

**WASHINGTON STATE
OFFICE OF ADMINISTRATIVE HEARINGS**

In the matter of:

Juan De La Torre,

Appellant.

Docket No. 07-2019-LTY-00005

**INITIAL ORDER ON SUMMARY
JUDGMENT MOTION**

Agency: Lottery Commission
Program: Prize Denial

1. ISSUES

- 1.1. Whether the Washington State Lottery's decision denying the prize claim of Appellant Juan De La Torre was proper?
- 1.2. Should summary judgment issue because no genuine issues of material fact exist?

2. ORDER SUMMARY

- 2.1. The Washington State Lottery's Motion for Summary Judgment is **GRANTED**.
- 2.2. The Notice of Hearing issued August 15, 2019 is **STRICKEN** and the hearing scheduled to begin October 28, 2019 is **CANCELLED**.
- 2.3. The Lottery Commission prize denial for ticket numbers 1513-053649-005, 1513-049069-008 and 1513-052766-006 is **AFFIRMED**.
- 2.4. The appeal of Juan De La Torre is **DISMISSED**.

3. SUMMARY JUDGMENT MOTION HEARING

- 3.1. Hearing Date: No oral argument received
- 3.2. Administrative Law Judge: Debra Pierce
- 3.3. Appellant: Juan De La Torre
- 3.4. Agency: Lottery Commission
 - 3.4.1. Representative: Attorney Kristie Weeks
- 3.5. Documents Considered: I considered the following documents:

Doc. No.	Document Name	Document Date	No. Pages
1	Lottery Commission Request for Assignment of ALJ	7/18/2019	1
2	Appellant's Request for Hearing	7/15/2019	1

3	Lottery Commission Motion for Summary Judgment	9/4/2019	2
4	Declaration of Kim Ficek in Support of Lottery Commission Motion for Summary Judgment with Attachments	9/4/2019	2
5	Declaration of Derek Poppe in Support of Lottery Commission Motion for Summary Judgment with Attachments	9/4/2019	2
6	Declaration of Gaylene Gray in Support of Lottery Commission Motion for Summary Judgment with Attachments	9/4/2019	2
7	Juan De La Torre Response to Lottery Commission Motion for Summary Judgment	(Received) 9/20/2019	2
8	Lottery Commission's Reply in Support of Motion for Summary Judgment	10/3/2019	3

4. FACTS FOR PURPOSE OF SUMMARY JUDGMENT

On a motion for summary judgment, the decision maker only considers those facts for which the parties establish "no genuine issue as to any material fact".¹ "Summary judgment is appropriate only where the undisputed facts entitle the moving party to judgment as a matter of law."² Only evidence in the record and inferences from that evidence establish facts. If evidence in the record points to more than one possible finding of fact, then summary judgment may not rest on the moving party's version of that fact.³ Admissions, stipulations, procedural history, and uncontested declarations and affidavits establish facts for summary judgment. Therefore, the record here supports the following facts for the purposes of summary judgment:

Jurisdiction

- 4.1. Juan De La Torre purchased Game of Life Ticket numbers 1513-053649-005, 1513-049069-008 and 1513-052766-006. On June 26, 2019, he submitted a Winner Claim Form and Substitute W-9 to Washington Lottery, claiming all three tickets as winners.
- 4.2. Lottery Commission issued a prize denial for all three tickets and a Notice of Right to Administrative Hearing form.

¹ WAC 10-08-135. In Superior Court matters, CR 56 governs summary judgment. Where the relevant procedural rules do not conflict with CR 56, it and the cases interpreting it serve as persuasive authority in the management of summary judgment under WAC 10-08-135.

² *Verizon NW, Inc. v. Employment Sec. Dep't*, 164 Wn.2d 909, 916 (2008), citing *Alpine Lakes Prot. Soc'y v. Dep't of Natural Res.*, 102 Wn. App. 1, 14 (1999).

³ *Verizon NW*, 164 Wn.2d 916.

4.3. Appellant requested a hearing on July 15, 2019.

Summary Judgment

4.4. Lottery Commission filed a Motion for Summary Judgment on September 5, 2019.

4.5. Juan De La Torre filed a responsive argument on September 20, 2019, without supporting declarations or material attachments establishing an issue of fact.

4.6. Lottery Commission replied in support of its Motion on October 3, 2019.

Game of Life Scratch Tickets

4.7. In December 2018, Washington State Lottery began sale of a new scratch ticket called "The Game of Life," Game 1513, as approved on October 9, 2018. *Declaration of Gray, Attachment 2.*

4.8. In accordance with the executed working papers, the instant tickets for this game of chance include printed instructions clearly indicating what constitutes a winning ticket. *Id.*

4.9. The Lottery determines the number of winners and the number of tickets for sale before the game tickets for any game are printed. The Lottery maintains an official list of winning validation numbers. *Id.*

4.10. Tickets are numbered with a validation number as they are manufactured. When tickets are produced or manufactured, only some contain winning features. Nothing a player does can change whether the scratched ticket wins. *Id.*

4.11. The ticket instructions for the Game of Life scratch tickets purchased by Appellant include directions to scratch all of the "Your Spins" area to reveal sixteen numbers between one and six. *Id.*

4.12. The numbers indicate the number of spaces the player moves at a time to "advance from 'START' the number of spaces indicated in 'SPIN1,' counting START CAREER as the first space." The player repeats the process with each remaining spin.

4.13. The instructions direct the player to scratch the spaces on which they land, revealing a monetary amount from \$10.00 to \$200,000.00. If three spaces revealed match, the player wins that amount. *Declaration of Gray, Attachments 1 and 2, pages 36-37.*

Appellant's Game of Life Scratch Ticket

4.14. When Appellant purchased Game of Life scratch tickets 1513-053649-005, 1513-049069-008 and 1513-052766-006 he played the three tickets and believed he held three \$200,000 winners.

- 4.15. According to Appellant's argument, he scratched the "Your Spins" section per the instructions. He then scratched the Start Career space revealing the first "\$200,000.00" space. He believed this was the first step as he read the instructions. *De La Torre "Facts Demonstrating A Genuine Issue."*
- 4.16. None of Appellant's three first spins place on "Start Career" in accordance with the instructions, but he scratched "Start Career" to start anyway. He then scratched the appropriate spot for the remaining spins in accordance with instructions. He scratched seventeen spaces on each ticket, "Start Career," and sixteen others. *Id.; Declaration of Ficek, Attachment 1, pages 3 through 8.*
- 4.17. On each ticket, two boxes properly scratched per instructions also revealed "\$200,000.00" to match with the improperly scratched seventeenth box at "Start Career." *Id.*

Investigation of Denied Prize

- 4.18. When Lottery personnel scanned Appellant's three tickets, none won any prize based on its validation number. Derek Poppe further investigated the status of Appellant's three non-prize tickets. *Declaration of Poppe, Attachment 1, pages 1-3.*
- 4.19. Derek Poppe is a security specialist with the Lottery. He investigates damaged, defective or disputed tickets. He examined Appellant's ticket to determine whether it was defective and whether it was a winner. *Declaration of Poppe.*
- 4.20. The validation numbers on scratch ticket numbers 1513-053649-005, 1513-049069-008 and 1513-052766-006 do not appear on the official list of winning tickets for the instant scratch game, and were therefore validated as "non-winners." *Id. at Attachment 1.*
- 4.21. Mr. Poppe requested the vendor who printed the three tickets to reconstruct them. The reconstruction confirmed no defect in or damage to Appellant's three tickets. *Id. Attachment 2.* Mr. Poppe determined Appellant's tickets were not defective or damaged and none of the three were winning tickets. *Id.*

5. CONCLUSIONS OF LAW

Based upon the facts above, I make the following conclusions:

Jurisdiction

- 5.1. The Office of Administrative Hearings has jurisdiction over the parties and subject of this dispute. *WAC 315-20-005, chapter 34.05 RCW, the Washington Administrative Procedure Act, and chapter 67.70 RCW the Washington State Lottery Act.*

Standards for Summary Judgment

- 5.2. RCW 34.05.437, WAC 10-08-135 as well as the procedural order in this matter entered following the prehearing conference, allow for the filing of dispositive motions in matters of administrative review, including motions for summary judgment. Summary judgment is a procedural device designed to avoid the time and expense of a trial when no trial is necessary. *See Hudesman v. Foley*, 73 Wn.2d 880, 441 P.2d 532 (1968); Karl B. Tegland, 4 *Wash. Prac., Rules Practice CR 56*.
- 5.3. Washington Court Rule 56(c) and WAC 10-08-135 provide that "a motion for summary judgment may be granted and an order issued if the written record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law."
- 5.4. In making this determination the tribunal will consider any evidence and inferences therefrom in a light most favorable to the non-moving party. *Wilson v. Steinbach*, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982). A material fact is one upon which the outcome of the litigation depends. *Hudesman*, 73 Wn.2d at 886.
- 5.5. The party moving for summary judgment has the burden of showing the absence of any issue of material fact. *Id.* at 887. Once the moving party meets its burden, the non-moving party may not rest on mere allegations, argumentative assertions, speculation, or denials. *White v. State*, 131 Wn.2d 1, 9, 929 P.2d 396 (1997). Summary judgment motions are important to the dispute resolving process. *Id.* Summary judgment should be granted if reasonable minds could reach only one conclusion based on the facts in evidence. The Lottery moves for summary judgment, averring that there is no issue of material fact.
- 5.6. Appellant does not challenge the facts as alleged in the agency's motion, documents and declarations attached to and supporting the motion. Appellant provided no declarations or relevant attachments controverting facts established by the agency.
- 5.7. No genuine issue of material fact exists. Resolution of the issues presented rests with application of the law to the facts. Summary Judgment is proper.

Lottery Law and Regulation

- 5.8. The Lottery Commission adopts rules for administration of the lottery as authorized by RCW 67.70.040. The Director of the Lottery supervises and administers operation of the Washington Lottery. *RCW 67.70.050*.
- 5.9. The director's decisions and judgments in respect to the determination of a winning ticket or of any other dispute arising from the payment or awarding of

prizes shall be final and binding upon all participants in the lottery. WAC 316-06-120(16).

- 5.10. Ticket purchasers agree to comply with laws, regulations, the final decisions of the Director, and all procedures established by the director for the conduct of games. WAC 315-06-070.
- 5.11. An "instant game" is one in which a ticket is purchased and ticket bearer determines his or her winnings, if any. WAC 315-10-020(2). A "scratch game" is a type of "instant game" in which a ticket bearer determines winnings, if any, upon removal of a scratch-off coating on the front and/or back of the ticket. WAC 315-10-020(9).
- 5.12. The Director establishes final instant game specifications, including the determination of winning tickets, in executed working papers or software requirement specifications. WAC 315-10-010(2). Working papers provide production and winning ticket specifications for each instant ticket game. WAC 315-10-020(8).
- 5.13. "Each instant ticket shall be printed with instructions clearly indicating what constitutes a winning ticket. In addition, written descriptions of winning play and prize symbol combinations shall be included in the executed working papers or software requirement specifications for the production of each game. The ticket bearer must submit the winning ticket to the lottery as specified by the director. The winning ticket must be validated by the lottery through use of the **validation number** or any other means as specified in WAC 315-10-070 or by the director. WAC 315-10-035 (*emphasis supplied*).
- 5.14. The validation number is a unique multi-digit number on the ticket. WAC 315-10-022.

Appellant's Ticket is Not a Winner

- 5.15. Only winning validation numbers, determined at the time of manufacture or production, are prizewinners and eligible for payment.
- 5.16. Appellant presented no evidence that his tickets were defective. There is no evidence the ticket numbers 1513-053649-005, 1513-049069-008 and 1513-052766-006 had valid winning validation numbers. They are not winning tickets.
- 5.17. Appellant's argument that the instructions confused him and others is immaterial. The prize denial for each ticket must be affirmed.

6. INITIAL ORDER

IT IS HEREBY ORDERED THAT:

- 6.1. The Washington State Lottery's Motion for Summary Judgment is **GRANTED**.
- 6.2. The Notice of Hearing issued August 15, 2019 is **STRICKEN** and the hearing scheduled to begin October 28, 2019 is **CANCELLED**.
- 6.3. The Lottery Commission prize denial for ticket numbers 1513-053649-005, 1513-049069-008 and 1513-052766-006 is **AFFIRMED**.
- 6.4. The appeal of Juan De La Torre is **DISMISSED**.

SIGNED at Tacoma, Washington on the date of mailing.



Debra Pierce
Administrative Law Judge
Office of Administrative Hearings

CERTIFICATE OF SERVICE IS ATTACHED

PETITION FOR REVIEW

Any party that disputes this Initial Order may file a Petition for Administrative Review with the Washington State Lottery Commission.⁴ A Petition for Administrative Review may be mailed or delivered to the Director at the physical address listed below:

Washington State Lottery Commission
814 4th Ave E
PO Box 43000
Olympia, WA 98504-3000

Whether you mail or deliver the Petition for Administrative Review, the Commission *must actually receive* the Petition for Administrative Review during office hours at the Commission's office within 20 days of the date this Initial Order was mailed to the parties. Part of filing a Petition is providing copies to the other parties at the same time. If the Commission does not receive a Petition for Administrative Review within 20 days from the date of the Initial Order, the Initial Order shall become final with no further right to appeal.⁵

If you timely file a Petition for Administrative Review, the Commission will conduct an administrative review under chapter 34.05 RCW.

⁴ RCW 34.05.464.

⁵ Chapter 34.05 RCW.

CERTIFICATE OF SERVICE FOR OAH DOCKET NO. 07-2019-LTY-00005

I certify that true copies of this document were served from Tacoma, Washington via Consolidated Mail Services upon the following as indicated:

Juan De La Torre 1751 Clark Rd Pasco, WA 99301 Appellant	<input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail
Kristi L. Weeks Washington State Lottery Commission MS: 43000 814 4th Ave E Olympia, WA 98504-3000 Agency Representative	<input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input checked="" type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail:
Audrey Price Washington's Lottery Legal Services MS: 43000 Olympia, WA 98504-3000 Agency Contact	<input type="checkbox"/> First Class Mail <input type="checkbox"/> Certified Mail, Return Receipt <input type="checkbox"/> Hand Delivery via Messenger <input checked="" type="checkbox"/> Campus Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail

Date: Thursday, October 17, 2019

OFFICE OF ADMINISTRATIVE HEARINGS


 Stephanie Kitt
 Legal Assistant 2