individuals and families across MA. HRiA also administers the Massachusetts Substance Use Helpline. Effective July 1, 2020, the helplines have been integrated and HRiA will be responsible for responding to calls and website visits by providing support and referrals for problem gambling, substance use, and mental health.

**“Mini Zip Trips” Partnerships**

Executive Director Sweeney announced that the Lottery is once again partnering with Boston 25 Morning News for this year’s Mini Zip Trip series to celebrate the heroes and healthcare workers in local communities. In addition, the Lottery will offer Mass Lottery VIP Club members a chance to win one of four Instant Ticket prize packs in the popular Scratch for Cash promotion.

To keep everyone in the community safe, this year’s Zip Trips will have a different feel as they change from an onsite event with audience participation to a feature-driven broadcast.

The Mini Zip Trips will include a weekly Healthcare Highlight presented by the Massachusetts Lottery, which will recognize a healthcare worker from the featured city or town for their contributions to their community.

Assistant Executive Director of Marketing Edward Farley described the partnership for the past four years with Boston 25 as excellent and he was impressed with their ability to transform this partnership into something that is relevant for today’s climate, and to honor the healthcare workers across the state in a healthy and responsible way.

**“Scratch for Cash” Promotion**

As part of the Zip Trip experience, Executive Director Sweeney announced that the Massachusetts Lottery and Boston 25 Morning News are teaming up again to give VIP Club members a chance to win one of four Instant Ticket prize packs in our popular Scratch for Cash Promotion. The entry period is from July 10<sup>th</sup> at 6:00 a.m. until August 14<sup>th</sup> at 3:00 p.m. Four winners will be randomly selected by the Lottery from all eligible entries. On Friday, August 21<sup>st</sup>, the names of the four winners will be announced on the Boston 25 Morning News broadcast. The winners will virtually appear on Boston 25 Morning News on Friday, August 28<sup>th</sup>, and will scratch their assigned Instant Ticket prize pack.

**Social Media**

The Lottery continues to utilize social media to connect with players. Executive Director Sweeney presented examples of recent strategies employed on Twitter, Facebook and Instagram. He explained that the Lottery has been mild in its efforts and doing a level of winner awareness to bring attention to the retail partners and customers while maintaining social distancing in stores and elsewhere.



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**IV. Update Regarding Information Technology**

Executive Director Sweeney updated the Commission on the Lottery's progress in the complete replacement of the Lottery's website as well as the mobile interfacing areas. He stated that the Lottery has implemented a mobile first design to meet the vast majority of players on the devices that are used every day. The Lottery has developed a more modern content management system that allows authors to update areas of the website instead of going directly to the developers. In addition, the Lottery is converting 30 plus years of the Massachusetts State Lottery legacy system into a more modern and resilient data base and service oriented architecture. He explained that a lot of the Lottery systems that are IT based are either 18 to 25 plus years old and in vast need of updating and modernization. The Lottery has migrated the website into a highly secured cloud infrastructure that can be easily scaled up for huge traffic events such as billion dollar jackpot runs.

Executive Director Sweeney communicated that the Lottery has had a very good working relationship with the Executive Office of Technology Services and Security (EOTSS) who reviewed a lot of the projects, particularly on the security side, to ensure the Lottery was on track and in the right direction. He stated that Senior Program Engagement Manager with Overture Partners, Joshua Fredette and the internal team have done a good job of moving things forward with improved analytics and instrumentation around the system to ensure that player insights, availability, and performance are well monitored.

Executive Director Sweeney presented visuals that compared the old Lottery website to the new one. He explained that the website is still in development with changes being made with the marketing team and by customer feedback. He elaborated that the majority of users world-wide have shifted away from the desktop format to the mobile device for everyday interaction. He announced that the Lottery is no longer behind in this area and is much more responsive in meeting the expectations of people who are using mobile devices to engage in the Lottery. He described this as a critical part of the business. This new design will greatly improve mobile engagement and accessibility, which has become the primary method by which players engage with the Lottery.

Executive Director Sweeney described the new site as having a better player support system, which will improve the player experience and generate efficiency. The new searchable help center will deflect inbound emails and phone calls and provide the Lottery with new analytics to make measured improvements.

Executive Director Sweeney stated that during internal meetings, and in speaking with EOTSS, one of the goals is to understand how to best utilize cloud infrastructure as much as possible. The new cloud infrastructure will support enhanced security, flexibility and scalability for the Lottery and its players, with expanded options for redundancy, performance, and data protection.

**V. Matters Requiring Approval of the Massachusetts State Lottery Commission**

**VOTE (1):** That the Massachusetts State Lottery Commission hereby ratifies and adopts the Recommended Findings and Decision of Susan Anderson, Esq. (hearing officer sitting by designation) in re: Stephen McGarry, Denial of Prize Claim.

Special Counsel Spencer Lord made a motion to ratify and adopt the decision and Commissioner William McNamara seconded the motion.

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Lottery General Counsel Gregory Polin provided a brief background and explained the process of the Commission-level appeal. He acknowledged Mr. Stephen McGarry as the appellant in this matter and an attendee at the meeting. He explained that Mr. McGarry had presented five instant tickets denied by the Lottery due to the expiration date. General Counsel Polin stated that the Lottery's regulations allow Mr. McGarry to appeal the decision to the Commission.

He introduced Treasury Hearing Officer Susan Anderson who conducted a hearing and who would be discussing her recommended findings and decision. General Counsel Polin then recommended that Mr. McGarry be afforded the opportunity to be heard by the Commission to present any objections or arguments after Hearing Officer Anderson discussed her decision. He stated that the Commission may then to proceed to issue a final decision.

Hearing Officer Anderson stated that Mr. McGarry submitted a claim in August, 2018 on five \$10,000,00 Hold 'em Poker instant game tickets. The game had ended on October 31, 2012 and, by regulation, the last day to claim those tickets was October 31, 2013. The one-year period between the ending of the game and the last day to claim is standard for instant tickets and is consistent with what is done for other forms of games by the Lottery. The most critical question was whether the tickets were void on the day that Mr. McGarry filed to claim them, and given the five year gap after the expiration it was determined that they were. Hearing Officer Anderson continued that Mr. McGarry presented other arguments with respect to whether the tickets should be honored despite the delay in the claim. Mr. McGarry raised the issue that the design of the Poker game was unreasonably difficult to evaluate however Hearing Officer Anderson's findings determined that it was not.

Hearing Officer Anderson noted that four out of the five tickets had non-Poker winnings on them as the Hold 'em Poker game presents both a poker hand as well as a standard Lottery game. Assuming that Mr. McGarry could not fairly evaluate the Poker winnings, four of those five tickets had winnings on them that were not Poker winnings. With respect to the additional codes that appear on the game, there was nothing that would have prevented the filing of a claim on the others because there is only one code. Mr. McGarry is a disabled veteran; however, he did not offer any evidence to support the argument that his disability status in any way impaired him from evaluating the winnings on the tickets. In addition, with respect to whether the practice of terminating games after a period of time is against the public's interest, it is in fact in the public interest to have a final cutoff date for filing a claim on the ticket, because otherwise the books could not be closed on a Lottery game. The ability of the Lottery to fulfil one of its primary purposes, which is to provide revenue to the cities and towns, would be hampered. Hearing Officer Anderson additionally noted that there has been an extension for expiring game tickets due to the pandemic. However, during the period these tickets were unclaimed there wasn't a comparable longstanding emergency for anything that would have supported such an extension during that period and certainly not close to five years.

Treasurer Goldberg asked the appellant in this case, Mr. Stephen McGarry, if he would like to speak. Mr. McGarry disputed the code system and argued that the code on his ticket was invalid. He said that in reading the Massachusetts Lottery Rules and Regulations, there wasn't anything written in reference to the code system. He felt it was a design flaw and that the code is embedded on every ticket but with no explanation within the rules and regulations. He elaborated how he found out that his ticket was a winner. He explained that when he submitted his ticket in for the second chance drawing, it was not accepted and upon further evaluation, he realized the ticket was a \$1,000 winner. He then discovered that any winning ticket over \$600.00 shows an invalid code. He believed it was deceitful to not have this information listed in the rules and regulations.

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Hearing Officer Anderson informed the Commissioners that the code issue is addressed in the recommended decision and there is no basis for concluding the code itself is deceptive, misleading, or in any way not authorized by the current regulations even though there is not a specific provision for it.

Comptroller William McNamara asked Hearing Officer Anderson if she could specify what is meant by, the code. Hearing Officer Anderson explained that when an instant ticket has had the material covering the ticket scratched off, three letters of the alphabet are revealed, which some are easy to decipher. She gave examples such as the letters, O. N. E. means that the player has won \$1.00. She added that the winnings that Mr. McGarry had are spelled out in this decision in the findings. The code O. I. R. appears to be one that shows up on a ticket that is \$600.00 or more. Mr. McGarry argued that a code is embedded on every ticket and he believes that there should be some kind of explanation in the Massachusetts Lottery Rules and Regulations. Lottery General Counsel Polin stated that for every instant ticket game, there is an administrative bulletin that outlines the rules for that particular game and that the codes that are being discussed are addressed in those administrative bulletins. Lottery General Counsel Polin added that he believes that the decision of Hearing Officer Anderson speaks for itself.

Treasurer Goldberg asked Hearing Officer Anderson to further elaborate on her findings that the fifth ticket clearly showed \$700.00 in winnings. Hearing Officer Anderson explained that Mr. McGarry had pointed out the challenge in understanding whether he was a winner in the Hold 'Em Poker side of the ticket, however, there is a standard game on those tickets as well. The game didn't require the player to understand poker rules and that was what she was referring to in that ticket as being a winning ticket. She elaborated that as long as a player could understand the standard rules, they may be unaware that they have won extra money on the poker game but they would know that the ticket is worth cashing. This ticket was not presented for cashing until five years after the expiration. Comptroller William McNamara stated that it appears that the date of the expiration is the central and definitive issue and it is very clear how the date and timing of each game works. This was undisputed by all parties. Mr. McGarry argued that his dispute is putting a code in that is deceiving to anyone who has a winning ticket of over \$600.00. Hearing Officer Anderson added that the case as a matter of law can be decided solely on the issue of the termination of the game and between the lapse of time when the ticket expired and when Mr. McGarry sought to claim it. Mr. McGarry has requested this to be waived and everything that has been discussed regarding the ability to evaluate the value of the tickets, relates to that waiver request as opposed to whether the ticket was valid on the date that it was submitted for claim. Hearing Officer Anderson expressed compassion for Mr. McGarry's situation but stated that there is important public policy reason to follow the rules and this is one of those difficult situations. Mr. McGarry then restated his argument that the Massachusetts State Lottery should have rules regarding the codes on all of the tickets. He explained that because he would scratch multiple tickets at one time, in order to save time going through and examining each ticket for a winner, he would rely on the code, and if he saw that it was a losing code, he ignored it. Hearing Officer Anderson sympathized with Mr. McGarry but stated that this was not a sufficient basis for the Lottery to make a waiver. She added that under the law, it is clear that the ticket had expired when it was presented.

General Counsel Polin repeated that he believes that the decision of Hearing Officer Anderson speaks for itself and he also believes that there is a different code for prizes over \$600 because of a security or compliance reason to protect those tickets from being fraudulently handled or transacted. He added that it is consistent practice for prizes above \$600 to have unique codes that are not easily identifiable.

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Treasurer Goldberg asked Hearing Officer Anderson if she agreed that the issue of the codes is not relevant because of the time that had passed and the tickets had expired. Hearing Officer Anderson agreed and added that the tickets were void as of a year and a day after the game closed and Mr. McGarry unfortunately waited longer than that to submit his tickets.

Treasurer Goldberg sympathized with Mr. McGarry's claim but added that she is unsure why Mr. McGarry would ignore the ticket as a winner. She stated that there are different codes for different amounts, and she has not run into the situation of the codes causing difficulties amongst players. Mr. McGarry repeated that he believes the codes present a flaw in the system and are deceiving. Treasurer Goldberg disagreed that the codes are deceiving and the codes did not have an impact on the fact that five years had passed since the expiration on the ticket. She added that as a matter of law, the decision could not be changed.

Treasurer Goldberg, recognizing there was no further discussion, moved the motion to a roll-call vote. Commissioner McNamara: yes; Special Counsel Lord: yes; and Treasurer Goldberg: yes. The Motion carried.

**VI. Other Business – Reserved for matters the Chair did not reasonably anticipate at the time of posting**

After asking if there was any other business to discuss, Treasurer Goldberg sought a motion to adjourn the meeting. Commissioner McNamara moved to adjourn and Special Counsel Lord seconded the motion.

Treasurer Goldberg moved the motion to a roll-call vote. Commissioner McNamara: yes; Special Counsel Lord: yes; and Treasurer Goldberg: yes. The Motion carried.

The Commission meeting adjourned at 11:56 a.m.

**List of Documents and Exhibits Used:**

- MSLC July 2020 Commission Meeting Book
- MSLC Meeting Executive Director's Report, July 21, 2020 – PowerPoint Presentation
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**COMMONWEALTH OF MASSACHUSETTS  
Massachusetts State Lottery Commission  
Boston, Massachusetts**

*In re: Stephen McGarry, Denial of Prize Claim*

Appearance for the Massachusetts State Lottery  
Commission:

Candace Hodge, Esq.  
Massachusetts State Lottery Commission  
150 Mount Vernon St.  
Boston, MA 02125-3573

Appearance for Mr. McGarry

Stephen McGarry, *pro se*  
81 Salem Road  
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**RECOMMENDED FINDINGS AND DECISION**

Mr. Stephen McGarry (“Appellant”) is appealing the decision of the Director of the Massachusetts State Lottery (“Lottery”), issued January 30, 2019. That decision held that the Lottery had correctly denied Mr. McGarry payment for five winning tickets for the \$10,000,000 Hold ’Em Poker® game, based on the fact that the game had expired more than one year prior to Mr. McGarry presenting the tickets for payment.

The hearing on the Appellant’s appeal was held on July 9, 2019, at the headquarters of the Lottery, in accordance with G. L. c. 10 and c. 30A, 801 CMR 1.02 and 961 CMR 2.13. Candace Hodge, Esq., appeared on behalf of the Lottery, Mr. McGarry appeared on his own behalf.

**I. PROCEDURAL BACKGROUND AND EVIDENCE PRESENTED**

On July 6, 2019, Ms. Hodge electronically submitted copies of the seven exhibits proposed by the Lottery. She also submitted copies of three exhibits proposed by Mr. McGarry. At the hearing, the set of exhibits offered by the Lottery were admitted into evidence as Exhibits 1 – 7. The Lottery called one witness; the Appellant testified in his own behalf, and called no other

witnesses. Mr. McGarry did not offer into evidence the exhibits submitted electronically; however, those are marked collectively as Exhibit 8 for Identification.

### **Exhibits**

- Exhibit 1. Five "\$10,000,000 Hold 'em Poker®" ticket claim forms, each dated August 6, 2018, and numbered 97-208343-034; 97-337089-082; 97-208345-003; 97-407445-045; and 97-473539-048 (2 pp. each, total, 10 pp.), with photocopies of Mr. McGarry's Florida Driver's license and United States Uniformed Services ID attached to the first four ticket claim forms (4 pp.). (14 pp. total).
- Exhibit 2. Letter from Robert Ellard, Lottery Claims Department, to Mr. McGarry, dated August 17, 2018 (1 p.).
- Exhibit 3. August 30, 2018 letter from Stephen McGarry to Robert Ellard (2 pp.), with attached letter from Michael Freuh, U.S. Department of Veterans' Affairs, dated September 3, 2018 (2 pp.)(total, 4 pp.).
- Exhibit 4. Letter from Melissa Peura, Lottery Paralegal, dated September 11, 2018 (1 p.), certified mail receipt (1 p.) (2 pp. total).
- Exhibit 5. Letter from Mr. McGarry, dated October 3, 2018 (1 p.).
- Exhibit 6. Findings and Decision by Christian Gonsalves, Esq., Lottery Deputy General Counsel, issued January 30, 2019 (2 pp.).
- Exhibit 7. Letter from Mr. McGarry, appealing the January 30, 2019 decision, dated February 12, 2019 (1 p.).
- Exhibit 8. Marked for Identification Only. Three "Billion Dollar Blockbuster" ticket claim forms, each dated August 6, 2018 (3 pp. total).

### **Witnesses Presented**

Witness 1. Melissa Peura, Lottery Paralegal

Witness 2. Stephen McGarry

### **FINDINGS OF FACT**

1. On August 6, 2018, Mr. McGarry filed a claim for five instant game tickets in the 2005 "\$10,000,000 Hold 'Em Poker®" game (hereinafter, the "Hold 'Em Poker Game.")

Exhibit 1.

2. At approximately 2:30 PM that day, the Lottery computer system produced four reports (*i.e.*, one report per ticket for four of the tickets) stating on each that the ticket submitted was “not a valid game.” Exhibit 1.
3. On August 17, 2018, Robert Ellard, of the Lottery Claims Department, wrote to Mr. McGarry denying the claim for a prize. In the letter, he stated that the game had expired, and that the last day to redeem a prize in the Hold 'Em Poker Game was October 31, 2013. His letter also advised Mr. McGarry that he had 30 days to file for an appeal of that decision. Exhibit 2.
4. On August 30, 2018, Mr. McGarry filed an appeal of Mr. Ellard's decision. Exhibit 3.
5. Mr. McGarry's appeal was forwarded to Ms. Peura, Lottery Paralegal, for review. Exhibit 4, Tr. 6:13 – 7:16.
6. After reviewing Mr. McGarry's claim, on September 11, 2018, Ms. Peura sent him a letter in which she stated that the Hold 'Em Poker Game had been officially closed on October 31, 2012, and the last day to claim the tickets was therefore October 31, 2013. Exhibit 4, Tr. 12:7 – 22.
7. Ms. Peura's letter also stated that Mr. McGarry's appeal remained on file, and if he chose, he could have a hearing on it. Exhibit 4.
8. On October 3, 2018, Mr. McGarry replied to Ms. Peura's decision, requesting that his appeal go forward. Exhibits 4 and 5, Tr. 12:23 – 13:15.
9. Mr. McGarry's appeal was heard by Christian Gonsalves, Esq., Deputy General Counsel for the Lottery. On January 30, 2019, Mr. Gonsalves issued a decision upholding the decision of September 11, 2018, to deny Mr. McGarry's claim. Exhibit 6.
10. On February 12, 2019, Mr. McGarry appealed from the decision issued by Mr. Gonsalves. The hearing on this appeal was held July 9, 2019. Exhibit 5.
11. In her testimony at this hearing, Ms. Peura explained the process the Lottery follows when terminating an instant ticket game. Ms. Peura's testimony on this issue was credible, and no evidence contradicted it.

12. Instant ticket games are typically terminated when the major prizes have already been paid. Games may also be terminated because of poor sales or technical difficulties, *e.g.*, when there proves to be a problem with the scratch-off coatings on the tickets. Tr. 18:25 - 19:14.
13. When a specific game ends, the game's termination is announced on the Lottery's website, and published in two major newspapers – typically the Boston Globe and the Boston Herald. All tickets for that game are immediately pulled from all Lottery agents and all vending machines, and destroyed. The last day to purchase a ticket is therefore the day that the game ends. Consumers then have one year from the day the game ends to file a claim for any prizes. Tr. 6:19 – 7:16; Tr. 14:1 – 15:5; Tr. 21: 6 – 22:16.
14. As Ms. Peura had stated in her letter to Mr. McGarry, she determined that the Hold 'Em Poker Game had ended on October 31, 2012, and that the game's termination had been announced in two newspapers and on the Lottery's website. The last day to claim the tickets was therefore October 31, 2013. Exhibit 4, Tr. 7:5 – 20.
15. The Hold 'Em Poker Game cards presented by Mr. McGarry each include three scratch-off poker "hands," each hand representing a chance to win. Scratching off the coverings shows a set of two cards for the "player," two cards for the "opponent," and five "community cards" that must be treated as available to both the player and the opponent. Exhibit 1.
16. A second panel on each Hold 'Em Poker ticket includes a second instant game that is not related to poker, or to any other card game. In this more standard instant game (the "Standard Game"), the player scratches off six winning numbers, plus a bonus number. There are 12 items to be scratched off, and thus 12 chances to win on this part of the ticket. Exhibit 1.
17. The reverse side of each of each Hold 'Em Poker ticket has, first, a section that ranks the possible poker hands from high to low (*i.e.*, from royal flush to a single pair), and can be used by players to determine whether the "player's cards," plus selections from the "community cards" can beat the "opponent's cards," and from that, determine whether the player has won on any of the three poker hands shown on the face of the ticket. Exhibit 1.



18. The reverse side of each ticket also includes a notice that states, in relevant part:

“Grand prizes are defined as both \$1,000,000 and \$4,000,000 prizes. The \$10,000,000 HOLD ‘EM POKER® game will be terminated after all Grand Prizes have been claimed. . . . All Prizes must be claimed within 1 year of the announced end of game.”

Exhibit 1.
19. The reverse side of each ticket also includes that following statement, “All holders, tickets and transactions subject to Lottery Commission Rules as Published in the Massachusetts Register and the administrative bulletin issued thereunder.” Exhibit 1.
20. The reverse side of each of Mr. McGarry’s Hold ‘Em Poker Game tickets states that it was copyrighted in 2005. Exhibit 1.
21. As Mr. McGarry pointed out, scratching off the coating on the second panel also reveals a three-letter code related to the amount won on the ticket. The codes appear within the field when the player scratches off their numbers and possible prizes. They are not explicitly identified in the game instructions. Exhibit 1.
22. The codes visible on the tickets that Mr. McGarry presented to the Lottery are: ticket no. 97-208343-034, OHN; ticket no. 97-337089-082, TWF; ticket no. 97-208345-003, OHN; ticket no. 97-407445-045, FRT; and ticket no. 97-473539-048, OIR. Exhibit 1.
23. Taken in the same order, the tickets show themselves to represent winnings of \$100.00 (of which all is attributable to the poker game), \$25.00 (of which \$15.00 is attributable to the poker game, and \$10.00 to the Standard Game), \$100.00 (of which \$60.00 is attributable to the poker game, \$40.00 (all of which is attributable to the Standard Game), and \$1,000.00 (of which \$300.00 is attributable to the poker game, and \$700.00 to the Standard Game). Exhibit 1.
24. In all, there are four alphabetic codes that appear on Mr. McGarry’s tickets: OHN (which appears on his first and third tickets), TWF (which appears on his second ticket), FRT (which appears on his fourth ticket) and OIR (which appears on his fifth ticket). The first three codes can be decoded by comparing them to the winnings revealed on the ticket:

OHN stands for one hundred dollars, TWF for twenty-five dollars, and FRT for forty dollars.<sup>1</sup> Exhibit 1.

25. Those first three codes appeared on three tickets in which Mr. McGarry had some winnings in the Standard Game (second, third and fourth tickets), and one in which all winnings were in the poker game (first ticket). Exhibit 1.
26. The fourth code, OIR, which appeared on Mr. McGarry's fifth ticket, does not readily translate to a dollar amount. However, that ticket clearly showed \$700 in winnings on the Standard Game. As this amount exceeds \$600, it must be claimed at either a Lottery office or a Lottery claim center. Exhibit 1, 961 CMR 2.38.
27. Thus, of the five winning tickets that Mr. McGarry has presented, three show winnings in both the poker game and the Standard Game, one shows winnings in only the poker game, and one shows winnings in only the Standard Game. Exhibit 1.
28. Mr. McGarry served in the United States Army from February 9, 1973 to June 8, 1973, and again from September 26, 1983 to July 19, 1997. He was honorably discharged, and has been determined to be 100 percent disabled due to service-connected disabilities. Exhibit 3.
29. Mr. McGarry presented two forms of identification when he sought to claim the tickets at issue: A United States Uniformed Services ID, and a Florida driver's license. Mr. McGarry's driver's license identifies him as a veteran, and does not appear to identify any restrictions on his license. Exhibit 1.

## **ANALYSIS AND CONCLUSIONS OF LAW**

Counsel for the Lottery has argued that under the governing regulations the ticket holder, to be eligible for a prize, must submit an original winning ticket prior to the expiration of the claim period, as required by 961 CMR 2.38 (2). Additionally, she points out that the terms and conditions printed on the scratch ticket expressly subject the ticket to the Lottery's rules. As the

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<sup>1</sup> The Billion Dollar Blockbuster tickets that were marked for identification show two codes that, also, are easily decoded: one ticket showing FHN (showing winnings of \$500), and two tickets showing TWY (\$20 in winnings). Exhibit 8-ID.

Hold 'Em Poker Game at issue here ended on October 31, 2012, the last day for claiming a prize from that game was October 31, 2013. Mr. McGarry has countered with several arguments, which relate primarily to the difficulty of determining whether a Hold 'Em Poker Game ticket is a winner, and the fairness to the general public of the Lottery's practice of terminating instant ticket games. Mr. McGarry has requested a waiver due to a military service-connected disability, and his arguments are considered as part of such a request.

***1. Whether Mr. McGarry's tickets were void on the date he filed to claim them.***

As authorized by G.L. c. 10, § 24, the Lottery has established a comprehensive set of regulations to govern its operations, which include, *inter alia*, detailed rules regarding the operation of the games, including specific time limits on submitting a claim for a prize. The regulations state that on-line tickets must be claimed within one year of the drawing date; similarly, instant tickets must be claimed within one year of the end of the particular game. 961 CMR 2.38(2). Any tickets not claimed within that one-year time period are, by regulation, void. *Id.* Further, the requirement stated in the regulation that instant game tickets must be claimed within one year of the announced end of game is specified on the back side of each of Mr. McGarry's tickets; as is a statement that all holders, tickets and transactions are subject to Lottery rules. Exhibit 1. These statements are sufficient to provide Mr. McGarry with notice of the pertinent Lottery rules, including the limit on the time to claim ticket winnings. *See, Ruggiero v. State Lottery Comm'n*, 21 Mass. App. Ct. 686, 689 (1986).

The evidence in this record clearly shows that the Hold 'Em Poker game was terminated on October 31, 2012. The last day to claim winnings under that game was therefore October 31, 2013. Mr. McGarry filed his claims on August 6, 2018, and thus filed his claims almost six years after he purchased them. Accordingly, by regulation, Mr. McGarry's tickets were void.

***2. Whether the design of the Hold 'Em Poker Game makes determining whether a ticket is a winner unreasonably difficult warranting waiving the one-year period to claim the winnings.***

Mr. McGarry makes two arguments about the difficulty of determining whether a Hold 'Em Poker instant game ticket is a winner, and takes the position that the difficulty is such that the

one-year period to claim the winnings should be waived. First, he points out that unlike standard instant game tickets, which require the player to match like-to-like (*e.g.*, matching numbers to numbers, or symbols to symbols), the design of the Hold 'Em Poker instant game requires a player to have a working knowledge of the game of poker in order to assess whether they hold a winning ticket. Second, he argues that a player's assessment of whether the ticket is a winner is complicated by the small size of the symbols for the suits of the cards, and that for someone with limited vision, it is difficult to tell the difference between hearts and diamonds, or spades and clubs. I am not persuaded by these arguments to find that the one-year time limit should be waived.

First, Mr. McGarry is correct that assessing whether a Hold 'Em Poker game ticket is a winner is more challenging than assessing whether a standard instant game ticket is a winner. Indeed, it is likely that that challenge was an attractive feature for some players. The basic rules for poker, however, are printed on the back of each ticket, making it possible for any instant game player, irrespective of the level of their familiarity with poker, to determine whether they have a winning ticket. Assuming that the photocopies of Mr. McGarry's tickets that were entered as evidence showed the tickets at one hundred percent of actual size, Mr. McGarry is also correct that the symbols for the four card suits are small, and that while they are sufficiently distinct to be easy-to-read for a player with good vision, they might be too small for a visually-impaired player to correctly determine whether the ticket shows a winning hand for the player. However, that difficulty can be present – to a greater or lesser extent – in reading any instant game ticket. Any difficulty that a player might have in determining whether a Lottery ticket is a winner, either because of lack of understanding of poker rules or visual-impairment, is easily resolved by presenting the ticket for payment at any Lottery sales location, claims center, or Lottery office. All of these locations can make payment on winning tickets by scanning the bar code printed on the ticket to determine both whether it is a winner and the amount of any prize. Mr. McGarry did not identify the precise nature of the injury or injuries that qualified him for status as a disabled veteran, but although his driver's license suggests that he is not visually impaired, visual impairment is the only specific physical disability identified in his arguments. Assuming *arguendo* that Mr. McGarry's disability status is due in whole or part to a visual impairment, the evidence on this issue does not support a recommendation that in his case the one-year limitation should be waived.

Second, Mr. McGarry has also argued that the 961 CMR 2.38(2) does not make specific provision for the alphabetic codes that appear on the face of the lottery tickets after the prizes have been scratched off, and that although many of the alphabetic codes displayed on each ticket are easily understood, others are difficult to decode. This, he argues, makes the coding system unfair and deceptive. Counsel for the Lottery argued that these codes are included as a security mechanism, rather than as a guide to players.

Fraud prevention is a critical concern for the Lottery and, by extension, the general public. Therefore, security features are a necessary part of all instant games, and are authorized by regulation. *See, e.g.*, 961 CMR 2.31. As Mr. McGarry has pointed out, some of the alphabetic codes are easily decoded, particularly the lower dollar amounts. This suggests that any additional security these codes provide is primarily intended to verify that a losing or lower-value ticket has not been altered to represent a winner or higher-dollar value, rather than to conceal information from a player. As there is no evidence that these codes are unique to the Hold 'Em Poker Game, it seems likely that these codes would be used as a short-cut by players, even though they are not offered for that reason. There is no basis here, however, to conclude that even if used as such, that they would have caused a delay in determining whether the tickets should be claimed.

Four separate codes are shown on Mr. McGarry's five tickets: OHN (which appears on his first and third tickets), TWF (which appears on his second ticket), FRT (which appears on his fourth ticket) and OIR (which appears on his fifth ticket). As found above, the first three are easily decoded: OHN stands for one hundred dollars, TWF for twenty-five dollars, and FRT for forty dollars. More importantly, all of these codes appeared on three tickets in which Mr. McGarry had winnings in the Standard Game. It is therefore clear that they stand for a winning hand, even if the player is unsure of amount of the winnings on the poker game that appears on each ticket. As the OHN code appeared on both the sole ticket that only had winnings in the poker portion of the ticket, and on one in which the winnings were split between the two games, Mr. McGarry had clear notice that that code signaled a winning ticket. .

The fourth code, OIR, which appeared on Mr. McGarry's fifth ticket, does not readily translate to a dollar amount. However, that fifth ticket clearly showed \$700 in winnings on the Standard Game. Even if a player might be uncertain of the amount of any poker winnings, such

uncertainty about additional winnings would not provide a basis for failing to claim that ticket on time.

Thus, with regard to the question of whether the presence of these codes was in some way misleading or deceptive, or impeded Mr. McGarry's ability to assess whether his five tickets were winners, the answer is that they did not. There is no evidence that, as a general matter, the codes are misleading or deceptive. With respect to Mr. McGarry, he made no complaint about the portion of the ticket that displayed a Standard Game, and four of his five tickets were winners on that portion of the ticket.<sup>2</sup> The alphabetic code on the only ticket that had no winnings on the Standard Game, matched the code on a ticket that did. There is, therefore, no basis to conclude that these codes in any way impeded Mr. McGarry's ability to determine whether his tickets were winners.

Therefore, the design of the Lottery tickets is not a basis to conclude that the deadline to file a claim on these tickets should be waived. Should a player be in any doubt about whether any ticket is a winner – whether due to the challenge of determining a winning poker hand, the difficulty of reading small print, or any other factor - that player always has the option of requesting assistance at a Lottery sales location. Mr. McGarry had that option open to him throughout the period when the tickets were valid, a period that extended for at least one year after his purchase of the tickets. Further, there is no basis to conclude that the alphabetic codes on the tickets impeded Mr. McGarry's ability to assess whether his five tickets were winners. There is therefore no basis to waive that one-year time period.

The thrust of Mr. McGarry's request for a waiver is that the Lottery should honor his winning tickets approximately five years after the of the one-year period for claiming the tickets, and approximately six years after the game ended. As discussed above, the evidence does not present facts that would support a grant of waiver. Mr. McGarry's tickets were, on their faces, winners. Any uncertainty about the value of the tickets could have been resolved by a Lottery sales agent. Additionally, there was no evidence presented that would support a conclusion that

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<sup>2</sup> The "Billion Dollar Blockbuster" tickets, marked as Exhibit 8 for identification, also represent a "standard" game.

Mr. McGarry's status as a disabled veteran would independently warrant a waiver from the one-year limit.

Moreover, even assuming *arguendo* that the evidence had presented facts that might have justified a delay in claiming the tickets, a claim for waiver is rooted in equity, and equity does not support the granting of a waiver where an unreasonable delay in bringing a claim results in a detriment to the party from whom it is sought. *W. Broadway Task Force v. Boston Hous. Auth.*, 414 Mass. 394, 400 (1993). The guiding principle of fairness requires that a party cannot simply sit on their hands. *Serv. Employees Int'l Union, Local 509 v. Dep't of Mental Health*, 476 Mass. 51, 63 (2016). Therefore, any such evidence would have to be weighed against the detriment to the Lottery, and by extension, to the cities and towns it supports. As required by statute, the Lottery must retain for one year all money for unclaimed prizes, and must then allocate it in the manner statutorily prescribed for other Lottery revenues. G.L. c. 10, § 32, *see also* G.L. c. 10, §§ 25 and 35, G.L. c. 58, § 18C. The money from all unclaimed tickets on the Hold 'Em Poker Game was therefore distributed, as directed by statute, over four years before Mr. McGarry filed his claims. Under these circumstances, even if Mr. McGarry were to have shown justification for his delay, equity and fairness would preclude the granting of a waiver.

***3. Whether Lottery's practice of terminating games after the major prizes have been won is contrary to the public interest, warranting waiving the one-year claim period.***

Mr. McGarry also argued that the Lottery's practice of terminating certain games is against the public interest. He argues that millions of dollars in winning tickets are unclaimed, and that this opens the door to misuse of the money. Mr. McGarry offers no evidence that the unclaimed prizes have been in any way misused or allocated contrary to statute. Indeed, the one-year claim period is established by regulation (*see, e.g.*, 961 CMR 2.31(8) and 961 CMR 2.38(2)), and Mr. McGarry does not claim that the regulations were promulgated improperly.

Additionally, any assessment of the public interest requires balancing multiple perspectives. Overall, the public interest in maximizing revenue for cities and towns is well-served by the Lottery's practice of terminating instant ticket games when major prizes have been claimed or when a particular game has presented technical problems. First, as Lottery consumers are likely attracted by high value prizes, terminating games when the top prizes have been won both

enhances profitability and ensures that the instant games on offer provide players an opportunity to win the top prizes that have been advertised. Further, terminating the game provides the Lottery the ability to assess the profitability of the game and, close its account books on the game and direct the net revenue according to statute. *See*, G.L. c. 10, §§ 25, 32 and 35; G.L. c. 58, § 18C. While consumers might understandably prefer that their tickets were valid indefinitely, the one-year period in which to claim prizes provides a reasonable opportunity for players to redeem their prizes.

Therefore, I am not persuaded that the public interest is poorly served by the balanced procedure followed by the Lottery, or that the public interest warrants waiving the one-year claim period.

### **CONCLUSION AND RECOMMENDATION**

For all the reasons set forth above, therefore, the Hearing Officer recommends that the Massachusetts State Lottery Commission determine that the January 2019 Decision of the Executive Director be affirmed, and that Mr. McGarry's request for a waiver should be denied.



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Dated: June 4, 2020