

“Misprinted” Lottery Tickets and the Disappointment of a Non-Winning Ticket

By Dan Russell

Most people who play the lottery dream of one day hitting it big, making the call to their boss that they won't be in tomorrow (or ever again), or buying that fancy car they've always had their eye on. For most players, that dream never turns into a reality, and the lucky ticket never ends up in their hand. Imagine for a moment that you actually had the dream come true...only to later find out that it was all a misunderstanding, or a “misprint” as the lottery industry has come to describe the situation.



Misprinted Tickets Almost Always Result in Non-Payment

Such a circumstance has played out in many lottery jurisdictions around the country in recent years. Lottery operators in Connecticut,¹ Florida,² Georgia,³ Massachusetts,⁴ New Mexico,⁵ New Jersey,⁶ New York,⁷ Rhode Island,⁸ and Wisconsin,⁹ just to name a few, have all had to address this issue. Lottery operators in these states have dealt with litigation, media coverage, or both, in situations where players have arrived at their door with what they believed to be tickets valued up to \$5 million and in each of these states the player was sent home without a dime.

The word “misprint” pretty clearly describes the situation in which these unlucky players find themselves. The ticket appears to indicate that they have won a significant sum of money when in fact, in Florida most recently, their number “1” was actually a literal unlucky “13.”

In that case, Mr. Curcio of Central Florida purchased a \$20 “Gold Rush” scratch-off lottery ticket in May of 2007. Consistent with the vast majority of scratch-off style lottery games, the ticket indicated that he must “Match any of YOUR NUMBERS to any of the WINNING NUMBERS” to win the prize shown for that number. One of the “YOUR NUMBERS” was a “1 – ONE,”

and it is critical to keep in mind that both the numeral itself and the spelling, or abbreviated spelling, of each number is placed below both “YOUR NUMBERS” and “WINNING NUMBERS” on every ticket. One of the “WINNING NUMBERS” on the ticket also appeared to be a “1-ONE,” with a value of \$500,000, but the caption under the number included the letters “TH” and a partial “N.” This would indicate that the number that appeared to be a “1-ONE” was actually a “13-THRTN,” which was not one of the numbers included in “YOUR NUMBERS” on Mr. Curcio’s ticket. Mr. Curcio

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and his family genuinely believed that they had finally hit it big.

As such, Mr. Curcio visited the retailer from whom he had purchased the ticket to validate that his ticket was a winner. Confusingly, he was told that he had not won anything. He then went to the Lottery's headquarters in Tallahassee in an attempt to claim his \$500,000 prize. Upon arrival, the Lottery refused to pay the prize because it was not able to validate the ticket as a winner in its system.

Three years later, still not having been paid a prize, Mr. Curcio sued the Lottery, raising legal theories including breach of contract, equitable estoppel, unfair and deceptive trade practices, misleading advertising, and promissory estoppel. All such claims were anchored in the Lottery's refusal to pay the \$500,000 prize despite what appeared to be matching numbers on the ticket. The relevant Florida Statutes and Administrative Regulations provide the following:

"No prize may be paid arising from claimed tickets that are...produced or issued in error, unreadable...lacking in captions that confirm and agree with the lottery play symbols as appropriate to the lottery game involved..." Section 24.115(1)(c), Florida Statutes.

"The validation number of an apparent winning ticket must validate on the Lottery's gaming system and must not have been previously paid." Rule 53ER06-4(11)(g), Florida Administrative Code.

"The ticket must pass any additional confidential validation tests determined necessary by the Florida Lottery." Rule 53ER06-4(11)(i), Florida Administrative Code.

"Any ticket not meeting the criteria set forth in paragraphs (11)(a) through (i) above is ineligible for any prize and shall not be paid as a win-

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ning ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Florida Lottery shall be the replacement of the defective ticket with an unplayed ticket or tickets of equivalent sales price from a current Florida Lottery game, or refund the retail sales price." Rule 53ER06-4(11)(j), Florida Administrative Code.

The trial court granted judgment on the pleadings in favor of the Lottery on the equitable estoppel claim and granted summary judgment in favor of the Lottery on all of the other claims. In affirming the trial court's position, the First District stated that "...on the merits, the trial court correctly noted that because 'the numbers didn't match...[and the Lottery] did not fail to deliver on that promise [to pay a prize] as a matter of law.'"

A Rare Exception to the Non-Payment Rule

In January of 2009 a lottery player in Canada looked to meet a similar, unpaid, fate as Mr. Curcio from Florida. Thomas Nofall purchased several "Fruit Smash" scratch-off tickets from a retailer in

Ontario and believed that he had won a total of \$135,000 from four apparent winning tickets. Upon his arrival at the Ontario Lottery and Gaming Corporation ("OLG"), however, Mr. Nofall was notified that his tickets were actually non-winners and that there were in fact as many as 1,100 misprinted "Fruit Smash" tickets that were part of a recall. Within a few days, more than a dozen people had come forward with misprinted "Fruit Smash" tickets claiming to be winners, none of them were paid either.

Mr. Nofall's story differs from that of Mr. Curcio and the other players in Ontario in that, before arriving at the OLG he called in and asked if there would be a payment made if there was an error on the tickets, he was clearly and told there would be. OLG acknowledged in a release to the media that this "was an erroneous statement."¹⁰ That phone call, and the "erroneous statement" made during the course of it, when combined with being told that he would not be paid by the OLG once he arrived at its headquarters, led Mr. Nofall to immediately hire an attorney and take his story to every media outlet he could find.

Ontario's rules relating to payment of misprinted tickets is essentially the same as all other lottery jurisdictions:

The Corporation will not award a prize for tickets which are void unless the Corporation, in its discretion, deems it appropriate to do so. Tickets are void if lost, stolen, unused, illegible, mutilated, damaged, altered, counterfeited or forged, miscut, misregistered, defective, misprinted, cancelled, produced in error and not recorded in the on-line system, incomplete, not paid for, destroyed or issued, acquired or presented, in, or upon, violation of the Act, the Regulations, these Rules, or the Game Conditions. Void tickets are the property of the Corporation. Section 5.16, Rules Respecting Lottery Games, Ontario Lottery and Gaming Corporation.

Based upon the clear reading on this language, the tickets presented were “void” as they qualified as both “misprinted” and “produced in error.” Clearly, the OLG was not required to pay Mr. Nofall his prize.

However, citing the “direct miscommunication” by its staff, and Mr. Nofall’s apparent ability to activate the media and public support in his favor, the OLG actually settled with Mr. Nofall and “made him a payment in acknowledgment of that pain and suffering.” The amount of the settlement was not made public and given the opportunity to discuss it, Mr. Nofall’s attorney simply stated “[h]e’s accepted the gracious apologies by OLG and is sufficiently happy with the result and he will continue to play OLG lotto tickets.” He certainly wasn’t paid the full value of the tickets, but the lottery acted quickly to quiet an angry player who had made the media well aware of his situation.

Advice for Lotteries and Caution to Lawyers

Billions of scratch-off lottery tickets are printed every year and, even with the most elaborate systems available, errors will occasionally occur. It is critical for the lottery industry, including government operators, vendors and retailers, to continue to work diligently to minimize such issues and also to quickly address these situations when they inevitably arise. Lottery players seem willing to accept the one-in-a-billion nature of ticket misprints and have continued to purchase tickets at a growing rate. However, if misprints begin to

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For lawyers representing clients with misprinted tickets, the first thing to realize is that the likelihood of a client being paid full value for his or her “winning” ticket hovers at or around zero percent. Lawyers in this situation have multiple issues working against their client, including the fact that trial and appellate courts have consistently rejected breach of contract claims by players over misprinted lottery tickets. In addition, lotteries have language for all of their games that deem misprinted or erroneous tickets as void, entitling a client only to a refund of the price paid for the ticket or the issuance of a new ticket. It may be a best-practice to follow Mr. Nofall’s lead and work with the media in the hope of settling the matter without resorting to litigation. ♣



Dan Russell

Dan Russell is special counsel in Jones Walker LLP and his practice focuses on civil and administrative litigation, gaming, and governmental law. He most recently served as General Counsel of the Florida Lottery where he managed the legal affairs of the Lottery’s \$5.5 billion operations. In addition to handling procurements, bid protests, state and federal litigation, and other legal matters for the Lottery, Mr. Russell spearheaded the creation of Florida’s Lottery Retailer Integrity Program.

¹ *Plourde v. Conn. Lottery Corp.*, 2000 WL 1918014 (Conn. Super. Ct. Dec. 18, 2000) (granting summary judgment in favor of state lottery agency on breach of contract claim because state law prohibited payment on tickets printed in error and the ticket at issue contained game symbols 6 and 9 that resembled the winning number 8 but the captions below such symbols read “six” or “nine”).

² *Curcio v. Dep’t of the Lottery*, Case No. 1D14-2324 (Fla. 1st DCA 2015), Opinion filed May 27, 2015.

³ *Ga. Lottery Corp. v. Sumner*, 529 S.E.2d 925 (Ga. Ct. App. 2000) (holding that state lottery agency did not breach contract in determining that scratch-off ticket was not a winner because the mark on the ticket that resembled the winning symbol resulted from a printing error).

⁴ *Ruggiero v. State Lottery Comm’n*, 489 N.E. 2d 1022 (Mass Ct. App. 1986) (reversing decision in favor of plaintiff who claimed to have won a \$100,000 prize on scratch-off lottery ticket because evidence showed that the ticket had been misprinted and could not be validated as a winner as required by applicable statutes and rules).

⁵ “Roswell man told \$500k winning lottery ticket a ‘misprint.’” KOB Eyewitness News, January 2, 2015.

⁶ “A ‘C’ or an ‘O?’ Lottery Ticket Dispute Costs Woman \$50,000.” NBC News – Philadelphia, February 5, 2015.

⁷ *Consola v. New York*, 84 A.D. 3d 1557 (N.Y. App. Div. 2011) (affirming summary judgment in favor of state lottery agency that refused to pay a \$5 million prize because the disputed ticket contained an illegible play symbol caption resulting from a misprint that made it appear that one of the numbers was a 6 when it was actually a 26).

⁸ *Talente v. Rhode Island Lottery Comm’n*, 544 A.2d 586 (R.I. 1988).

⁹ “Man Fights Wisconsin Lottery over misprinted tickets.” Tribune Wire Reports, July 29, 2014.

¹⁰ “OLG worker’s mistake leads to payout to man with misprinted lottery tickets.” CBC News – Toronto, January 7, 2009.