APPENDIX

FILED
November 30, 2017
Molly C. Dwyer, Clerk
U.S. Court of Appeals

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 16-35793

D.C. No. 3:16-cv-05420-RJB
Western District of Washington,
Tacoma

ORDER

CHRISTOPHER R. GRANTON,
Plaintiff-Appellant,
v.
WASHINGTON STATE LOTTERY,
Defendant-Appellee.

Before: LEAVY, W. FLETCHER, and OWENS, Circuit Judges.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed R. App. P. 35.

Granton's petition for rehearing en banc (Docket Entry Nos. 4, 5, 6, 7, 8, and 9) is denied.

No further filings will be entertained in this closed case.

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED
March 16, 2017
Molly C. Dwyer, Clerk
U.S. Court of Appeals

No. 16-35793
D.C. No. 3:16-cv-05420-RJB

MEMORANDUM*

CHRISTOPHER R. GRANTON
Plaintiff-Appellant,
v.
WASHINGTON STATE LOTTERY,
Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Washington
Robert J. Bryan, district Judge, Presiding

Submitted March 8, 2017**

Before: LEAVY, W. Fletcher, and OWENS,
Circuit Judges.

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* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Christopher R. Granton appeals pro se from the district court's judgment dismissing his action alleging that the Washington State Lottery unconstitutionally denied him restitution. We have jurisdiction under 28 U.S.C.§1291. We review de novo a dismissal of an action as barred by Eleventh Amendment immunity. *Micomonaco v. Washington,*45 F.3d 316, 319 (9th Cir. 1995). We affirm.

The district court properly dismissed Granton's action against the Washington State Lottery on the basis of Eleventh Amendment immunity. *See Krainski v. Nevada ex rel. Bd. of Regents of Nevada System of Higher Educ.*, 616 F.3d 963,967 (9th Cir. 2010) ("The Eleventh Amendment bars suits against the State or its agencies for all types of relief, absent unequivocal consent by the state." (citation omitted)); *Nat'l Audubon Society, Inc. v. Davis,* 307 F.3d 835, 848 (9th Cir. 2002) (recognizing that claims against a state or its officials seeking damages or restitution are "of course prohibited by the Eleventh Amendment" (citation and internal quotation marks omitted)); *Confederated Tribes & Bands of Yakama Indian Nation v. Locke,*176 F.3d 467, 469-70 (9th Cir. 1999) (recognizing the Washington State Lottery as a state agency). In light of our disposition, we do not address the merits of Granton's claims.

AFFIRMED.

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT TACOMA

ORDER DENYING PLAINTIFF'S APPLICATION TO PROCEED IN FORMA PAUPERIS AND DISMISSING CASE

CHRISTOPHER R. GRANTON,
Plaintiff,

v.

WASHINGTON STATE LOTTERY,
Defendants.

This matter comes before the Court on Plaintiff Christopher Granton's Application to Proceed *In Forma Pauperis* (Dkt. 1) and on review of the Complaint (Dkt. 1-1). The Court has considered the relevant record and the remainder of the file herein.

Standard for Granting Application for IFP. The district court may permit indigent litigants to proceed *in forma pauperis* upon completion of a proper affidavit of indigency. *See* 28 U.S.C.§1915(a). However, the court has broad discretion in denying an application to proceed *in forma pauperis. Weller v. Dickson,*314 F.2d 598 (9th Cir. 1963), *cert. denied* 375 U.S. 845 (1963).

Application to Proceed IFP. Mr. Granton states that he has been unemployed due to a work-related injury since October 2015 and has received $6600 in public benefits within the last 12 months. Dkt. 1, at 2. Mr. Granton estimates monthly

expenses of $1105, has $405 cash on hand, and owns a car valued at $250.

Decision on Application to Proceed IFP. As discussed below, the Court lacks jurisdiction over Mr. Granton's claim, so the application to proceed *in forma pauperis* should be denied without prejudice as moot. *Minetti v. Port of Seattle,* 152 F.3d 1113 (9th Cir. 1998), (*quoting Tripati v. First Nat'l Bank & Trust,* 821 F.2d 1368, 1370 (9th Cir. 1987)).

Review of the Complaint. The Court has carefully reviewed the Complaint. Because Mr. Granton filed this Complaint *pro se*, the court has construed the pleadings liberally and has afforded him the benefit of any doubt. *See Karim-Panahi v. Los Angeles Police Dep't,* 839 F.2d 621, 623 (9th Cir. 1988).

Mr. Granton alleges that he was denied payout of a lottery award because of a statute, WAC 315-38-050(3), which he alleges is unconstitutional as applied. In April 2005, Mr. Granton allegedly possessed a play slip that matched a winning lottery number but was not able to collect his lottery award because he did not possess the corresponding ticket. Mr. Granton apparently appealed the non-award administratively without success. He "fe[els] that the [lottery] machines were not maintained in good working order" and that the statutory requirement of WAC 315-38-050(3) is unconstitutional "as applied." The statute provides that "[u]nder no circumstances will a claim be paid for either the jackpot prize or the second prize without official Mega Millions ticket matching all game play[.]" WAC 315-38-050(3).

Jurisdiction. Federal courts are courts of limited jurisdiction. Jurisdiction is a threshold issue that must be raised *sua sponte. Steel co. v. Citizens*

for a Better Environment, 523 U.S. 83, 94-95 (1998). A complaint must be dismissed for lack of subject matter jurisdiction if, considering the factual allegations in the light most favorable to the plaintiff, the action: (1) does not arise under the Constitution, laws, or treaties of the United States, or does not fall within one of the other enumerated categories of Article III, Section 2, of the United States Constitution; (2) is not a case or controversy within the meaning of the United States constitution; or (3) is not one described by any jurisdictional statute. *Baker v. Carr*, 369 U.S. 186,198 (1962); *D.G. Rung Indus., Inc. v. Tinnerman*, 626 F. Supp. 1062, 1063 (W.D. Wash. 1986).

In this case, there is no showing that the Court has subject matter jurisdiction. On the Civil cover Sheet, Mr. Granton has indicated that the court has federal question jurisdiction. Dkt. 1-2. *See* 28 U.S.C.§1331. The Complaint makes reference to WAC 315-38-050(3), not a federal statute so it appears that the federal question jurisdiction would stem from the allegation that WAC 315-38-050(3) is "unconstitutional as applied." However, giving Mr. Granton every benefit of the doubt, the Court cannot discern a constitutional claim. The Complaint does not articulate how the state statute is federally unconstitutional as applied. Therefore, the case should be dismissed for lack of subject matter jurisdiction.

IFP on Appeal. In the event that Mr. Granton appeals this order, and/or appeals dismissal of this case, IFP status should be denied by this court, without prejudice to Mr. Granton to file with the Ninth Circuit U.S. Court of appeals an application to proceed *in forma pauperis.*

Therefore, it is hereby ORDERED that:

- Plaintiff Christopher Granton's Application to Proceed *In Forma Pauperis* (Dkt. 1) is DENIED WITHOUT PREJUDICE AS MOOT;
- This case is **DISMISSED WITHOUT PREJUDICE;**
- In the event that Plaintiff Christopher Granton appeals this order, IFP status is **DENIED** by this court, without prejudice for Mr. Granton to file with the Ninth Circuit U.S. Court of Appeals an application to proceed *in forma pauperis.*

The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any party appearing *pro se* at said party's last known address.

Dated this 15th day of June, 2016.

"S/"
ROBERT J. BRYAN
United States District Judge

Filed 8/3/16

Document 12

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CHRISTOPHER R. GRANTON,
Plaintiff

v.

WASHINGTON STATE LOTTERY,
Defendant

THIS MATTER comes before the Court following several motions filed by Plaintiff.

The Court previously dismissed Plaintiff's case without prejudice after Plaintiff failed to state the jurisdictional basis for his claims. Dkt. 2. Plaintiff has since filed the following: "COMPLAINT Statute used to gain judgement [*sic*] in prior courts was unconstitutional as applied" (Dkt.3), an application for court-appointed counsel (Dkt.4), a "Motion to reopen case" (Dkt.5), "COMPLAINT Statute used to gain judgment [*sic*] in prior courts was unconstitutional as applied. Amended)" (Dkt. 6), a praecipe with a single attachment (Dkt.7), "COMPLAINT Statute used to gain judgement [*sic*] in prior courts was unconstitutional as applied. (2nd Amended complaint)" (Dkt.8), a praecipe with several attachments (Dkt.9), and "COMPLAINT Statute used to gain judgement [*sic*] was unconstitutional as applied" (Dkt.10). The Court has considered these filings and the remainder of the file.

Pending before the Court is Plaintiff's motion to reopen the case (Dkt.5) and Plaintiff's application for appointed counsel (Dkt.4). Given the sequence and headings of Plaintiff's other filings, the Court construes Plaintiff's most recent filing, Dkt. 10, as a motion to amend the Complaint. *See* Dkts. 3, 6, 8, 10.

1. Motion to Reopen Case

Plaintiff "humbly ask[s] this court" to reconsider its dismissal, where Plaintiff has since realized that he "had missed a key portion of [his] complaint" and "had not given any thought to jurisdiction." Dkt. 5. Plaintiff states that he has "since amended [his] complaint to address jurisdiction," and he asks for leniency due to his limited education. *Id.*

To the extent that the Court need consider whether it has subject matter jurisdiction over the case, *see below*, Plaintiff's motion to reopen the case should be granted. However, for the reasons stated below, the case should still be dismissed.

2. Motion to Amend the complaint.

The Court previously identified a fatal defect in Plaintiff's Complaint, namely, the lack of subject matter jurisdiction. Plaintiff purports to address this problem by amending the Complaint. The Amended Complaint alleges jurisdiction based on Defendant's constitutional violation of the Contract Clause: "[j]urisdiction falls under UNITED STATES CONSTITUTION Article I Section 10 Clause 1. No State shall enter into any law impairing contracts." Dkt. 10 at 2. It is alleged that WAC 315-38-050(3) "impairs the [Washington State Lottery] from their contractual obligation." *Id.* It appears that the Amended Complaint alleges that the contractual

terms giving rise to the contract are found within subsections of the WAC. *Id.*

Considering the subsections alleged in the Amended Complaint, it is, at best, unclear whether the Amended Complaint sufficiently alleges a contractual relationship under the facts alleged. Nonetheless, even in the Court could have subject matter jurisdiction based on a Contract Clause theory, the Court still lacks subject matter jurisdiction because of Defendant's Eleventh Amendment immunity. "An unconsenting State is immune from suits brought in federal courts by her own citizens as well as by citizens of another State." *Pittman v. Oregon Employment Dept.,* 509 F.3d 1065, 1071 (9th Cir. 2007) *(internal quotations omitted).* Eleventh Amendment immunity extends to state agencies. *Pennhurst State Sch. & Hosp. v. Holdeman*, 465 U.S. 89, 101-102 (1984). Defendant is a state agency that has not consented to be sued, so the Amended Complaint should be barred from proceeding.

Also problematic is the State of Washington's statute of limitations for contracts claims, six years, when this incident allegedly occurred in 2005. RCW 4.16.040. *See* 42 U.S.C.§1988. Giving Plaintiff the opportunity to further amend the complaint would be futile.

Plaintiff's motion to amend should be denied.

3. Application to Appoint Counsel.

Plaintiff has requested that the Court appoint counsel to represent him. Dkt. 4. Plaintiff indicates that his prior IFP request was denied, that he has contacted 2 attorneys to represent him without success, and that neither the EEOC nor the Washington State Human Rights Commission have

found reasonable cause to believe that Plaintiff's allegations are true. *Id.*

Under 28 U.S.C.§ 1915(e)(1), courts may request an attorney to represent any person unable to afford counsel, but courts do so in exceptional circumstances. *Franklin v. Murphy,* 745 F.2d 1221, 1236 (9th Cir. 1984). To find exceptional circumstances, the court must evaluate the likelihood of success on the merits and the ability of the petitioner to articulate the claims pro se in light of the complexity of the legal issues involved. *Weygandt v. Look,* 718 F.2d 952, 954 (9th Cir. 1983).

Plaintiff has not articulated exception circumstances warranting counsel. Even if Plaintiff could do so, because the Amended Complaint's jurisdictional flaw is fatal, *see above,* the Court will not exercise its discretion to appoint counsel. Plaintiff's motion for appointment of counsel should be denied.

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THEREFORE, it is HEREBY ORDERED:

(1) Plaintiff's motion to Reopen Case (Dkt.5) is GRANTED IN PART. The Court has reopened this case as needed to consider Plaintiff's Amended Complaint.

(2) Plaintiff's Motion to Amend Complaint (Dkt. 10) is DENIED.

(3) Plaintiff's Motion to Appoint Counsel (Dkt.4) is denied.

The case is HEREBY DISMISSED.

The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any party appearing *pro se* at said party's last known address.

Dated this 3rd day of August, 2016.

"S/"

ROBERT J. BRYAN
United States District Judge

THE SUPREME COURT
STATE OF WASHINGTON
September 4, 2008

Christopher R. Granton
10413 15th Avenue Ct. S.
Tacoma, WA 98444

Jennifer Elias
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PO Box 40100
Olympia, WA 98504-0100

David Ponzoha, Clerk
Court of Appeals, Division II
950 Broadway
Suite 300, MS TB-06
Tacoma, WA 98402-4454

Re: Supreme Court No. 81451-1-Christopher R. Granton v. Washington State Lottery Commission
Court of Appeals No. 35778-0-II

Clerk, Counsel & Mr. Granton:

Enclosed is a conformed copy of the Order entered following hearing of the above matter on the Court's September 3, 2008, Motion Calendar.

Sincerely,

Susan L. Carlson
Supreme Court Deputy Clerk

SLC:bbm
Enclosure as referenced.

THE SUPREME COURT
OF WASHINGTON

NO. 81451-1

ORDER

C/A NO. 35778-0-II

CHRISTOPHER R. GRANTON,
Petitioner
v
WASHINGTON STATE LOTTERY COMMISSION
Respondent

Department II of the Court, composed of Chief Justice Alexander and Justices Madsen, Chambers, Fairhurst, and Stephens, at its September 3, 2008, Motion Calendar, considered whether review should be granted pursuant to RAP 13.4(b), and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the Petition for Review is denied.

DATED at Olympia, Washington this 4th day of September 2008.

For the Court

"S/"
CHIEF JUSTICE

WASHINGTON STATE COURT OF APPEALS
Division Two

February 20, 2008

Christopher Granton
10413 13th Avenue Court South
Tacoma, WA 98444

Michael Steven Tribble
Agriculture and Health Division
7141 Cleanwater Dr SW
PO Box 40109
Olympia, WA 98504-0109

CASE #: 35778-0-II
Christopher Granton, Appellant, v. State Lottery Commission, Respondent

Counsel:

An opinion was filed by the court today in the above case. A copy of the opinion is enclosed.

Very truly yours,

David C. Ponzoha
Court Clerk

DCP:cjb
Enclosure

cc: Judge Anne Hirsch
Judge Paula Casey
Administrative Law Judge Jane Habegger
Administrative Law Judge Robert Krabill

FILED
COURT OF APPEALS
DIVISON II
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STATE OF WASHINGTON
BY CB DEPUTY

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON DIVISION II

No. 35778-0-II

PUBLISHED OPINION

CHRISTOPHER R. GRANTON,
Appellant

v

WASHINGTON STATE LOTTERY COMMISSION,
Respondent.

QUINN-BRINTNALL, J. – Christopher Granton appeals the Office of Administrative Hearing's (OAH) grant of summary judgment dismissing his claims against the Washington State Lottery Commission. Granton argues that, because the "draw break" for the mega Millions lottery occurred early, he was unable to purchase a ticket that he believes would have been a winning Mega Millions ticket and that he should be treated as a de facto ticket holder. Because Granton did not purchase a valid Mega Millions ticket, he is not eligible to receive a prize award and we affirm.

FACTS

On April 8, 2005, at around 6:40 PM, Granton filled out a lottery play slip[1] and handed it to a convenience store clerk at the Steele Street Texaco Station in Tacoma in an attempt to purchase a Mega Millions lottery ticket. The clerk attempted to process the ticket, but the ticket distribution machine reported an error, "Draw Break[2] - Wager Refused by Central," and was unable to complete the transaction. Administrative R. at 102-03. As a result, Granton never purchased a ticket for the April 8, 2005 game. Subsequently, Granton contacted the Lottery Commission and sought to collect the April 8, 2005 Mega Millions jackpot,[3] claiming that the numbers on the play slip he used to attempt to purchase a Mega Millions ticket matched the winning numbers.

On June 27, 2005, the Lottery Commission denied Granton's claim because he could not produce a winning ticket for the game in question. During the course of the Lottery Commission's investigation

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[1] A "play slip" is a form on which a player chooses the game he would like to play and selects the numbers he wants to use for that particular game. Administrative R. at 8.

[2] A "draw break" is a period of time between games in which players cannot purchase tickets until the start of the new game. Former WAC 315-30-040(2) (1992).

[3] On April 8, 2005, the Mega Millions jackpot was $102,000,000. Washington Lottery, Mega Millions, winning Numbers, Past Winning Numbers, http://www.walottery.com/sections/Lottery Games/MegaMillion.aspx?Page=PastWinning&year=2005.

into Granton's claim,[4] it researched and evaluated the automated terminal transaction list generated by the ticket distribution machine and found no "draw break" messages on April 8, 2005, on or around 6:50 PM. Instead, the Lottery Commission determined that all "draw breaks" occurred statewide from 7:45 to 8:01 PM, as scheduled. Granton requested an administrative hearing on the matter.

On August 25, 2005, the OAH held a prehearing conference in which the Lottery Commission informed Granton that it intended to move for summary judgment dismissal of his claim. Granton requested that the Lottery Commission produce its investigative file regarding his claim and one year's worth of data from third-party contractor G-TECH regarding any errors that occurred on the ticket distribution machine that failed to process his play slip. Granton sought to show that the machine had a history of errors of which the Lottery Commission should have been aware. The Lottery Commission informed Granton and the Administrative Law Judge (ALJ), Judge Jane L. Habegger, that it did not have machine data for that entire period of time because, during the course of its own investigation, it had only requested ticket distribution machine data for the week surrounding April 8, 2005. The Lottery Commission offered to hand over its investigative file to Granton along with

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[4] State governmental entities have expended significant resources and taxpayer dollars reviewing and investigating Granton's patently meritless claims. Although it could have done so under RAP 18.9©(2), the State did not ask this court to dismiss Granton's appeal as frivolous. Nor did it request terms or compensatory damages for being required to respond to a frivolous appeal. RAP 18.9(a).

the ticket distribution machine data it had collected from G-TECH. ALJ Habegger informed Granton that if he wanted more data than the Lottery Commission had, Granton needed to subpoena that information from G-TECH. ALJ Habegger offered to help Granton draft the subpoenas, but told Granton that he would have to serve the subpoenas himself. Subsequently, the Lottery Commission provided Granton with its complete investigative report, including the data it had collected from G-TECH.

On August 26, 2005, the Lottery Commission filed a motion for summary judgment. ALJ Robert C. Krabill set oral arguments for October 4, 2005.

On September 22, 2005, Granton filed a request for public records with the OAH. Granton repeated his request for data from G-TECH. The Lottery Commission stated that it was willing to work cooperatively with Granton and G-TECH to provide Granton with the data he was seeking should summary judgment be denied and the data become arguably relevant for a hearing on the merits of Granton's claim.

On October 11, 2005, ALJ Krabill issued an initial order dismissing Granton's claim because he never actually purchased a ticket for the Mega Millions drawing on April 8, 2005, as required by WAC 315-38-050(3)[5] to claim a Mega Millions prize.

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[5] WAC 315-38-050(3) states in relevant part:

> Under *no circumstances* will a claim be paid for... the jackpot prize... without an official Mega Millions ticket matching all game play, serial number, and other validation data residing in the selling party lottery's on-line gaming system computer, and such ticket shall be the only valid proof of the wager placed and the only valid receipt for claiming or redeeming any prize. (Emphasis added.)

Granton filed a petition for review by the Director of the Lottery Commission and, on March 7, 3006, the director of the Lottery Commission issued his final order, affirming ALJ Krabill's initial order. On March 17, 2006, Granton moved for reconsideration. The Lottery Commission denied the motion.

On March 27, 2006, Granton filed a petition for judicial review in Thurston County Superior Court which was assigned to Judge Paula Casey. On November 15, 2006, the case was reassigned to Judge Anne Hirsch. Judge Hirsch affirmed the Lottery Commission's final order. Granton timely appeals.

ANALYSIS

STANDARD OF REVIEW

We review an order of summary judgment de novo. *Hisle v. Todd Pac Shipyards Corp.,* 151 Wn.2d 853, 860, 93 P.3d 108 (2004). Summary judgment is appropriate only 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." WAC 10-08-135. We view all facts in the light most favorable to the nonmoving party. *Vallandigham v. Clover Park Sch. Dist. No. 400,* 154 Wn.2d 16, 26, 109 P.3d 805 (2005). Summary judgment is appropriate only if reasonable persons could reach but one conclusion from all the evidence. –*Vallandigham*, 154 Wn.2d at 26.

In reviewing an administrative action, we sit in the same position as the trial court and apply the Washington Administrative Procedure Act (APA)[6]

[6] Chapter 34.05 RCW.

standards directly to the agency's administrative record. *Superior Asphalt & Concrete Co. v. Dep't of Labor and Indus.,* 112 Wn. App. 291, 296, 49 P.3d 135 (2002) (citing *Tapper v. Employment Sec. Dep't,* 122 Wn.2d 397, 402, 858 p.2d 494 (1993)), review denied, 149 Wn.2d 1003 (2003). Under the APA, the "burden of demonstrating the invalidity of agency action is on the party asserting invalidity." RCW 34.05.570(1)(a). According to the APA, we will reverse an administrative decision that (1) violates a constitutional provision on its face or as applied, (2) lies outside the agency's lawful authority or jurisdiction, (3) is a result of an erroneous interpretation or application of the law, (4) is not based on substantial evidence, or (5) is arbitrary or capricious. RCW 34.05.570(3); *see also Tapper,* 122 Wn.2d at 402. We may overturn an agency final order if it is inconsistent with an agency rule and the agency fails to explain the inconsistency by stating facts and reasons demonstrating a rational basis for the inconsistency. RCW 34.05.570(3)(b).

Like the trial court, we review questions of law de novo, but we accord substantial weight to the agency's interpretation of the statutes it administers. *Superior Asphalt,*112 Wn. App. at 296 (citing *Everett Concrete Prods., Inc. v. Dep't of Labor & Indus.,* 109 Wn.2d 819, 823, 748 P.2d 1112 (1988).

VALID TICKET

Granton argues that, because the "draw break" occurred early and shut down the ticket distribution machine at the incorrect time, he was unable to purchase a ticket that he believes would have been a winning Mega Millions ticket. Specifically, Granton argues that the Lottery Commission should

treat him as a de facto ticket holder because he entered into a contract with the Lottery Commission after he filled out his play slip and attempted to hand his money over to the cashier. The Lottery Commission responds that a ticket is the only valid proof that the party placed the wager and the only valid receipt for claiming or redeeming a prize and, because Granton admittedly did not purchase a ticket, he is not entitled to claim the Mega Millions jackpot. Granton admits that he was unable to purchase a ticket for the April 8, 2005 Mega Millions game.

Under WAC 315-38-050(3), "[u]nder *no circumstances* will a claim be paid for... the jackpot prize... without an official Mega Millions ticket... and such ticket shall be the only valid proof of the wager placed and the only valid receipt for claiming or redeeming any prize." WAC 315-38-050(3) (emphasis added).

The lottery is contractual in nature. *Thao v. Control Data Corp.,* 57 Wn. App. 802, 805, 790 P.2d 1239 (1990). Lotteries have elements of a chance, a consideration, and a prize. *Thao,* 57 Wn. App. at 805 (quoting *Seattle Times Co., v. Tielsch,* 80 Wn.2d 502, 507,495 P.2d at 507).

In *Thao*, the court held that the plaintiff and his nephew accepted the lottery's general offer of a chance and created a valid contract when they (1) completed and submitted the play slip, and (2) paid the price of the lottery ticket. 57 Wn. App. at 806.

Unlike *Thao,* Granton never entered into a contract with the Lottery Commission. He never paid the purchase price of the lottery ticket because

the sale was frustrated.[7] Because Granton does not have a valid ticket and was unable to provide the requisite consideration necessary to accept the Lottery Commission's offer of a chance to win a prize, he did not enter into a contract with the Lottery Commission and is not entitled to the Mega Millions jackpot prize.

ACTION CONSISTENT WITH AGENCY RULES

Granton also contends that the Lottery Commission's final order is inconsistent with several agency rules because the Lottery Commission (1) permitted the "draw break" to occur early, contrary to former WAC 315-30-040(2);[8] (2) failed to comply with discovery rules, contrary to WAC 315-20-115[9]

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[7] Granton repeatedly argues that whether he had a ticket is irrelevant because he was unable, through no fault of his own, to purchase a ticket because an early "draw break" frustrated his purchase. But whether the ticket distribution machine was operating properly or whether the "draw break" did in fact occur early are not issues of material fact, because successfully purchasing a ticket is a requirement for collecting or claiming a Mega Millions ticket. *See* former WAC 315-30-050(3) (1989).

[8] Former WAC 315-30-040(2) provided:

> The director shall announce for each type of on-line game the time for the end of sales prior to the drawings. [Ticket distribution machines] will not process orders for on-line tickets for that drawing after the time established by the director.

[9] WAC 315-20-115(1) provides in relevant part:

> Upon request by any party to the adjudicative proceeding, copies of all materials to be presented at the adjudicative proceeding shall be provided to the requester within seven days of the request but, for good cause shown, not less than three business days prior to the date of the hearing.

and (3) failed to honor his public disclosure request, contrary to WAC 315-12-050,[10] WAC 315-12-110,[11] RCW 42.56.550,[12] and RCW 42.56.520[13] But Granton did not purchase a valid Mega Millions ticket as required by former WAC 315-30-050(3) (1989), which is a condition precedent to collect or claim a Mega Millions prize. Moreover, any deficiencies in the Lottery Commission's process

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[10] WAC 315-12-050 states:

> Public Records Available.
>
> All public records of the commission and director as defined in WAC 315-12-020(2) are deemed to be available for public inspection and copying pursuant to these rules, except as otherwise provided by RCW 42.17.260, 42.17.310, 42.17.330, WAC 315-12-100, and other applicable laws.

[11] WAC 315-12-110 states:

> Denial of Request.
>
> Each denial of a request for a public record shall be accompanied by a written statement to the requestor clearly specifying the reasons for the denial, including a statement of the specific exemption authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld. Such statement shall be sufficiently clear and complete to permit the director or his or her designee to review the denial in accordance with WAC 315-12-120.

[12] RCW 42.56.550 requires an agency to show cause as to why it refused a public disclosure request.

[13] Under RCS 42.56.520, agencies must respond promptly to requests for public records. Within five days of receiving a request, the agency must respond by either (1) providing the record, (2) acknowledging that the agency received the request and provide an estimate of the time it will require to respond to the request, or (3) deny the public record request.

occurred after Granton failed to purchase the requisite ticket, and we need not reach these issues.

JUDICIAL REASSIGNMENT AND ANALYSIS

Lastly, Granton argues that it was improper for ALJ Krabill to hear his case because ALJ Krabill[14] allegedly had no previous experience reviewing an agency final order. Granton also alleges error with the superior court's analysis when it affirmed the agency's final order. But we "sit[] in the same position as the trial court and apply the APA standards directly to the administrative record in front of the agency." *Superior Asphalt*, 112 Wn. App. at 296. Accordingly, although our review of the record reveals no deficiencies, any deficiencies in the superior court process would not alter the result. *See Superior Asphalt*, 112 Wn. App. t 296.

CONCLUSION

Granton did not purchase a Mega Millions ticket and was not entitled to a jackpot prize. We note that the State governmental entities have expended significant agency and taxpayer resources investigating and reviewing Granton's patently meritless claims. Although it could have done so, the Attorney General's Office did not move to have this court dismiss Granton's appeal as frivolous. RAP 18.9(c)(2). Nor did it request terms or compensatory

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[14] Although Granton argues that ALJ Krabill's inexperience prejudiced his case, Thurston County Superior Court Judge Hirsch actually heard the oral arguments and signed the order affirming the Lottery Commission's final order. ALJ Krabill was the ALJ who initially heard Granton's case.

damages for being required to respond to a frivolous appeal. RAP 18.9(a). Owing to the Lottery Commission's solicitous consideration for Granton's claim, Granton was apparently unaware of the costs incurred or that he could be required to reimburse the State for having to respond to a frivolous appeal. Like other State governmental entities we have been forced to expend precious resources reviewing this patently frivolous action. Nevertheless, at this time, we have decided to exercise our discretion and decline to impose sanctions for Granton's frivolous appeal sua sponte. We emphasize that our decision on this point is an exercise of discretion and leniency that may not be repeated in future frivolous appeals such as this one.

We affirm.

"S/"
QUINN-BRINTNALL, J.

We concur:

"S/"
ARMSTRONG, J.

"S/"
VAN DEREN, A.C.J.

Hearing is Set

Date: December 15, 2006
Time: 1:30 p.m.
The Honorable Anne Hirsch

FILED December 15, 2006
Superior Court
Betty J. Gould
Thurston County Clerk

STATE OF WASHINGTON
THURSTON COUNTY SUPERIOR COURT

NO. 06-2-00572-1
FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER ON JUDICIAL REVIEW

CHRISTOPHER R. GRANTON
Petitioner

v.

WASHINGTON STATE LOTTERY COMMISSION
Respondent

This matter came regularly on for hearing on December 15, 2006, before the above-entitled court pursuant to the Washington Administrative Procedures Act. The State of Washington, Washington's Lottery (Lottery) was represented by ROB MCKENNA, Attorney General, and MICHAEL S. TRIBBLE, Assistant Attorney General. Petitioner Christopher R. Granton appeared *pro se*. The Court, having reviewed the Administrative

Record, pleadings on file, and having heard arguments, and in all premises being fully advised, hereby makes the following:

I. FINDINGS OF FACT

I.

Lottery applied the law appropriately when it dismissed Mr. Granton's claim on summary judgment.

II.

The Final Order is supported by substantial evidence.

III.

Lottery decided all issues requiring resolution because all other issues raised by Mr. Granton were not material.

IV.

The Final Order is not inconsistent with agency rules.

V.

The Final Order is not arbitrary or capricious.

From the foregoing Findings of Fact, the Court makes the following:

II. CONCLUSIONS OF LAW

I.

The Court has jurisdiction over the parties and subject matter.

II.

Mr. Granton has failed to establish he is entitled to relief under RCW 34.05.570(3).

From the foregoing Findings of Fact and Conclusions of Law, the Court enters the following:

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Washington Lottery Final Order of March 7, 2006 issued in the matter of Christopher Granton, Docket No. 2005-LTY-002 is affirmed and Mr. Granton's Petition for Judicial Review is dismissed.

"S/"
JUDGE ANNE HIRSCH

Presented by:
ROB MCKENNA
Attorney General

MICHAEL S. TRIBBLE
WSBA # 30508
Assistant Attorney General

Presented as to Form:

CHRISTOPHER R. GRANTON, Petitioner

MAILED
October 11, 2005
Olympia, OAH

STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE WASHINGTON STATE LOTTERY

INITIAL ORDER ON THE LOTTERY'S MOTION FOR SUMMARY JUDGMENT

Docket No. 2005-LTY-002

In the matter of:

Christopher R. Granton,
Appellant

On October 4, 2005, Robert C. Krabill, Administrative Law Judge, conducted a hearing on this matter on the Washington State Lottery's Motion for Summary Judgment. The Appellant, Christopher R. Granton, appeared and represented himself. Michael Tribble, Assistant Attorney General, appeared and represented the Washington State Lottery (the "Lottery").

ISSUE

Whether the Lottery is entitled to summary judgment on Mr. Granton's claim for a prize when he never purchased the winning ticket.

RESULT

The Lottery's motion for summary judgment is GRANTED.

FINDINGS OF FACT

I took no testimony during the hearing, but, because this is the Lottery's' motion for summary judgment, I accepted as fact Mr. Granton's version of events as presented in his declarations and other evidence. For purposes of summary judgment, I considered the following listed documents:

1. Page 11, G-Tech Report of April 8, 2005, Agent No. 219907
2. Declaration of Phyllis Monroe, September 23, 2005
3. Declaration of Christopher Granton, September 15, 2005
4. Response to Motion for summary Judgment, September 6, 2005
5. Marci Savage Letter to Christopher Granton, April 20, 2005
6. Ceil Buddeke Letter to Christopher Granton, June 27, 2005
7. Copy of Play Slip, received August 29, 2005
8. Motion of Summary Judgment, August 26, 2005 with internal attachments A-C
9. Mari Jo Nagel Letter to Christopher Granton, May 3, 2005

<u>For summary judgment purposes only</u>, I make the following findings of fact:

1. Around 6:40 PM on April 8, 2005, Mr. Granton entered the "Texaco Food Mart" with a wrinkly play slip and $4 intending to buy Mega Millions lottery tickets for the upcoming drawing. Declaration of Christopher Granton, September 15, 2005,

Summary Judgment Exhibit 3, page 2. When he attempted to purchase tickets using the wrinkly play slip, the machine could not read it, so he stepped out of line and created a new play slip using the same numbers. *Id.* He got back in line and waited his turn to buy tickets. *Id.*

2. When it was Mr. Granton's turn, he handed clerk Phyllis Monroe his newly created play slip. *Id.* She attempted to process the ticket, but machine number 219907 rejected his play. Declaration of Phyllis Monroe, September 23, 2005, Summary Judgment Exhibit 2, page 2. The machine's screen read "Draw Break – Wager Refused by Central". Summary Judgment Exhibit 3, page 2. It was 6:46.29 PM Page 11 of G-Tech Report for April 8, 2005, Agent No. 219907, Summary Judgment Exhibit 1.

3. Mr. Granton felt frustrated because he believed the machine wrongly refused his wager, but he never bought a ticket for the April 8, 2005, Mega Millions lottery using the numbers on the play slip.

4. The winning numbers for the April 8, 2005, drawing were 5-13-17-33-35 with a Mega Ball of 35. See http://222.walottery.com/Sections/LotteryGames/MegaMillion.aspx?Page=PastWinning&year=2005, website visited October 4, 2005. Those winning numbers match Panel B on Mr. Granton's play slip. copy of Play Slip, summary Judgment Exhibit 7.

5. Mr. Granton has appealed the Lottery's refusal to pay him the jackpot for the April 8, 2005 drawing.

CONCLUSION OF LAW

Jurisdiction

1. The Washington State Lottery (the "Lottery), through its director, has the authority to "supervised and administer the operation of the Lottery." RCW 67.70.050. The director has the authority to investigate and conduct hearings, and he may delegate his authority to conduct hearings to an administrative law judge. RCW 67.70.060. Those proceedings should be conducted in accordance with the Administrative Procedure Act, Chapter 34.05 RCW. RCW 67.70.060(5); WAC 315-20-005.

Summary Judgment

2. The Model Rules of Procedure, WAC 10-08 et seq., apply to all Lottery hearings. WAC 315-20-005. The Model Rules provide for summary judgment when the record shows "no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." WAC 10-08-135; cf. *Magula v. Benton Franklin Title Co., Inc.,* 131 Wn. 2d 171, 182, 930 P. 2d 307 (1997).

Effect of No Ticket

3. The Lottery will only pay a jackpot prize, if the claimant presents "an official Mega

Millions ticket matching all game play, serial number, and other validation data" in the Lottery's computer system. WAC 315-38-050(3). The ticket itself is the "only valid proof of the wager placed and the only valid receipt for claiming or redeeming any prize." *Id.*[1] Admittedly, Mr. Granton did not purchase and does not possess a valid winning ticket for the April 8, 2005 Mega Millions drawing. Therefore, he has no valid proof that he made a wager for that drawing, and he lacks the necessary receipt for claiming any prize, including the jackpot, under WAC 315-38-050(3).

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[1] In its entirety, WAC 315-38-050(3) reads as follows:

Under no circumstances will a claim be paid for either the jackpot prize or the second prize without an official Mega Millions ticket matching all game play, serial number, and other validation data residing in the selling party lottery's on-line gaming system computer, and such ticket shall be the only valid proof of the wager placed and the only valid receipt for claiming or redeeming any prize.

4. Play slips have no prize value. WAC 315-38-050(5). Play slips do not "constitute evidence of purchase or number selections." *Id.*[2] While Mr. Granton has a play slip showing the winning number selections for the April 8, 2005, Mega Millions drawing, he does not have a Mega Millions ticket matching all game play, serial number, and other validation data in the Lottery's computer system. Under WAC 315-38-050(5), his play slip does not show purchase or number selections. But the play slip is Mr. Granton's only evidence of the numbers he picked. Therefore, under WAC 315-38-050(5), Mr. Granton has not established that he picked the winning numbers, even with the liberal treatment of his evidence provided in a summary judgment motion.

Conclusion

5. Because Mr. Granton lacks an authentic winning Mega Millions ticket, he is not entitled to the jackpot prize he claims as a matter of law under WAC 315-38-050(3). While I sympathize with Mr. Granton's profound frustration and disappointment,

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[2] In its entirety, WAC 315-38-050(5) reads as follows:

Purchasers may submit a manually completed Mega Millions play slip to a Mega Millions agent or retailer to have issued an official Mega Millions ticket. Mega Millions play slips shall be available at no cost to the purchaser and shall have no pecuniary or prize value, and shall not constitute evidence of purchase or number selections. The use of mechanical, electronic, computer generated or any other non-manual method of marking play slips is prohibited.

he has not raised a genuine issue of material fact that would result in any other conclusion. Therefore, the Lottery is entitled to summary judgment under WAC 10-08-135.

INITIAL ORDER

IT IS HEREBY ORDERED that this matter be DISMISSED.

SERVICED on the date of mailing.

"S/"

Robert C. Krabill
Administrative Law Judge
Office of Administrative Hearings

NOTICE TO THE PARTIES

Pursuant to RCW 34.05.464 and WAC 10-08-211, any party to an adjudicative proceeding may file a petition for review of an initial order by the Director of the Washington State Lottery. The petition for review shall be filed with the agency head within twenty (20) days of the date of service of the initial order. Copies of the petition must be served upon all other parties or their representatives at the time the petition is filed. The petition for review must specify the portions of the initial order to which exception is taken and must refer to the evidence of record which is relied upon to support the petition.

Any party may file a reply to a petition for review. The reply shall be filed with the office where the petition for review was filed within ten days of the date of service of the petition and copies of the reply shall be served upon all other parties or their representatives at the time the reply is filed.

A copy was sent to:

Appellant:

Christopher R. Granton
10413 13th Avenue Ct. S.
Tacoma, WA 98444

Assistant Attorney General:

Michael Tribble
Assistant Attorney General
Office of the Attorney General
PO Box 40100
Olympia, WA 98504-0100

Lottery Representative:

Ceil Buddeke, Legal Counsel
Washington State Lottery
PO Box 43025
Olympia, WA 98504-3025

Candace Martin, Paralegal
Washington State Lottery
PO Box 43025
Olympia, WA 98504-3025

STATE OF WSHINGTON)
) ss.
COUNTY OF THURSTON)

I hereby certify that I have this day served a copy of this document upon all parties of record in this proceeding by mailing a copy thereof, properly addressed with postage prepaid, to each party to the proceeding or his or her attorney or authorized agent.

Dated at Olympia, Washington, this 11th day of October, 2005.

Shiela Koochagian
Representative, Office of
Administrative Hearings

WASHINGTON STATE LOTTERY

In the Matter of:

OAH DOCKET NO. 2005-LTY-002

CHRISTOPHER R. GRANTON,
Appellant

FINAL ORDER

The above-entitled matter coming on regularly before the Director, and it appearing:

1. That a hearing was held on October 4, 2005, on Washington State Lottery's Motion for Summary Judgment on the appeal of Christopher R. Granton of Lottery's refusal to grant Mr. Granton's claim for a lottery prize in the Mega Millions game. Lottery denied the claim because Mr. Granton did not present a ticket that he had purchased for the game.
2. That on October 11, 2005, Administrative Law Judge Robert C. Krabill entered his initial Order on the Lottery's Motion for Summary Judgment, granting the Lottery's motion and dismissing Mr. Granton's appeal; and
3. Mr. Granton, on October 12, 2005,filed a Petition for Review from the Initial Order; and
4. That the entire record in this proceeding was presented to the Director for final decision, and the Director having fully

considered said record and being fully advised in the premises;

NOW, THEREFORE,

IT IS HEREBY ORDERED that the Administrative Law Judge's Initial Order heretofore made and entered in this matter be, and the same hereby is, affirmed and adopted as the Final Order of the Director, and that the appeal of Christopher R. Granton, challenging the Lottery's decision to deny his prize claim, is DISMISSED.

DATED AT Olympia, Washington this 7th day of March, 2006.

S"

Christopher Liu, Director
Washington Lottery

Copies to:

Christopher Granton, Appellant
Robert Krabill, ALJ, OAH
Michael Tribble, Assistant Attorney General
Mary Jo Nagel,
Customer Service Supervisor, Lottery
Barbara Cleveland, Executive Assistant, OAH

Pursuant to RCW 34.05.542, any appeal from this Order must be filed in superior court and served within thirty days.

AGENCY:	WASHINGTON STATE LOTTERY COMMISSION
PROGRAM:	Prize Denial
Notice of Hearing:	OAH to send
Statutory Authority:	Chapter 67.70 RCW
Rules:	WAC 315
Record:	Tape
Order:	Initial Order
Serving Order	OAH serves with cover letter explaining appeal rights. Attach WAC 10-08-211(2).
Appeal rights:	RCW 34.05.464; RCW 34.05.542; and WAC 10-08-211(2).
Special Instructions:	Send copy of all notices and orders to: Ceil Buddeke, Legal Counsel Washington Lottery Commission PO Box 43025 Olympia, WA 98504-3025 Send orders via email attachment to

	Ceil Buddeke at: Cbuddeke@walottery.com and Candace Martin at: Cmartin@walottery.com
Sending File:	Ceil Buddeke, Legal Counsel (see address above) (360)664-4833
Travel Vouchers:	Candace Martin, Legal Assistant (see address above)
Billing Contact:	Margo Driver (360) 664-4775
Agency Contact:	Candace Martin (360) 664-4831
References:	Telephone NOH In Person NOH

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