

[Cite as *Maffett v. Ohio Lottery Comm.*, 2005-Ohio-2474.]

IN THE COURT OF CLAIMS OF OHIO

FAY A. MAFFETT :
Plaintiff :
v. : CASE NO. 2004-09967-AD
OHIO LOTTERY COMMISSION : MEMORANDUM DECISION
Defendant :

.....

{¶ 1} Plaintiff, Fay A. Maffett, filed a complaint against defendant, Ohio Lottery Commission (“Commission”), alleging a winning lottery ticket she had purchased was not honored by the Commission. Plaintiff asserted she purchased a Holiday Wishes instant lottery ticket in November, 2001 and that in GAME 3 on the ticket two “like prizes” were matched. Plaintiff maintained the rules and instructions printed on the front of the GAME 3 ticket read, “Match two like prize amounts and win that prize.” Plaintiff’s GAME 3 ticket revealed two matched prize amounts of \$2,500.00. Game rules printed on the reverse side of plaintiff’s lottery ticket for GAME 3 read: “Match 3 like prize amounts and win that prize. Match 2 like prize amounts plus a bell symbol and win DOUBLE that prize.” Plaintiff’s lottery ticket did not display a bell symbol. Plaintiff explained the Commission refused to pay the \$2,500.00 prize she allegedly won in accordance with the rules and instructions printed on the front of her Holiday Wishes instant lottery ticket. Plaintiff contended the match of two like prizes on Game 3 entitles her to a prize of that amount and, therefore, defendant was in breach of contract by refusing to honor the ticket. Defendant countered by relating the front of plaintiff’s lottery ticket contains a misprint and consequently, plaintiff is not entitled to the prize claimed under the rules of Game 3 of the Holiday Wishes instant ticket.

{¶ 2} Sales and purchase of lottery tickets are governed by general principles of contract law. *Peters v. Ohio Lottery Commission* (1992), 63 Ohio St. 3d 296, 299. Lottery tickets such as those purchased and redeemed by plaintiff herein, contain express terms requiring compliance with the

rules and regulations of the commission, and lottery players are deemed to agree to abide by the terms of the game. See *Woodbridge Partners Group, Inc. v. Lottery Com.* (1994), 99 Ohio App. 3d 269; *Board v. Ohio Lottery Comm.* (Dec. 14, 1999), Franklin App. No. 99AP-208; *Rice v. Ohio Lottery Comm.* (1999), 96 Ohio Misc. 2d 25.

{¶ 3} Persons who play the Ohio Lottery are on notice that the rules that govern these games are outlined in the Ohio Administrative Code. *Woodbridge supra* at 272-73. The relevant lottery commission regulations are found at Ohio Adm. Code Section 3770:1-9-193(B)(1)(c) which provides, in pertinent part:

{¶ 4} “Game 3; - the player reveals six prize values or five prize values and a ‘bell’ symbol. The player must match *three like prize values* to win that prize amount. If the player matches two like prize values and a ‘bell’ symbol is revealed, the player wins double that prize amount.” (Emphasis added.)¹

{¶ 5} In support of its position, defendant submitted a letter sent to plaintiff by the Commission’s then chief legal counsel, Kathleen G. Weiss, wherein Weiss speaks to the problem with the tickets purchased by plaintiff, as follows:

{¶ 6} “*** In game three, players were required under the play instructions to match three like prize amounts and win that prize or to match two like prize amounts plus a ‘Bell’ symbol to win double that prize. These instructions are clearly stated on the front and back of each ticket. Unfortunately, in game three on the front of the ticket you submitted, a ‘plug’ partially covers the ‘3’ where the player is required to match three like prize amounts.

{¶ 7} “Pursuant to the game rule, the Director has declared ‘void’ any misprinted tickets in the *Holiday Wishes* instant game. His authority to do so can be found at OAC §3770:1-9-193(I)(2). *** The Director’s declaration that any misprinted tickets in the *Holiday Wishes* game are void includes the ticket you submitted for consideration.

{¶ 8} “[Plaintiff] [is] entitled to a refund of the purchase price for the ticket, or . . . [is] entitled to another instant lottery ticket of comparable price. ***”

¹ See *Costantini v. Ohio Lottery Comm.*, Court of Claims No. 2003-11615, 2004-Ohio-6584.

{¶ 9} It is clear plaintiff's Holiday Wishes instant lottery ticket contains a misprint. Issues regarding misprints on lottery tickets have been previously addressed by this court. See *Freiling v. Ohio Lottery Commission*, Court of Claims No. 2003-11275, 2004-Ohio-6583.

{¶ 10} Furthermore, Ohio Adm. Code 3770:1-9-193 speaks directly to the issue of misprinted tickets as follows:

{¶ 11} "(I) Validity of tickets.

{¶ 12} "(1) A mechanical error in printing prize awards, symbols, words or other numbers on a ticket shall not automatically invalidate that ticket. To the extent feasible, the director shall establish procedures by which the holder of any ticket on which information is incorrectly printed due to mechanical malfunction may be advised of correct information for the ticket. If it is not technically feasible to recover the information from a mechanically misprinted ticket, the director may declare the ticket void and the holder shall be entitled to a return of the ticket price or a replacement ticket of comparable price.

{¶ 13} "(2) In addition to, but not in limitation of, all other power and authority conferred on the director by the commission's rules, the director may declare a ticket in game number one hundred ninety-three void if it is stolen, unissued, deactivated, not sold or deemed not sold in accordance with commission rules; if it is illegible, mutilated, altered, counterfeit, misregistered, reconstituted, miscut, defective, printed or produced in error or incomplete; or if the ticket fails any of the validation tests or procedures established by the director. The commission's liability and responsibility for a ticket declared void, if any, is limited to refund of the retail sales price of the ticket or issuance of a replacement ticket of comparable price. ***"

{¶ 14} As this court stated in *Freiling*, "[t]he court finds, as a matter of law, that the express terms set forth above clearly and unambiguously provide that the player must either match three like values in order to win, or match two like values and a 'bell symbol' to win double that amount. Additionally, the regulations clearly and unambiguously grant defendant's director the discretion to void misprinted or illegible tickets such as those purchased by plaintiffs. Despite plaintiffs' protestations to the contrary, the contract at issue is not reasonably susceptible to another interpretation."

{¶ 15} When presented for redemption, plaintiff's ticket was properly declared void due

to the misprint. The Commission director exercised proper authority in declaring the misprinted ticket void. Defendant's liability and responsibility for a ticket declared void is limited to either a refund of the retail sales price of the ticket or issuance of a replacement ticket of comparable price. Plaintiff is not entitled to any prize amount eligibility based on a misprinted void ticket. Defendant is not responsible for the damages claimed.

IN THE COURT OF CLAIMS OF OHIO

FAY A. MAFFETT :
Plaintiff :
v. : CASE NO. 2004-09967-AD
OHIO LOTTERY COMMISSION : ENTRY OF ADMINISTRATIVE
Defendant : DETERMINATION

.....

Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

Kevin M. Pearl
337 Penco Road
Weirton, West Virginia 26062

Attorney for Plaintiff

Dennis Kennedy, Director
Ohio Lottery Commission
615 West Superior Avenue
Cleveland, Ohio 44113

For Defendant

DRB/laa
3/23
Filed 4/20/05
Sent to S.C. reporter 5/20/05