COMMONWEALTH OF MASSACHUSETTS
MASSACHUSETTS STATE LOTTERY COMMISSION

In re: Appeal of Robert Silvia, Jr.	)

FINDINGS & RECOMMENDATION

INTRODUCTION

The claimant, Robert Silvia, Jr. ("Mr. Silvia"), appeals the decision of the Executive Director of the Massachusetts State Lottery (the "Lottery") affirming prize awards of $4.00 on two KENO draw games and denying his claim to two prizes of $100,000.00 on another KENO draw. As discussed below, I recommend that the Massachusetts Lottery Commission (the "Commission") affirm the Executive Director's decisions but clarify what appears to be a mathematical error and award Mr. Silvia a total prize of $8.00.[1]

PROCEDURAL BACKGROUND

On or about July 1, 2020, Mr. Silvia submitted claims to the Lottery based on two KENO tickets that he purchased on June 26, 2020 at Harry's Bar & Grill, located in Middleborough, Massachusetts ("Harry's"). Mr. Silvia contended that he matched 10 of the 20 numbers shown as drawn on a KENO game that he played on both of his tickets. Consequently, he claimed $100,000.00 on each ticket. The Lottery found instead that Mr. Silvia matched only one of the

[1] The Lottery determined that Mr. Silvia was entitled to a $2.00 prize on games 2251414 and 2251417 because he failed to match any of the drawn numbers. Because his two tickets included both games, Mr. Silvia is entitled to a $4.00 prize on each ticket, for a total award of $8.00. However, the Lottery awarded him a total of $4.00.

drawn numbers, so not entitled to any prize. It also found that Mr. Silvia had not matched any numbers on two other draws, was entitled to $2.00 prize for each draw, and awarded him a total prize of $4.00.

At Mr. Silvia's request, on December 3, 2020, the Lottery held an informal hearing concerning the disputed claims. By letter dated May 25, 2021, the Lottery's Executive Director advised Mr. Silvia that he did not find merit to the complaint, confirmed the award of $2.00 on each of two games, and denied his two $100,000.00 claims. Mr. Silvia was advised of his right to submit a written appeal to the Commission within thirty days. Mr. Silvia submitted a timely written appeal.

On September 22, 2021, a hearing on Mr. Silvia's appeal was held by Zoom, as agreed to by the parties. Assistant Director and Associate General Counsel, Candace Hodge, Esq., appeared on behalf of the Lottery. Michael J. Riley, Esq., of the Massachusetts Laborers' Legal Services, appeared on Mr. Silvia's behalf. Mr. Silvia did not testify or appear at the hearing. However, as agreed by the parties, Mr. Silvia later submitted testimony through sworn affidavit. Also, as agreed to by the parties, Tawnia Renee Barker later submitted testimony on Mr. Silvia's behalf through sworn affidavit. Guy Calabrese was sworn and testified at the hearing on the Lottery's behalf.

The following documents were marked as exhibits and entered as evidence without objection[2]:

1. Exhibit A: a June 26, 2020 KENO ticket for ten draw games numbered 2251408 through 2251417 showing, among other items, the selected numbers of 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 and a purchase price of $10.00.

2. Exhibit B: a June 26, 2020 KENO ticket for ten draw games numbered 2251409 through 2251418 showing, among other items, the selected numbers of 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 and a purchase price of $10.00.

[2] A document marked Demonstrative Exhibit 2 was not entered into evidence.

3. Exhibit C: a photograph purporting to depict a KENO screen with the text: Game #2251415 and the numbers 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 16, 20, 51, 61, 67, 71, and 75.

4. Exhibit D: a chart purporting to show Lottery-related transactions occurring at Harry's Bar & Grille on June 26, 2020.

5. Exhibit E: images purporting to show certain information pertaining to KENO games numbered 2250239, 2251415, and 2254243.

6. Exhibit F: a chart purporting to show certain information pertaining to instances in which individuals selected numbers 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 for KENO games played on June 22, 2020 and June 26, 2020.

7. Exhibit G: a chart purporting to show the winning KENO numbers drawn on June 22, 2020 and June 26, 2020.

8. Exhibit H: charts purporting to show to instances in which individuals selected numbers 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 for KENO games played on June 26, 2020, *excluding* games played at Harry's Bar & Grille.

9. Exhibit I: a chart purporting to show daily Lottery sales generated by Harry's Bar & Grille for the period March 1, 2020 through June 30, 2020.

After the close of the evidence, the parties submitted written closing arguments. The Lottery defended the denial by arguing, first, that its rules and regulations require that a prize be validated by the Lottery's mainframe computer system and verified by the Lottery's internal validation requirements. Second, it contended that the rules and regulations mandate that winners are determined by the numbers drawn, not the numbers reported. Finally, the Lottery argued that awarding prizes based upon Mr. Silvia's photograph evidence risked fake claims using doctored, altered, or photo-shopped images, which will undermine the Lottery's administration of games and its mission to return local aid to cities and towns.

Mr. Silvia argued that, because he relied in good faith on the erroneous numbers shown on Harry's KENO video monitor when making his claim, he is entitled to two $100,000.00 prize awards for game number 2251415, which he played on both of his tickets. He pointed to the lack of evidence that anyone at Harry's tampered with the KENO video monitor, or any third party

manipulated the process. And, he pointed to the lack of evidence that he engaged in any wrongdoing or violated Lottery rules. Under such circumstances, he asserted that denying his claims would be grossly inequitable and undermine public confidence and trust in Lottery games and claim processing.

FACTUAL FINDINGS

I. THE KENO GAME

KENO is an on-line Lottery game in which a player selects from 1 to 12 spots to play and then selects numbers from 1 to 80 that correspond to the selected number of spots. 961 CMR 2.58. Players can play the same numbers for multiple drawings (also referred to as games), up to a maximum of 30 consecutive drawings. *See* https:/www.masslottery.com/game/draw-instants/keno, last viewed on December 30, 2021. Players place bets by telling the Lottery sales agent their selected numbers or completing a betting slip and the agent then enters the numbers into their KENO computer. 961 CMR 2.58(2). The KENO computer then prints a ticket that identifies a variety of items, including: the numbers selected; the number of draws to be played; and the specific game number(s) for which the bet is eligible. *See* 961 CMR 2.58(1)(d). The ticket is given to the player. 961 CMR 2.58(2)(b).

As players select numbers and place bets, for each successive game, the Lottery draws 20 different numbers from the field of 1 through 80. 961 CMR 2.58. KENO drawings begin at 5:04 a.m. and recur every four minutes until 1 a.m., for a total of 300 draws daily. *See* September 22, 2021 hearing transcript (cited as "Tr.") at 16:18 - 23. The Lottery's mainframe computer draws the numbers and sends them to Lottery agent KENO computer terminals for viewing on the monitors. *See* Tr. at 29:3 – 16; Tr. at 32:3 - 7. Approximately two minutes after each drawing,

the mainframe computer system sends the drawn numbers to the Lottery's website where they are available for public viewing. Tr. at 69:23 – 70:5.

The Lottery's mainframe computer is "responsible for all [Lottery] transactions … [including] wager of cash, cancel, [and] winning numbers." Tr. at 29:3 – 16. The mainframe computer contains the record of every KENO draw, when the draw closed, and the winning numbers. Tr. at 28:21 – 29:2. The KENO numbers drawn by the mainframe computer are the sole numbers of record, even if there is a malfunction at the KENO agent's location. Tr. at 40:14 – 24. The Lottery awards prizes based upon the mainframe computer system record, not an agent's KENO computer. *Id.*

Depending on how many of a player's selected numbers match the Lottery's drawn numbers, the player may win a prize. For example, for a 10-spot game where a $1.00 is wagered on the draw, where a player's ten selected numbers match ten of the game's twenty drawn numbers, the player is eligible for a $100,000.00 prize. *See* https:/www.masslottery.com/game/draw-instants/keno, last viewed on December 30, 2021. As a player's selected numbers match fewer of the drawn numbers (e.g., between 9 to 5 numbers), the player is eligible for smaller prize amounts. *See* https:/www.masslottery.com/game/draw-instants/keno, last viewed on January 5, 2022. A player is ineligible for any prize if they match 4 to 1 of the drawn numbers. *Id.* If a player matches *none* of the game's drawn numbers, they are eligible for a $2.00 prize. *Id.*

II. MR. SILVIA'S KENO WAGERS

Harry's is a licensed Lottery agent and sells Lottery products, including KENO. Tr. at 66:18 - 20. It has a video monitor intended to display the numbers drawn for each KENO game and the associated KENO draw game number. *See, e.g.,* Tr. Exhibit ("Exh.") C. Harry's stopped reporting revenue from the sale of Lottery instant tickets and KENO from Tuesday, March 17,

2020, until Monday, June 22, 2020. *See* Tr. Exh. I and Tr. at 71:22 – 73:12. I find it likely that Harry's was closed to on-premises consumption of food or beverages, which corresponds with the pandemic-related State of Emergency declared by Governor Baker.[3] No evidence was produced to establish whether Harry's KENO computer system was turned off during the period.

On Friday, June 26, 2020, while at Harry's and between 8:15 p.m. and 8:30 p.m., Mr. Silvia placed the KENO wagers at issue. Affidavit of Robert Silvia, Jr. (cited as "Silvia Aff."), ¶ 2; *see also* Tr. at 24:17 – 26:16; Tr. Exh. D.

For his first wagers, Mr. Silvia:

- selected 10 spots;
- selected numbers 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10;
- chose to play 10 draw games; and
- paid $1.00 wager for each game, for a payment of $10.00.

Silvia Aff. at ¶¶ 2, 3; *see also* Tr. Exhs. A and D. Harry's issued Mr. Silvia a ticket for those wagers; his 10 draw games were numbered 2251408 through 2251417. *See* Tr. Exh. A. Later, for the second of his wagers, Mr. Silvia placed the exact same wager, including 10 spots and numbers 1 through 10. Silvia Aff. at ¶¶ 2, 3; *see also* Tr. Exhs. B and D. Harry's issued Mr. Silvia a second ticket for the wagers; his 10 KENO draw games were numbered 2551409 through 2251418. *See* Tr. Exh. B.

That evening, at 4-minute intervals, the Lottery's mainframe computer system drew numbers for KENO games, including Mr. Silvia's games. The numbers drawn by the Lottery for Mr. Silvia's games were:

[3] *See* G.L. c. 30A, § 11(5) ("Agencies may take notice of any fact which may be judicially noticed by the courts, and in addition, may take notice of general, technical or scientific facts within their specialized knowledge.") *See also* Declaration of Emergency (March 10, 2020); COVID Order No. 13 (March 23, 2020); COVID Order No. 40 (June 19, 2020).

Draw Game Number	Drawn Numbers
2251408	1, 3, 8, 10, 23, 24, 25, 31, 36, 39, 45, 48, 55, 59, 60, 63, 65, 66, 74, 80
2251409	3, 6, 15, 22, 24, 25, 29, 31, 36, 37, 41, 44, 48, 51, 58, 63, 66, 71, 72, 75
2251410	4, 6, 8, 14, 18, 23, 24, 27, 39, 42, 45, 46, 49, 50, 56, 61, 64, 65, 78, 79
2251411	7, 9, 12, 21, 22, 32, 33, 37, 40, 41, 42, 43, 53, 62, 63, 64, 66, 67, 68, 80
2251412	2, 3, 4, 20, 24, 29, 31, 32, 35, 51, 55, 56, 59, 64, 66, 69, 71, 72, 73, 80
2251413	2, 3, 6, 10, 15, 17, 19, 21, 22, 26, 35, 52, 54, 56, 62, 63, 66, 70, 71, 74
2251414	12, 13, 15, 24, 30, 36, 43, 45, 46, 47, 49, 55, 58, 60, 63, 65, 68, 69, 75, 77
2251415	**9, 14, 15, 16, 19, 20, 25, 28, 33, 36, 51, 55, 56, 61, 62, 63, 67, 71, 75, 79**
2251416	1, 4, 6, 7, 16, 19, 25, 31, 39, 40, 48, 51, 56, 59, 60, 61, 64, 71, 76, 77
2251417	11, 13, 15, 21, 24, 25, 30, 33, 45, 52, 53, 64, 65, 67, 68, 70, 71, 72, 76, 77
2251418	3, 5, 7, 8, 14, 15, 17, 18, 21, 27, 28, 30, 31, 33, 39, 51, 60, 64, 74, 80

See Tr. Exh. G (emphasis added); Tr. at 34:11 – 35:6.

When the numbers for game 2251415 appeared on Harry's KENO video monitor, Mr. Silvia testified that 10 of the numbers were 1 through 10, his selected numbers. Silvia Aff., ¶ 4. He took a picture of video monitor and the picture purports to show that the twenty drawn numbers were 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 16, 20, 51, 61, 67, 71, and 75. *See* Tr. Exh. C. Mr. Silvia testified that he did not observe any other winning numbers for game number 2251415. Silvia Aff., ¶ 5. Mr. Silvia's witness testified that she saw "the video screen showing what appeared to be winning numbers matching ten of the number on [Mr. Silvia's] tickets." Affidavit of Tawnia Renee Barker, ¶ 4. The parties did not present evidence of any other game numbers displayed by Harry's video monitor that evening. The Lottery acknowledged that the numbers it drew for game number 2251415 were not shown on Harry's video monitor. Tr. at 62:11 – 63:11;

Tr. at 65:17 – 22. I find that Harry's KENO video monitor did not show the numbers drawn by the Lottery but displayed the numbers 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 16, 20, 51, 61, 67, 71, and 75 for game number 2251415. The incorrect numbers did not appear on the Lottery's website. Tr. at 70:6 – 22.

Mr. Silvia, believing that he had won two $100,000.00 prizes for game number 2251415 because he played it on his two tickets, submitted prize claims. Silvia Aff., ¶ 6. The reverse side of Mr. Silvia's KENO tickets each bear a signature but do not otherwise include the signer's printed name, address, city, state, zip code, or telephone number. *See* Tr. Exhs. A and B. I find that the signatures on the tickets are Mr. Silvia's signatures. The reverse side of the KENO tickets both contain the following provisions, repeated at least twice:

> **HOW TO CLAIM PRIZE**
> Present winning ticket to any Lottery Sales Agent for payment up to and including $600.00. Claims over $600,000 will be paid by the Lottery Commission after ticket is validated as a winner, Claim Form is filed, and proof of positive identification including Social Security number is provided …
>
> **RULES AND REGULATIONS**
> This ticket is a bearer instrument and unless signed by owner, prize may be claimed by anyone in possession of the winning ticket. SIGN YOUR TICKET IMMEDIATELY. BETTORS AGREE TO ABIDE BY MASSACHUSETTS STATE LOTTERY COMMISSION RULES AND REGULATIONS. Applicable Rules are available for inspection by Bettors by contacting the Lottery at the address below.

See Tr. Exhs. A and B (emphasis in originals).

The Lottery denied Mr. Silvia's claims, contending that only one of his selected numbers (the number 9) matched the twenty numbers drawn for game number 2251415. Instead, it awarded Mr. Silvia a total of $4.00, comprised of $2.00 on games number 2251414 and number 2251417 because he did not match any of the numbers drawn for either game. Tr. at 35:21 – 36:15; Tr. at 61:1 – 62:10; Tr. Exh. G.

The Lottery submitted evidence that, earlier in the week, on Monday, June 22, 2020, two different people both played the numbers 1 through 12 while at Harry's. Tr. at 30:7 – 13; Tr. at 34:1 - 10. The players have since claimed prizes, contending that the Harry's KENO monitor displayed the numbers 1 through 12 as 12 of the 20 numbers drawn for two games occurring on June 22, 2020. Tr. at 30:7 – 13; Tr. at 34:1 – 10; Tr. Exh. E. I infer that the Lottery denied the claims because the selected numbers did not sufficiently match the numbers drawn for the games. Tr. at 48:18 - 49:9. The odds of the numbers 1 through 12 being drawn once is one in 48 million. Tr. at 30:14 - 21. The odds of the numbers 1 through 12 being drawn twice within four draws of each other is one in 228 quadrillion. *Id.* and Tr. at 34:1 -10.

The Lottery learned that Harry's KENO computer was "having trouble" and replaced it around June 27, 2020 or July 1, 2020. Tr. at 30:22 - 32:7. No evidence was presented that the Lottery's mainframe computer system or website malfunctioned the week of June 22, 2020 or on June 26, 2020. I find that Harry's KENO computer system was not working properly the evening of June 26, 2020. Consequently, the video monitor displayed numbers different from those drawn by the Lottery for game number 2251415.

DISCUSSION

Massachusetts court have held consistently 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) (affirming the Lottery's decision to award plaintiff $10.00). On this point, the Appeals Court has written: "[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." *Bretton v. State Lottery Comm'n*, 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).

Explaining the importance of Lottery game rules, the Appeals Court has written: "A person playing a game … ought to be aware of the fact that there are rules for playing it and that his rights are limited by those rules. Without rules there would be no assurance that the game would be conducted in an orderly way, the winners would be treated fairly, that the Commonwealth would be protected against false or fraudulent claims, or that anticipated revenue would be produced." *Ruggiero v. State Lottery Comm'n*, 21 Mass. App. Ct. 686, 689 (1986) (rejecting claim based upon interpretation of rules printed on the game ticket).

As discussed more fully below, I recommend affirming the denial of Mr. Silvia's claims to two $100,000 prizes because: 1) his selected numbers matched only one of the numbers drawn for game 2251415 and 2) the tickets were not validated by the Lottery's mainframe computer system as winners for game 2251415. No authority permits the Commission to ignore Lottery regulations and rules despite Mr. Silvia's reliance on the erroneous numbers shown on Harry's video monitor. To do so would be contrary to law and undermine the Lottery's mission. The Hearing Officer also recommends clarifying that Mr. Silvia is entitled a total prize of $8.00 based on his entitlement to $2.00 for game 2251414 and for game 2251417, which are each encompassed by his two KENO tickets.

I. MR. SILVIA'S CLAIMS FOR TWO $100,000 PRIZES WERE PROPERLY DENIED BECAUSE THEY ARE NOT BASED UPON THE DRAWN NUMBERS.

The Lottery correctly denied Mr. Silvia's claims on game number 2251415 because they are based upon numbers reported in error by Harry's. Lottery regulations state that "[a]ll Lottery prizes shall be determined by the Commission from time to time and awarded to the owners of tickets which contain the winning numbers as determined from the drawings supervised by the

[Executive] Director." *See* 961 CMR 2.33. Importantly, the regulation states that "Winners are determined by the numbers drawn and not the numbers reported." *Id.*

Here, Mr. Calabrese testified that the Lottery's mainframe computer holds the numbers of record for KENO and is the basis for paying prizes, even if an error occurs at an agent location. For game number 2251415, the mainframe computer drew the numbers 9, 14, 15, 16, 19, 20, 25, 28, 33, 36, 51, 55, 61, 62, 63, 67, 71, 75, and 79. In contrast, Harry's video monitor showed only six of the drawn numbers: numbers 9, 20, 51, 67, 71, and 75. It showed fourteen other erroneous numbers because the Harry's KENO computer was not working properly that evening. The parties agreed that the Lottery did not draw the numbers shown on Harry's KENO monitor. Mr. Silvia's two $100,000.00 claims are based on the displayed numbers, not those drawn by the Lottery. Thus, the Lottery was correct to deny them.

II. MR. SILVIA'S CLAIMS FOR TWO $100,000 PRIZES WERE PROPERLY DENIED BECAUSE THE TICKETS WERE NOT VALIDATED.

A second basis to affirm the Lottery's decision is that Mr. Silvia's tickets were not properly validated. Under Lottery regulations, when claiming "prizes of $600.00 or greater but less than $100,000.01, a claim is valid only when the original winning ticket has been presented for payment, a claim form has been properly completed, and the ticket has been validated by the Lottery's computer gaming system and verified by the Lottery internal validation requirements at a Lottery office or duly authorized claim center." 961 CMR 2.38(2). The reverse side of Mr. Silvia's KENO tickets – which he signed - each state: "Claims over $600,000 will be paid by the Lottery Commission after ticket is validated as a winner … ." *See* Tr. Exhs. A and B.

The Appeals Court's decision in *Ruggiero* is instructive. At issue in the case was a Lottery Instant Holiday Jackpot Game scratch ticket. 21 Mass. App. Ct. at 686. The regulations provided, in part, that "[a]ny ticket not passing all the validation checks in this part is void and ineligible for

any prize and shall not be paid." *Id.* at 688. When Ruggiero rubbed the ticket, erroneous double imprints of $100,000 and another prize amount appeared in two of three scratched boxes. *Id.* The ticket manufacturer acknowledged misprinting the ticket. *Id.* The Court affirmed that the ticket was defective and failed the Lottery's validation requirement. *Id.* at 689.

Here, as detailed in the chart on page 7 above, the Lottery's mainframe computer system drew 20 numbers for game number 2251415. Of Mr. Silvia's selected numbers 1 through 10, only the number 9 was a match. Because of the single match, under KENO game rules, Mr. Silvia was not eligible for any prize award. The Lottery's mainframe computer gaming system did not validate the tickets as winning ones for game 2251415. Thus, the Lottery denied properly Mr. Silvia's two claims on game number 2251415.

III. AWARDING MR. SILVIA TWO $100,000 PRIZES WOULD BE CONTRARY TO LAW AND UNDERMINE THE LOTTERY'S MISSION.

Mr. Silvia argues that the Lottery's denial should be overturned because he relied justifiably and in good faith on the numbers shown at Harry's when submitting his claim. He further contends that failing to award the prize to him, where there was no evidence that he, Harry's, or other third parties acted wrongfully, would undermine confidence in the Lottery. Unfortunately, Mr. Silvia's argument is not a basis for overruling the claim denial.

First, Mr. Silvia has not identified any statutes or court cases that support his argument. To the contrary, in *Ruggiero*, the Court affirmed a Lottery prize denial even where the player was not alleged to have acted wrongly and the ticket admittedly contained a manufacturing defect. *Ruggiero*, 21 Mass. App. Ct. at 688.

Second, finding in Mr. Silvia's favor would be contrary to Lottery regulations. As explained above, Lottery winners are determined by the numbers drawn, not those reported. 951 CMR 2.33. Significantly, Lottery regulations provide that it "shall not be liable for numbers

reported in error." *See id.* Harry's KENO computer was not working properly June 26, 2020. The parties agree that it displayed the incorrect numbers for game 2251415. The incorrect numbers are the basis of the disputed claims. Granting Mr. Silvia a total prize of $200,000.00 would violate the mandates of 951 CMR 2.33.

Finally, Mr. Silvia's argument to the contrary, *awarding* his claims would undermine public confidence in the Lottery and its mission. Again, finding in his favor requires ignoring the Lottery's regulations and game rules. Granting prizes based on numbers reported by mistake opens the Lottery to fraud and significant liability. Such increased liability correspondingly reduces the money the Lottery returns to cities and towns, undermining its statutory mission.

CONCLUSION & RECOMMENDATION

For the reasons set forth above, I conclude that the Lottery and its Executive Director properly denied Mr. Silvia's two $100,000.00 prize claims on KENO game number 2251415 because he matched only one of the numbers drawn for the game. I recommend that the Massachusetts State Lottery Commission 1) affirm the denial of Mr. Silvia's two $100,000.00 claims pertaining to game 2251415 and 2) affirm and clarify that Mr. Silvia is entitled to a prize of $2.00 for games 2251414 and 2251417 played on his two tickets, for a total award of $8.00.

Sarah G. Kim
Hearing Officer
Deputy Treasurer & General Counsel

2/8/22
Date