

**COMMONWEALTH OF MASSACHUSETTS
MASSACHUSETTS STATE LOTTERY COMMISSION**

In re: Appeal of Kimberly Dempsey and
Dani Handrahan

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FINDINGS & RECOMMENDATION

INTRODUCTION

The claimants, Kimberly Dempsey (“Ms. Dempsey”) and Dani Handrahan (“Ms. Handrahan”) (collectively, the “Claimants”), appeal jointly decisions of the Executive Director of the Massachusetts State Lottery (the “Lottery”) pertaining to their identical claims arising from two KENO games played on June 22, 2020. Specifically, Ms. Dempsey claims \$2,000,000 for KENO game number 2250239 and \$2,000,000 on game number 2250243. Ms. Handrahan asserts the identical claims of \$2,000,000 on game 2250239 and \$2,000,000 on game 2250243. The Lottery’s Executive Director denied the claims.

After considering the evidence and arguments, the Hearing Officer recommends that the Massachusetts Lottery Commission (the “Commission”) affirm the denials because the claims are not based upon the numbers drawn by the Lottery.

PROCEDURAL BACKGROUND

The appeal arises from the Claimants’ \$2.00 wagers on two KENO games occurring on Monday, June 22, 2020. Believing that – on the two games - their selected numbers matched twelve of the twenty drawn numbers, the Claimants each sought a \$2,000,000 prize for each game.

The Lottery determined that they had not matched any numbers on a third game and were entitled to a \$4.00 prize for each \$1.00 wagered. It awarded each of them a total prize of \$8.00.

Claimants received an informal hearing before the Lottery's Executive Director on December 9, 2020. By letter dated May 25, 2021, the Executive Director wrote that he did not find merit to their complaints and affirmed the Lottery's decision. The letter advised that the Claimants could appeal the decisions to the full Commission. Claimants submitted timely written appeal requests.

On August 20, 2021, through their counsel, the parties participated in a pre-hearing conference call before the Hearing Officer. During the conference, the parties agreed to a Friday, October 22, 2021 hearing that would occur by video conferencing technology. The parties submitted a Joint Statement of Issues and Facts on October 18, 2021. The hearing was held as scheduled via Zoom before the Hearing Officer. The Claimants appeared and were represented by their counsel, Edmund L. Myers, Esq. Ms. Dempsey and Ms. Handrahan were sworn and testified on their behalf. Jessica Gaynor and Margaret Lynch were present but, by agreement of the parties, did not testify. The Lottery was represented by its counsel, Candace L. Hodge, Esq. Guy Calabrese was sworn and testified on the Lottery's behalf.

The following documents were marked as exhibits and entered in evidence without objection:

Exhibit A: A document reflecting the front and back of a KENO ticket, signed by Dani R. Handrahan and bearing serial number 09305-028043322-158410;

Exhibit B: A document reflecting the front and back of a KENO ticket, signed by Kimberly Dempsey and bearing serial number 09305-008702267-158010;

Exhibit C: Photocopies of pictures taken of a KENO video monitor, depicting numbers shown for KENO games numbered 2250239 and 2254243;

Exhibit D: A document reflecting the front and back of a blank KENO betting slip;

Exhibit E: A document reflecting data pertaining to Lottery KENO drawing games 2250239, 2250243, and 2254243;

Exhibit F: A document reflecting transaction data pertaining to wagers placed on June 22, 2020 in which players selected the numbers 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12, on KENO games played from approximately 10:00 p.m. onward;

Exhibit G: A document reflecting data pertaining to KENO transactions occurring at Harry's Bar & Grille on June 22, 2020;

Exhibit H: A document reflecting data pertaining to four KENO wagers placed on June 22, 2020 for which players selected the numbers 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 12;

Exhibit I: A document reflecting transaction data pertaining to a KENO ticket purchased on June 22, 2020 and claimed by Ms. Handrahan;

Exhibit J: A document reflecting transaction data pertaining to a KENO ticket purchased on June 22, 2020 and claimed by Ms. Dempsey;

Exhibit K: A document reflecting transaction data pertaining to prize payments issued to Ms. Dempsey and Ms. Handrahan;

Exhibit L: A document entitled "Daily Sales From March 1, 2020 to June 30, 2020";

Exhibit M: A document reflecting the front side of a Lottery claim form signed by Ms. Handrahan on June 26, 2020 and the front and back side of a KENO ticket bearing serial number 09305-028043322-158410;

Exhibit N: A document reflecting the front side of a Lottery claim form signed by Ms. Dempsey on June 26, 2020 and the front and back side of a KENO ticket bearing serial number 09305-008702267-158010;

Exhibit O: A document reflecting a photograph of a photograph purporting to reflect numbers drawn for KENO game number 2250239 and a date of June 22 and 10:21 p.m.;

Exhibit P: A document reflecting a photograph of a KENO video monitor purporting to reflect numbers drawn for Lottery KENO game number 2254243; and

Exhibit Q: Seven pictures taken on June 22, 2020 and June 23, 2020 and maintained on Ms. Dempsey's mobile telephone.¹

The parties submitted written closing arguments by January 7, 2022. The Claimants argued that they are each entitled to two \$2,000,000 awards because they matched twelve of twenty

¹ Exhibit Q was entered into evidence after the hearing at the parties' agreement.

numbers drawn for game 2250239 and game 2250243 as evidenced by Ms. Dempsey's pictures. They contend that the Lottery failed: 1) to present substantial evidence to support the denial of their claims; 2) to investigate their claims; or 3) to establish or apply an internal validation process to their claims. They further contended that 961 CMR 2.33, which limits the Lottery's liability to numbers drawn, does not apply to KENO.

The Lottery defended its denials on several grounds. First, the claims are not based upon the numbers it drew for the two games. Second, the claims fail to meet the requirements that: 1) prizes be validated by the Lottery's mainframe computer and verified by the internal validation requirements; and 2) prizes awarded be based upon official drawn numbers. Finally, the Lottery argues that to pay claims based upon numbers displayed in pictures will expose it to fraudulent claims, negatively affecting its administration of games and risking its mission.

FACTUAL BACKGROUND

I. KENO AND HARRY'S BAR & GRILLE

KENO is a Lottery game in which a player attempts to match as many of their selected numbers to those drawn by the Lottery to win a prize. October 22, 2021 Hearing Transcript Exhibit (cited as "Tr. Exh.") D. A player elects to play 1 to 12 spots and selects numbers from 1 to 80, corresponding with the number of spots they selected. October 22, 2021 Hearing Transcript (cited as "Tr.") at 70:7 – 72:3. Players place bets by telling the Lottery agent their selected numbers or completing a betting slip, which the agent enters into the KENO computer. *Id.* and Tr. Exh. D. The agent's KENO computer prints a ticket that identifies different 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. Tr. at 70:7 – 72:3.

The Lottery begins drawing numbers for KENO at 5:04 a.m. and, for each game, it draws twenty different numbers from a field of 1 through 80. Tr. at 70:7 – 72:3. The last drawing occurs at 1 a.m. every day of the year. *Id.* The Lottery has four mainframe computers, which record all Lottery transactions, including KENO.² Tr. at 77:8 – 21. Separately, there are two random number generator computers that alternate drawing numbers for KENO games throughout the day. Tr. at 104:22 – 106:15. “Every four minutes, the main [L]ottery computer sends a game close to the random number of [sic] generators, resulting in one of them generating a set of 20 numbers.” *Id.* “When the 20 numbers are drawn, they are sent to the four [L]ottery computers, two in Norwell and two in Chelsea.” *Id.* “[T]he main [L]ottery computer will broadcast and send the game number and the 20 winning numbers to all [L]ottery agents, as well as the Lottery Website. [The] agents with a [KENO] PC will then take in the info and send it to the television screen for it to be displayed.” Tr. 105:2 – 24. “[T]he numbers are drawn and recorded from [L]ottery computers in Norwell or Chelsea, not at an agent location.” *Id.* The official KENO game numbers are maintained on the Lottery’s mainframe computers. Tr. at 123:19 – 124:10.

On the player/bettor side, when a player’s bet is received by the Lottery’s mainframe computer, it records them, assigns a serial number (among other things), and relays them to the other three systems. Tr. at 77:8 – 21. The mainframe computer also relays the information to the agent’s KENO computer to print the KENO ticket. *Id.*

Harry’s is a licensed Lottery agent and sells Lottery products, including KENO. Harry’s requires KENO players to submit completed bet slips to the bartender and its KENO machine will

² Mr. Guy Calabrese, who testified on the Lottery’s behalf, is a forty-year Lottery employee who helped develop KENO in 1993. Tr. at 69:17 - 70: 6 and 76:2 – 6. For the past seven years, he has been a consultant for the agency. Tr. at 69:17 – 70:3. Mr. Calabrese’s knowledge of KENO, its operations, and the game-related data in the Lottery’s systems was evident during his testimony. He testified honestly, reliably, and accurately. I found him to be a credible witness.

issue players their tickets. Tr. at 12:9 – 13:3. If requested, Harry’s will process KENO tickets, its KENO machine will show how much a customer has won, and it may pay prizes. Tr. at 13:4 – 22.

II. MS. HANDRAHAN’S AND MS. DEMPSEY’S KENO WAGERS

The evening of Monday, June 22, 2020, Harry’s was open to customers for outdoor dining. Tr. at 13:23 – 14:8. It had been open only for takeout for the prior few months. *Id.* Ms. Handrahan was the closing manager that night. Tr. at 11:14 – 12:8. She has been a manager at Harry’s for about three years. *Id.* While her schedule may vary, she typically worked on nights and weekends, anywhere between 45 – 50 hours per week. Tr. at 27:13 – 22. As manager, Ms. Handrahan occasionally assisted customers with playing KENO. Tr. at 12:9 – 13:6. She “play[s] a lot of Keno” and is an “avid KENO player”. Tr. at 16:2 – 9; Tr. at 30:1 – 6. She has seen numerous times the statement on the KENO tickets: “Bettors agree to abide by Massachusetts State Lottery Rules and Regulations.” Tr. at 31:8 – 24.

Ms. Dempsey has worked for Harry’s for six years. Tr. at 41:5 – 17. She worked a little more than approximately 25 – 30 hours per week and mostly nights. Tr. at 51:20 – 52:24. The evening of June 22, 2020, she was working as a server. Tr. at 41:13 – 16. She was familiar with KENO and its rules, including the language on the tickets: “Bettors agree to abide by Massachusetts State Lottery Commission Rules and Regulations”. Tr. at 54:5 – 8; Tr. at 55:1 – 16.

On Monday nights, after their shifts finished, Ms. Handrahan and four to five of her co-workers have a regular “ladies night” during which they will play scratch tickets or KENO. Tr. at 14:24 – 15:8; Tr. at 54:1 - 4. June 22, 2020 was one such evening. Tr. at 15:9 – 12. After 9 p.m., the time Harry’s closed, the Claimants and two other co-workers pooled their money to play KENO. Tr. at 15:9 – 12; Tr. at 15:20 – 16:1; Tr. at 54:14 - 20. About 9:30 p.m., the group played “a few tickets that were 1 through 5, 1 through 9, and 1 through 12.” Tr. at 21:2 – 9; *see* Tr. Exh.

G. On one of the tickets, the group won \$150.00. Tr. at 21:2 – 19. The women confirmed via Harry's KENO computer that they had won \$150.00 and received the prize payout from Harry's. *Id.* Ms. Handrahan observed the KENO machine to be working normally. Tr. at 22:18 – 24.

About ten or fifteen minutes later, the group purchased ten draw games numbered 2250235 through 2250244, selecting numbers 1 to 12. Tr. at 37:7 – 20; Tr. Exh. B. The corresponding KENO ticket had the serial number 09305-008702267-158010. Tr. Exh. B. Using the same twelve numbers, the group purchased ten more draw games numbered 2250236 through 2250245. Tr. at 21:10 – 19; Tr. Exh. A. They received a second KENO ticket with the serial number 09305-0087022676-158010. Tr. Exh. A. Ms. Handrahan chose the numbers to play. Tr. at 16:2 – 13.

When Ms. Handrahan heard “a lot of screaming”, she came out from the back office to see their selected numbers displayed on a KENO video monitor. Tr. at 17:19 – 18:7. Ms. Dempsey took pictures of the video monitor showing the numbers 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 30, 31, and 66 and game number 2250239. Tr. at 44:20 – 45:9; Tr. Exhs. C, O, and Q. The time stamp on the pictures was 10:21 p.m. Tr. Exhs. O and Q. (The image is attached as Exhibit 1.)

Approximately twenty-eight minutes later, the Claimants' numbers appeared again on the KENO video monitor. Tr. at 45:19 – 46:3; Tr. Exh. Q. Ms. Dempsey took a picture that showed the numbers 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 46, and 78 on a video monitor. Tr. Exhs. C, P, and Q. The time stamp on the picture was 10:49 p.m. Tr. Exh. Q. The picture shows that the phrases “game # 2254243” (emphasis added) and the “Last Game” also appeared on the video monitor. *Id.* (The image is attached as Exhibit 2.) Game number 2554243 was not one that the Claimants and their co-workers had purchased. Tr. Exhs. A and B. Ms. Handrahan did not notice the incorrect game number. Tr. at 36:13 – 21. Ms. Dempsey also did not notice the

error. Tr. at 46:4 – 14. The phrase “Last Game” appears on KENO monitors only at 1 a.m., signaling the last game of the day. Tr. at 108:2 – 18. Prior to that time, the phrase “Next Game” with a countdown timer, appears on the screen. Tr. at 122:11 – 20. *See, e.g.*, Exhibit 2 (attached). The group “watched a few [KENO] games after [their] games were finished” but “didn’t stay too much longer after that.” Tr. at 20:12 – 18.

Lottery records showed that it drew the following numbers for the two games at issue:

Game Number	Numbers
2250239	1, 2, 5, 8, 17, 28, 30, 31, 43, 46, 50, 51, 55, 56, 61, 63, 66, 69, 72, and 75
2250243	1, 6, 9, 11, 15, 21, 27, 34, 38, 46, 47, 49, 53, 54, 55, 60, 74, 75, 78, and 80

See Tr. at 76:22 – 77:7; Tr. Exh. E.

The following day, Ms. Handrahan checked the Lottery’s website to view the winning numbers. Tr. at 23:1 – 12. According to Ms. Handrahan: “all of the numbers were different on the Website than what [they] saw on [Harry’s KENO video monitor].” *Id.* No evidence was submitted to show what numbers Ms. Handrahan observed on the website.

On June 26, 2020, the Claimants submitted their claims at the Braintree Lottery office. Tr. at 24:1 – 21 and Tr. at 59:20 – 60:2. Ms. Handrahan signed the ticket and claim form for games numbered 2250236 through 2250245. Tr. Exhs. A & M. Ms. Dempsey signed the ticket and claim form for games numbered 2250235 through 2250244. Tr. Exhs. B & N. According to Ms. Handrahan, a Lottery employee “said that she would then pass them on to whoever needed to see them from that point to start, I guess, an investigation as to what happened.” Tr. at 24:12 – 19. Ms. Dempsey testified that the Lottery employee who took their claim “said she had to send it to a different department and they would get back to us.” Tr. at 50:7 – 22.

About two weeks later, Ms. Handrahan saw a Lottery representative come to Harry's, that "[n]o part of the [KENO] machine or no instruments were swapped out", and the individual stayed for approximately five minutes. Tr. at 25:2 – 18. Because she "typically works nights and weekends", Ms. Handrahan acknowledged that a Lottery employee could have come to Harry's while she was not there. Tr. at 27:3 – 20. Ms. Dempsey also saw a Lottery representative come to Harry's but was too busy working to see what they did. Tr. at 52:11 - 17.

On July 6, 2020, the Lottery drew the numbers for game number 2254243 at 9:16 a.m. Tr. at 76:22 – 79:9; Tr. Exh. E. The drawn numbers were 1, 2, 6, 16, 18, 21, 22, 23, 40, 41, 45, 50, 54, 55, 57, 58, 61, 64, 67, and 70. *Id.*

In July 2020, Ms. Handrahan received an \$8.00 check from the Lottery. Tr. at 26:1 – 5. She emailed the Lottery to request a review, but did not testify about the Lottery's response. Tr. at 26:23 – 27:2. Similarly, after Ms. Dempsey received a check for \$8.00 prize, she emailed the Lottery and "believe[d] that they said that it was under investigation or being reviewed or" Tr. at 50:23 – 51:4; Tr. at 51:11 – 19. None of the emails was offered as evidence at the hearing.

III. THE LOTTERY'S ACTIONS

On December 17, 2020, Mr. Calabrese was asked to look at certain KENO draw transactions, including Harry's KENO PC, to determine if there were widespread problems. Tr. at 109:18 – 111:1. He researched the games played by the Claimants, checked the Lottery's mainframe computer system for the eleven games bet on by the Claimants, and confirmed that the winning numbers for the games were not 1 to 12. Tr. 103:11 – 104:21. He also viewed the Lottery's website to see the winning numbers for the Claimants' eleven games and again confirmed that 1 to 12 were not the winning numbers. *Id.* Mr. Calabrese confirmed that there was

“one drawing where [the Claimants] didn’t match any numbers”, resulting in their winning \$4.00 for every \$1.00 wager. *Id.*

With respect to Ms. Handrahan’s ticket, Mr. Calabrese testified that the Lottery’s records showed that, on July 25, 2020, the serial numbers were entered into the Lottery’s computer, the computer confirmed that the ticket was a winning one and the prize amount, and the computer then prompted the user whether they wished to continue. Tr. at 91:16 – 93:4; Tr. Exh. I. After the Lottery’s computer confirmed the user wished to continue, the user entered Ms. Handrahan’s contact information and the Lottery’s computer then issued a check for an \$8.00 prize. Tr. at 91:16 – 93:4; Tr. Exh. K. Similarly, for Ms. Dempsey’s ticket, Lottery records show that, on July 30, 2020, the ticket serial numbers were entered into the Lottery’s computer, the computer confirmed that the ticket was a winning one and the prize amount. Tr. at 93:5 – 94:2; Tr. Exh. J. Once the user confirmed they wished to continue and entered Ms. Dempsey’s contact information into the Lottery’s computer, the computer issued a check to Ms. Dempsey. Tr. at 93:5 – 94:2; Tr. Exh. K.

Mr. Calabrese believed that the Lottery’s mainframe computers were accurately sending information to Harry’s computer because otherwise, he expected to see “problems at other places as well.” Tr. at 111:5 – 11. He did not testify about the actions he took to arrive at the conclusion. Mr. Calabrese testified that Harry’s KENO computer was replaced about June 26, 2020. Tr. at 106:17 – 23. He testified that the computer was replaced “because there was an issue at Harry’s”. Tr. at 107:5 – 11. Mr. Calabrese stated that “everything was fine after.” Tr. at 125:6 – 9. He did not personally inspect the KENO computer. Tr. at 111:2 – 3.

Mr. Calabrese identified two other individuals who placed nearly identical bets on the same evening. Tr. 81:9 – 83:17; Tr. Exh. F. One individual, playing in Somerville, selected the numbers

1 to 12 and bet on ten games numbered 2250239 through 2250248. Tr. at 81:9 – 82:14.³ The Somerville player's wagers included games numbered 2250239 and 2250243. *Id.* Like Claimants, because the player matched only four of the numbers drawn for games 2250239 or 2250248, the Lottery did not award any prize for the games. *Id.* Another individual, playing in Salisbury, also selected numbers 1 to 12 and bet on the same ten games 2250239 through 2250248. Tr. at 82:15 – 83:17. The Salisbury player's wagers included the two games at issue. *Id.* Like the Claimants, on the 12-spot wagers, because the Salisbury player matched only four of the numbers drawn for games 2250239 or 2250243, they were not award any prize. Tr. Exh. F.

DISCUSSION & FINDINGS

Massachusetts court have held consistently that the relationship between a player and the Lottery is 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, according to the Appeals Court, "[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 the rules).

³ The Somerville player placed a 5-spot wager, selecting the numbers 1 to 5 and bet \$1.00 on the same ten games. Tr. at 81:9 – 82:14. On the 5-spot bet, for game 2250239, the player won a \$2.00 prize because three of their selected numbers matched three of the drawn numbers. *Id.*; Tr. Exh. F.

I. THE \$2,000,000 CLAIMS FOR THE TWO KENO GAMES WERE PROPERLY DENIED.

A. The Claims Are Not Based Upon The Drawn Numbers.

Lottery regulations provide that “[w]inners are determined by the numbers drawn and not the numbers reported. The Lottery shall not be responsible for numbers reported in error.” 961 CMR 2.33. At the hearing, the Lottery submitted records from its mainframe computer as evidence of the numbers it drew for games 2250239 and 2250243. *See* Tr. Exh. E. The Claimants did not challenge the Lottery’s records, the functioning of the random number generator, or the mainframe computer’s accurate storage of game data.

I find that the Lottery drew the following numbers:

- for Game 2250239: 1, 2, 5, 8, 17, 28, 30, 31, 43, 46, 50, 51, 55, 56, 61, 63, 66, 69, 72, and 75; and
- for Game 2250243: 1, 6, 9, 11, 15, 21, 27, 34, 38, 46, 47, 49, 53, 54, 55, 60, 74, 75, 78, and 80.

Because only four of the Claimants’ selected numbers matched those drawn for either of the two games, they are not entitled to any prize for the games. Tr. Exh. D. Thus, the claim denials were appropriate.

B. The Lottery Submitted Substantial Evidence To Support Denying The \$2,000,000 Claims.

The Claimants argue that the Lottery failed to submit substantial evidence to support denying their claims. As a rule, decisions of administrative agencies must be supported by “substantial evidence”, defined as “such evidence as a reasonable mind might accept as adequate to support a conclusion.” *Cobble v. Comm’r of the Dept. of Soc. Svs.*, 430 Mass. 385, 390 (1999) (citing M.G.L. c. 30A, § 1(6)). The substantial evidence test is “fairly characterized as a test of rational probability: an agency’s conclusion will fail judicial scrutiny if ‘the evidence points to no

felt or appreciable probability of the conclusion or points to an overwhelming probability of the contrary.” *Id.* at 390-391 (citations omitted).

When evaluating whether an agency’s decision is supported by substantial evidence, “[t]he entire record is to be taken into account, including evidence supporting the agency’s conclusion as well as evidence fairly detracting from that conclusion.” *B.K. v. Dept. of Children & Families*, 79 Mass. App. Ct. 777, 780 (2011) (citations omitted). “Substantial evidence may be based on hearsay alone if that hearsay has an indicia of reliability.” *Wilson v. Dept. of Social Svs.*, 65 Mass. App. Ct. 739, 747 (2006) (citations omitted). Further, substantial evidence may be based upon circumstantial evidence. *McGovern v. State Ethics Comm’n*, 96 Mass. App. Ct. 221, 229 (2019). Indeed, “[when] assessing whether the commission decision is supported by substantial evidence, we consider the record evidence as a whole ... recognizing as well that circumstantial evidence ... ‘can carry persuasive value equal to or even greater than that of direct proof.’” *Id.* at 229 (citations omitted).

Here, taken as a whole, sufficient evidence was submitted to support denying the claims. Mr. Calabrese testified and presented documents that he compiled from the Lottery’s mainframe computer system that showed the numbers drawn by the Lottery for the games at issue. I find that the documents are admissible as non-hearsay computer-generated records, resulting from the computer’s programing and not directly by human beings. *Comm. v. Brea*, 488 Mass. 150, 171 N.E.3d 1141, 1151 - 1152 (2021) (discussing computer-generated and computer-stored records). Mr. Calabrese testified about the automated process that generates, conveys, and stores KENO game numbers. Tr. at 105:2 – 106:16. Because the KENO game records reflect computer-generated numbers, they are admitted properly as non-hearsay. *Comm. v. Wollam*, 478 Mass. 493,

499 (2017) (summary chart compiling underlying computer-generated call logs admissible as non-hearsay).

Further, the Lottery's consistent treatment of two other KENO players is circumstantial evidence supporting the claim denials. Tr. Exh. F. As outlined above, the Somerville and Salisbury players made nearly the same bets as the Claimants on the same night. In part, the two players selected the numbers 1 through 12 and each bet on ten KENO games that included the two at issue in this appeal. *Id.* The Lottery did not award the players any prize for games 2250239 or 2250243 and there is no record that they submitted \$1,000,000 claims for the games. *Id.* The Lottery's actions with respect to the two players is consistent with its actions toward the Claimants and its record of the numbers drawn for games 2250239 and 2250243. *See, e.g., Wilson*, 65 Mass. App. Ct. at 747 (considering consistent statements by plaintiff to conclude that substantial evidence existed). I find that the consistent treatment further supports that the numbers shown in the Lottery's documents, not those in the Claimants' pictures, were drawn by the Lottery.

The Claimants make several arguments when contending that Ms. Dempsey's pictures reflect the numbers drawn by the Lottery. After consideration, however, I find that they are not a basis to overrule the Executive Director. First and foremost, the pictures - when evaluated against the whole of the evidence - do not "fairly detract from the conclusion" that the Lottery's records correctly depict the numbers it drew for games 2250239 and 2250243. For example, the picture purporting to show the numbers drawn for game 2250243 contains the wrong game number and the phrase "Last Game", although it was not the last game of the night. *See, e.g., Exhibit 2* attached hereto. Further, the day after the drawing, Ms. Handrahan saw winning numbers on the Lottery's website that were different from those in Ms. Dempsey's pictures.

Second, the Claimants argue that there is no evidence that Harry's KENO computer was malfunctioning the evening of June 22, 2020. Specifically, they assert that 1) the Lottery failed to introduce evidence that its mainframe computer was accurately sending information to Harry's KENO computer; 2) approximately ten minutes prior to the start of their games, Harry's KENO computer appeared to be working properly; 3) Mr. Calabrese did not inspect Harry's KENO computer; and 4) the Lottery did not introduced evidence that Harry's KENO computer was replaced, noting that they never observed anyone removing the KENO computer equipment.⁴ The crux of the case is what numbers did the Lottery draw for the two games at issue because, under 961 C.M.R. 2.33, the Lottery is liable for the numbers it draws, not those reported in error. The arguments respecting the functioning of Harry's KENO computer, which does not draw KENO game numbers, are irrelevant. Therefore, they are no reason to overrule the Executive Director's actions.

C. 961 C.M.R. 2.33 Applies To KENO.

The Claimants contend that 961 C.M.R. 2.33 does not apply to KENO because the drawn numbers are "broadcast directly by the Lottery" and "the Lottery has 100% control over the gaming systems at Harry's, as well as 100% control over the computer gaming systems in general." The arguments are not a basis for overruling the \$2,000,000 claim denials.

First, Claimants cite no case law or statutory or regulatory authority to support their position. Second, the Lottery does not possess 100% control over a KENO agent computer gaming systems or computer gaming systems generally. The Claimants themselves testified that Harry's

⁴Some of the assertions are not supported by the evidence. Mr. Calabrese testified that Harry's KENO computer was replaced on about June 26, 2020. Tr. at 107:5 - 11. And, the Claimants acknowledged that the Lottery could have replaced the KENO computer without their observing it because they were not always present at Harry's or paying attention. Tr. at 27:3 - 12 and 51:24 - 52: 17.

KENO PC is located at the restaurant and Ms. Handrahan accessed it when processing customer bets, tickets, and winnings. Third, excluding KENO from the protections of 961 C.M.R. 2.33 creates regulatory ambiguity. KENO is plainly a draw game. The regulations illustrate this point, stating that to be valid, a KENO bet must be “[a]ccepted by the Lottery Computer prior to the *drawing* of the winning numbers for the *drawing(s)* shown on the ticket.” *Id.* (emphasis added). Claimants’ position results in treating KENO differently from the Lottery’s other draw games, like MassCash, The Numbers Game, and All or Nothing, without any rationale. Finally, and importantly, awarding prizes based upon reported numbers opens the Lottery to fraud, jeopardizing the unrestricted aid it returns to Massachusetts cities and towns.⁵⁵ The claims, especially on game number 2250243, are illustrative. Ms. Dempsey’s picture shows two errors: 1) the game number 2254243 and 2) the phrase “Last Game”. See Exhibit 2 (attached). Reversing the claim denials requires ignoring the discrepancies. Reversing the claim denial will also result in paying \$4,000,000 to each of the Claimants and require the Lottery pay \$2,000,000 to the Somerville player and to the Salisbury player. A \$12,000,000 increased liability.

II. THE CLAIMANTS’ FURTHER ARGUMENTS DO NOT WARRANT REVERSING THE CLAIMS DENIALS.

Because the claims are not based upon the numbers drawn by the Lottery, 961 C.M.R. 2.33 disposes of them and relieves the Lottery of any liability. However, in their post hearing brief, the Claimants make two additional arguments. First, they assert that the Lottery had the burden and failed to 1) validate their KENO tickets or 2) verify the tickets by internal validation requirements as required by regulation. In fact, they assert that the Lottery failed to establish any internal

⁵⁵ There is no allegation that the Claimants are attempting to commit fraud. When testifying about the games they played and the events occurring the evening in question, the Claimants were honest, reliable, and accurate. I found them both to be credible witnesses.

validation requirement or apply the requirements to their claims. Second, they assert that the Lottery agreed to investigate their claims when they first presented them and then after paying the \$8.00 prizes but failed to do so. The arguments are not a basis to reverse the \$2,000,000 claim denials.

The first argument is based upon 961 C.M.R 2.38, which states in relevant part:

The following shall be the procedure by which prizes may be claimed and paid from the State Lottery:

(2) To be eligible for a prize, the prize winner must submit an original winning ticket prior to the expiration of the claim ticket. ... For prizes of \$100,000.01 or greater, 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 Lottery internal validation requirements at the office of the Director.

See 961 C.M.R 2.38 (emphasis added).

Mr. Calabrese testified about the process of entering a ticket's serial number into the Lottery's computer to confirm it is winning one, the computer's confirming the associated prize amount, and the computer requesting confirmation before a prize payment is issued. Tr. at 91:11 – 94:2; Tr. at 114:12 – 115:2; Tr. at 123:1 – 9; and Tr. Exhs. I and J. I find that the process and confirmations described by Mr. Calabrese and reflected in the documentary evidence satisfy the requirements of the 961 C.M.R. 2.38. When the Claimants' tickets serial numbers were entered in the computer system and prize payments were issued, the transactions were described as "validation" and the transactions were "approved" with "no error". See, e.g., Tr. Exhs. F, I, & J.

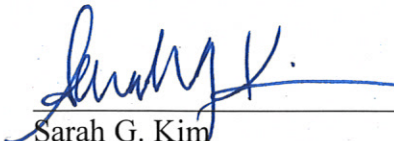
Consequently, I find that the Claimants' tickets were validated the tickets by the Lottery's computer gaming system and verified by its internal validation requirements.⁶

The second argument is not fully supported by the evidence. Ms. Handrahan testified that, when they submitted their claims, "[the Lottery employee] said that she would then pass them on to whoever needed to see them from that point to start, *I guess*, an investigation ..." (emphasis added)). Tr. at 24:12 – 18. The testimony did not establish a promise to investigate. Similarly, Ms. Dempsey's testimony does not establish a promise to investigate at the time she submitted her claim. However, her testimony arguably indicates a promise to investigate after she objected to the \$8.00 payment. The Claimants did not prove any other aspects of the promised investigation, such as the scope or the timing. Mr. Calabrese testified that he was asked to and did conduct an inquiry of the claims on December 17, 2020. I find that Mr. Calabrese's inquiry was the promised investigation. While the Claimants may disagree with the scope and timing of the investigation, the fact remains that the Lottery conducted one.

CONCLUSION & RECOMMENDATION

For the foregoing reasons, the Hearing Officer concludes and recommends that the Lottery Commission affirm the Executive Director's denial of Ms. Handranhan's and Ms. Dempsey's claims for \$2,000,000 on KENO game number 2250239 and claims for \$2,000,000 on KENO game number 2250243.

11/28/2022
Date



Sarah G. King
Hearing Officer

⁶ Although Mr. Calabrese testified that he did not know "a hundred percent" the Lottery's internal validation process (Tr. at 113:12 – 114:7), I interpret and find that the tickets' transaction data to evidence the requisite internal validation process. *Embers of Salisbury, Inc. v. Alcoholic Beverages Control Comm'n*, 401 Mass. 526, 529 (1988) (approving the agency's believing certain witnesses and disregarding others) (citations omitted).

2:11



June 22, 2020
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EXHIBIT 1

2:12



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KENO

Game # 2254243

1	2	3	4	5
6	7	8	9	10
11	12	13	14	15
16	17	18	46	78

Last Game

V.1603

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INTERLOTT

EXHIBIT 2