

IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE

CLAIM No. CV 520 OF 2023

BETWEEN:

IRVIN WILLIAMS

Claimant

AND

LOTTERIES COMMITTEE

Defendant

J.D. FINANCIAL SERVICES BELIZE LTD.

Interested Party

Appearances:

Mr. Allister Jenkins for the Claimant
Ms. Samantha Matute, Assistant Solicitor General, for the Defendant
Ms. Iliana Swift for the Interested Party

2024: May 21;

May 30.

JUDGMENT

Certiorari - Right to a Fair Hearing – Lotteries Control Regulations (2011)

[1] **GOONETILLEKE, J.:** The claimant on or about 24th February 2021, paid Two Dollars (**\$2.00**) and bought a Mega Bingo lottery ticket. The draw was held on the same date and the claimant's ticket possessed the winning numbers for the Jackpot prize of **Six Hundred and Seventy-Five Thousand Eight Hundred and Fifty-Three Dollars (\$675,853.00)**. In order to collect the prize money, on the 1st of March

2021, he presented the winning ticket to J.D. Financial Services Belize Ltd. (JDFS) - the Interested Party, who conducts the lottery. At that point, he was told that there were two other winners and that the Jackpot prize would be split in three. Accordingly, on the 1st of March 2021, he received from JDFS a Cheque for **One Hundred and Ninety-One Thousand Four Hundred and Ninety-One and Sixty-Nine Cents (\$191,491.69)** which was one-third (1/3) of the Jackpot prize money, less tax. The claimant alleges that no one else presented any other winning ticket to collect the Jackpot prize. Dissatisfied with not being paid the full prize money, the claimant through his Attorney at law, referred the matter for arbitration to the Lotteries Committee (LC) – the defendant, which is a body created by the **Lotteries Control Act**.¹ The LC upheld the decision of JDFS to pay one-third (1/3) of the Jackpot prize to the claimant and communicated its decision to the claimant by letter dated 14th July 2023. The claimant then filed a claim for judicial review, challenging the decision of the LC, for failing to give him a fair hearing and to obtain a declaration that he is entitled to the full prize money.

[2] Leave to apply for Judicial review was granted on 25th October 2023, for:

- a) A declaration that the *ex parte* arbitration proceedings of the Lotteries Committee held on the 6th of July 2023 is unlawful, arbitrary and irrational for breaching the Claimant's right to be heard and to a fair hearing and therefore void;
- b) A declaration that the decision of the Lotteries Committee as contained in the Letter dated 14th July 2023, is unlawful, for being in breach of the Lotteries Control Regulations;
- c) An Order of Certiorari quashing the decision of the Lotteries Committee as contained in the letter dated 14th July 2023, by which the Lotteries Committee held that the Interested Party is not liable to make any further payments to the Claimant, for being in breach of the Claimant's

¹ Chapter 151, Revised Edition 2020

right to be heard and to a fair hearing, and for being in breach of the Lotteries Control Regulations, and

- d) A declaration that the Claimant was the only winner of the Mega Bingo Jackpot Prize to whom the Jackpot Prize was payable in accordance with Regulation 9 of the Lotteries Control Regulations.

[3] The claimant thereafter filed a claim form. The defendant and the interested party filed their defence and affidavits. All parties were granted an opportunity to file written submissions and an oral hearing was held on 21st May 2024, at which all parties were heard.

[4] Having considered the documents and submissions of parties, for the reasons set out below, this court grants to the claimant a declaration that the arbitration proceedings of the Lotteries Committee breached the right of the claimant to a fair hearing. Consequently, the claimant is entitled to an order of certiorari quashing the decision of the Lotteries Committee contained in the letter dated 14th July 2023.

The relevant facts

[5] The chronology of the relevant facts is as follows:

- (a) Upon the claimant not receiving the full prize money, the attorney of the claimant by letter dated **9th August 2022**, wrote to the LC requesting arbitration in terms of regulation 12 of the Lotteries Control regulations (2011). This letter was copied to the Attorneys of JDFS.
- (b) Therefore, the Attorneys of JDFS by letter dated 19th August 2022, wrote to the LC to forward any correspondence on the matter to them.
- (c) Unknown to the claimant, by email of **10th August 2022**, the LC wrote to JDFS referring to the draw of 24th February 2022 and requested (a)

the serial numbers of the winning tickets, (b) the serial number of the ticket that was claimed and (c) the amount paid to the winner.

- (d) On **30th September 2022**, the claimant's Attorney not having received a response sent a reminder letter of even date stating that a response was awaited.
- (e) On **7th November 2022**, the claimant's Attorney wrote an email, once again to remind the LC of the reference to arbitration and state that they were awaiting a response. This email was acknowledged for and on behalf of the LC on the same date and it was informed that the mail had been forwarded to the secretary of the LC for "*review and action*".
- (f) On the **8th of November 2022**, an employee of JDFS by email informed the LC of the winning ticket of the claimant, his social security card and the amount paid out.²
- (g) The LC met sometime in **December 2022**, to consider the way forward with arbitration including obtaining legal advice.³
- (h) By letter dated **3rd May 2023**, the LC informed the claimant's attorneys that it had sought legal advice from the Attorney General's Ministry in relation to the matter referred to arbitration and that the LC will arbitrate on the matter at the next committee meeting and will inform the decision in due course. This letter, however, was received by the claimant's Attorneys only on 7th June 2023, when it was sent to them as a scanned copy by email of 7th June 2023 with an apology for the delay in the process.

² Paragraph 7, First Affidavit of Lewin Samuels, Secretary of the Lotteries Commission.

³ Paragraph 10, First Affidavit of Lewin Samuels, Secretary of the Lotteries Commission.

- (i) On the **4th of May 2023**, the claimant filed Claim No. 259 of 2023, naming JDFS as the defendant, claiming damages for breach of contract for failure to pay out the full Jackpot prize money.
- (j) The claimant's attorneys on **12th June 2023**, informed the LC that they had received the LC's letter only on 7th June 2023 via email and objected that the matter was proceeding to arbitration without the claimant being heard. The letter also informed the LC that Claim No. 259 of 2023 had been filed in the High Court against JDFS and that they "*now await a determination of the High Court*".
- (k) Thereafter on **14th July 2023**, the LC wrote to the attorneys of the claimant stating that the LC had met on the 6th of June 2023, it had considered the letter of the claimant's attorney dated 9th August 2022 and the information provided by JDFS and that as there were three winners to the 24th of February 2021 draw. The letter also stated that JDFS was correct in dividing the winning sum into three parts and that the claimant was only entitled to one-third (1/3) of the cash prize. The letter also referred to the fact that the LC had sought and obtained legal advice. It also stated that "*The Arbitrator along with the members of the Lotteries Committee carefully went over the information as presented...*".

Submissions of Parties

- [6] It was submitted for the claimant that he was not at any stage, prior to the arbitration, informed of when the arbitration would take place. He was also not informed of what information was provided by JDFS to the LC for consideration and that both of these facts denied him a right to a fair hearing. The claimant states that the arbitral proceedings were held in his absence which meant that it was an *ex-parte* arbitral hearing.

- [7] In support of this argument the case of ***R. v. Secretary for the Home Department, Ex. parte Doody***⁴ was cited. In that case, Lord Mustil stated that “*Fairness will very often require that a person who may be adversely affected by the decision will have the opportunity to make representations on his own behalf either before the decision is taken with a view to producing a favourable result; or after it is taken, with a view to procuring its modification; or both*”⁵.
- [8] The claimant also relied on the case of ***Hillaire Sears v. Parole Board et al.***⁶, wherein the Caribbean Court of Justice held that there was no procedural fairness when a Parole Board had revoked the parole of the appellant in circumstances where the appellant was not aware of the information that was before the Parole Board.
- [9] It was also submitted on behalf of the claimant that the Court of Appeal in the case of ***Isaac Longsworth v Anglican Diocese et al***⁷ had decided that the court had wide discretion to grant reliefs for claims of administrative orders in terms of **Rule 56.13 (3)** of the **Supreme Court Civil Procedure Rules (CPR)**. It was therefore submitted that the court could direct that the payment of the entire Jackpot Prize money could be paid to the claimant.
- [10] It was submitted for the defendant that the arbitration took place consequent to the request made by the claimant pursuant to **Regulation 12** of the **Lotteries Control Regulations (2011)**.
- [11] The Mega Bingo Lottery was a national lottery. In terms of **Regulation 12(2)**, if the lottery was a national lottery, the LC may arbitrate informally. As such it was submitted for the defendant that the LC arbitrated informally by adopting a paper-based approach without an oral hearing and that it heard the claimant by considering

⁴ [1994] 1 AC 531

⁵ [1994] 1 AC 531 at 560

⁶ [2022] CCJ 13 (AJ) BZ

⁷ Civil Appeal No. 12 of 2019, Decided on 28th April 2023

the complaint written by his attorneys and then sought the views of JDFS and decided the matter.

[12] It was further submitted that the hearing was not *ex-parte* as alleged and that through the paper-based approach, both parties were heard on paper.

[13] It was also submitted that in terms of **Regulation 10(2)** where there was an unclaimed prize, fifty per cent (50%) of the unclaimed prize was paid into the Consolidated Revenue Fund and the balance fifty per cent (50%) was put into the prize pot for the next draw. It was submitted that as two-thirds (2/3) of prize money had not been claimed for the 24th February 2021 draw, this portion of the prize money had already been credited to the Consolidated Revenue Fund and the next prize pot, in 2021 itself. Hence, the defendant's position was that it would not be possible to allocate that money to the claimant and that the claimant was in any event not entitled to that money.

[14] On behalf of the defendant, it was also pointed out that in proceedings for judicial review, what was at issue was the procedure and process of the decision and not the merits of the decision. On this basis, it was submitted that it was outside the scope of judicial review for the court to substitute its judgment for that of the decision maker. In support of its position the defendant cited the following passage from 'Judicial Review of Proceedings' by Jonathan Manning⁸:

“Traditionally analysed, the judicial review jurisdiction is supervisory rather than appellate. It is concerned with procedure and the decision-making process and not the merits of the original case. It is not a system of appeal, and the court will not substitute its own decision for that of the body under review”.

⁸ 2nd Edition, Paragraph 1.2

- [15] It was therefore argued for the defendant that even if the court came to the conclusion that the LC acted contrary to the **Lotteries Control Regulations**, it would not be appropriate for the court to direct that the unpaid portion of the prize be paid out to the claimant as that would be a decision on the merits of the matter.
- [16] On behalf of the JDFS, the Interested Party, a similar submission was made as the payment of the unpaid prize money would impact JDFS. It was submitted that the ambit of judicial review was in regard to the process of arriving at the impugned decision and not the merits and that judicial review was not an appeal from the original decision. The case of **Chief Constable of the North Wales Police v. Evans**⁹ was cited as the authority for this proposition.

Analysis

- [17] Three issues arise to be determined in this matter:
- (a) Whether the Lotteries Committee gave a fair hearing to the claimant?
 - (b) Whether the Lotteries Committee was in breach of the Lotteries Control Regulations (2011)?
 - (c) Whether the claimant is entitled to be paid the unpaid portion of the Jackpot prize drawn on the 24th of February 2021?
- [18] The issue of a fair hearing will be dealt with first. As disclosed by the facts, the LC did not communicate to the claimant or his attorneys, the date on which the arbitration was to take place. The date of the arbitration, which took place on 6th June 2023, was only communicated to the claimant together with the decision of the LC, by letter dated 14th July 2023.

⁹ [1982] 3 All ER 141

- [19] The claimant and his attorneys were also unaware of the information that was presented by JDFS to the LC. This fact is not in dispute. The defendants have confirmed that they wrote to JDFS on 10th August 2022, seeking information on the winning tickets and that by communication dated 8th November 2022, JDFS shared the information in relation to the claimant's winning ticket. This information was not shared with the claimant and as a result, the claimant and his attorneys were in the dark in regard to these communications and the material that was taken into consideration by the LC in making its determination.
- [20] The right to a fair hearing does not necessarily have to include an oral hearing. The claimant has conceded this by citing the cases of **Yussouf v. Solicitors Regulation Authority**¹⁰ and **Symbiote Investments Limited v. Minister of Science and Technology et al.**¹¹ wherein it is stated that a right to a fair hearing does not necessitate an oral hearing. The paper-based approach for informal arbitration adopted by the LC cannot be faulted, however, the LC must at a minimum give an opportunity to the parties to present their case and permit the parties to know what material would be considered by the arbitrator or panel and enable the parties to comment or make submissions thereon.
- [21] The duty to afford a fair hearing extends not only to judicial bodies but also to quasi-judicial and administrative bodies. As held by the House of Lords in **Ridge v. Baldwin**,¹² this duty is of universal application. The requirement to give notice of a hearing, to know the case against you or the material against you and to comment on it, is fundamental to a fair hearing.¹³ These principles have been upheld in a long line of cases beginning from **R v. University of Cambridge**¹⁴, where Fortescue J.

¹⁰ [2018] EWHC 211

¹¹ [2019] JMCA App 8.

¹² [1964] AC 40

¹³ **Cooper v. Wandsworth Board of Works** (1863) 14 CB (NS) 180, approved in **Ridge v. Baldwin** [1964] AC 40, **Durayappah v. Fernando** [1967] 2 AC 337 and **Wiseman v. Borneman** [1971] AC 297.

¹⁴ (1723) 1 Str. 557

stated that “even God himself did not pass sentence upon Adam, before he was called upon to make his defence”.¹⁵

[22] In terms of **Regulation 12(1)** of the **Lotteries Control Regulations**, a person aggrieved by the decision of the licensee (JDFS) made under **Regulation 10** (decision in regard to an unclaimed prize), may give notice of dissatisfaction to the licensee and the committee (LC), and the committee shall then arbitrate the matter. **Regulation 12(2)**, as stated previously, enables the LC to arbitrate informally where the dissatisfaction is in regard to a national lottery. These regulations have been made pursuant to the **Lotteries Act**.¹⁶ As stated by Lord Diplock in **R. v. Commission for Racial Equality ex. p Hillingdon LBC**¹⁷:

“Where an Act of Parliament confers upon an administrative body, functions which involve its making decisions which affect to their detriment the rights of other persons or curtail their liberty to do as they please, there is a presumption that Parliament intended that the administrative body should act fairly towards those persons who will be affected by their decisions.”

There is therefore no doubt, that even if the LC adopted a paper-based hearing procedure, it should have given the claimant a notice of hearing and shared the material upon which it was going to make a decision which was adverse to the claimant, in order that the claimant could make representations or comment on the material before the LC.

[23] I, therefore, hold that the failure of the Licensing Committee to notify the claimant or his attorneys of the date of the hearing, the failure to share the material given to the LC by JDFS and the failure to give the claimant an opportunity to comment on it,

¹⁵ Cited by Wade, Administrative Law, 8th Ed. P. 470

¹⁶ Chapter 151, Revised Edition 2020

¹⁷ [1982] AC 779

amounts to a violation of the claimants right to a fair hearing. The argument that the outcome of the decision would have been no different had notice been given is immaterial. As Seneca, the Roman Philosopher/Jurist put it; "*quicumque aliquad statuerit parte in audita altera, aequum licet statuerit, haud aequus fureut*"- translated from Latin it means; "dismissal without hearing held intrinsically unfair, even though fully justified". This phrase from Seneca was cited with approval in **Earl v. Slater & Wheeler (Airlyne) Ltd.**¹⁸ That position was also upheld in **General Medical Council v. Spackman**¹⁹ wherein Lord Wright stated:

*"If the principles of natural justice are violated in respect of any decision, it is, indeed, immaterial whether the same decision would have been arrived at in the absence of the departure from the essential principles of justice. The decision must be declared to be no decision".*²⁰

[24] Another reason for adopting such an approach is that there is always an unknown factor that can be brought up before a tribunal if the parties are given an opportunity to be heard. This is most succinctly stated in the case of **John v. Rees**²¹ by Megarry J. in the following terms:

*"As everybody who has anything to do with the law well knows, the path of the law is strewn with examples of open and shut cases which, somehow, were not; of unanswerable charges which, in the event, were completely answered; of inexplicable conduct which was fully explained; of fixed and unalterable determinations that, by discussion, suffered a change."*²²

¹⁸ [1973] 1 WLR 51

¹⁹ [1943] AC 627

²⁰ [1943] AC 627 at 644.

²¹ [1970] Ch. 345

²² [1970] Ch. 345 at 402

There is therefore no good reason that can be given nor any purpose served by not giving the claimant notice of the date of arbitration and not sharing with the claimant, the material before the tribunal for the claimant to comment thereon.

[25] The next two issues of whether the LC was in breach of the Regulations and whether the claimant is entitled to be paid the unpaid portion of the winnings, can be considered together as one leads to the other.

[26] **Regulation 9**, of the **Lotteries Control Regulations**, reads as follows:

“9. (1) *the licensee shall pay the **prizes** in respect of **tickets** bearing **winning numbers** in a lottery in the following circumstances:*

(a) Where payment is claimed by delivery of the ticket for which the claim is made to the licensee or his agent;

(b) Where payment is claimed by delivering of the ticket for which the claim is made to the licensee or his agent within 30 days from the date of the draw;

9. (2) ***the licensee shall make payment at the time the person presents the ticket and such payment shall absolutely discharge the licensee in respect of the payment of that prize.***

9. (3) *In the case of a **national lottery** and an instant lottery, prizes:*

(a) which do not exceed one hundred dollars and free tickets may be collected immediately from the agent;

(b) of one hundred dollars or more may be collected from the licensee;

*(c) **may be claimed within a period of ninety days;***

9. (4) *Where the winning is a national lottery, the licensee shall deduct taxes at the rate specified under the Income and Business Tax Act, and deposit that amount with the Commissioner of Income Tax before the payment of a winning.* [Emphasis added]

[27] What is apparent from a reading of **Section 9** is that it is possible to have multiple winnings and multiple payments in respect of lotteries as the words: “prizes”, “winnings” and “numbers” as emphasised above are in the plural. Hence, if there is more than one winner, the regulations make provision for payment of “prizes” to the “winners” based on the “winning numbers”. The matter, however, does not end there, in order to consider if the LC was in breach of the Regulations, it is necessary to consider what would happen if the prize or prizes are not claimed. This situation is catered for, in **Regulation 10**.

[28] **Regulation 10** reads as follows:

“10. (1) If payment of a prize is not claimed pursuant to Regulation 9(1), the prize shall cease to be payable.

10. (2) Where the payment of a prize is not claimed under Regulation 9(3), the licensee may refuse to pay the prize and deposit fifty per centum of the unclaimed prize to the Consolidated Revenue Fund and the next fifty per centum to the cash prize pot for the next national lottery draw.”

The court has been invited to interpret these provisions of the Lotteries Regulations as these are the provisions that appear to be relied upon by the LC in coming to its findings in regard to non-payment of the unclaimed prize money to the claimant.

[29] That matter, however, is not a matter of pure law. It is dependent on fact; whether there were two other winners, did they not claim the prize in the time required to do so. These facts while mentioned in the pleadings are not before the court. No winning numbers of the other two winners who did not claim their prize have been put forward.

[30] Due to the lack of this information, this court cannot consider whether the LC has correctly interpreted the Regulations in the circumstances of this case. To do so would also require the court to go into the merits of the matter considered by the LC rather than reviewing the decision-making process. The court, therefore, cannot determine if the LC is in breach of the Regulations in arriving at its conclusion.

[31] That finding has a direct bearing on whether the claimant is entitled to the unclaimed winnings. As stated by Manning²³:

*“If an application for judicial review is successful, the court will usually quash the decision complained of (or declare it to be unlawful) and **may** remit the matter back to the relevant body to take a fresh decision in accordance with the law. **If however, a body or tribunal, properly directing itself, having regard only to relevant considerations, etc., could only have come to one lawful decision, then the High Court may itself substitute that proper decision for the decision of the body under review**”* [Emphasis added].

²³ Jonathan Manning, *Judicial Review Proceedings*, 2nd ed. p.3

This is similar to what the court would have to assess if a mandamus had been sought together with a certiorari, to direct the LC to order the payment or JDFS to pay, the unpaid winnings. That would only be possible if one clear outcome was discernible from the facts. Even for an Order under **Rule 56(1) (3)** of the **CPR** to be made, the facts have to be proved. That Rule reads as follows; “*The judge may grant any relief that appears to be justified by the facts proved before him whether or not such relief should have been sought by an application for an administrative order*”[emphasis added]. As the facts relating to the winning tickets have not been proved before this court, it is not possible for the court to conclude that there is only one possible outcome discernible, upon review of the LC’s decision.

- [32] The proper forum to adjudicate the facts would be at the trial in the claim filed by the claimant against JDFS, the interested party, for damages for breach of contract.
- [33] In terms of **Rule 56.1** of the **CPR**, it is possible to file applications for (a) judicial review; (b) relief under the constitution; (c) for a declaration in which the Crown, a court, a tribunal or any other public body and (d) an order to quash any decision of a Minister or Government department consequent to such power being given to court by a specific enactment.
- [34] Judicial Review has to be applied for after having obtained permission to do so²⁴ as was the case in this claim. An Application for an administrative order has to be made under and in terms of **Rule 56.7** of the **CPR** by a fixed date claim form and identify whether the application is for judicial review, for relief under the constitution, for a declaration; or some other administrative order.²⁵ The Notice of Application filed by the claimant dated 17th August 2023, clearly states that it is made under **Rule 56.3** of the **CPR** and is for permission to apply for judicial review. It was upon this application that the court on 25th October 2023, granted leave to apply for judicial review on the grounds stated in that order which have been reproduced at

²⁴ Part 56.3 of the CPR

²⁵ Part 56.7 of the CPR.

paragraph [2] above. Hence, there is no doubt that this is a claim for judicial review and not claim for declaratory orders under **Rule 56.7 (1) (c)** of the **CPR**.

[35] For the reasons set out above, that no clear outcome is discernible from the facts on review of the LC's decision, and also because this is not an application for a Declaration under **Rule 56.7 (1) (c)** of the **CPR**, the court declines to make a Declaratory Order that the unclaimed and unpaid winnings of the Meg Bingo lottery draw of 24th February 2021, should go to the claimant.

Disposition

[36] I grant the claimant a declaration that proceedings of the Lotteries Committee held on the 6th of July 2023 are unlawful, for failing to give the claimant a fair hearing.

[37] The claimant is entitled to an order of certiorari quashing the decision of the Lotteries Committee as contained in the letter dated 14th July 2023.

Costs

[38] As the claimant has succeeded in the claim for an order of certiorari against the decision of the defendant, he is entitled to the costs of this claim.

[39] The interested party will have to bear its own costs.

IT IS HEREBY ORDERED AND DECLARED THAT:

- 1) The arbitration proceedings of the Lotteries Committee held on the 6th of July 2023 are unlawful, arbitrary and irrational for breaching the claimant's right to be heard and for failing to give the claimant a fair hearing and therefore void.

- 2) The decision of the Lotteries Committee as contained in the letter dated 14th July 2023, is quashed.
- 3) The defendant shall pay the costs of the claimant which are to be agreed or assessed.

Rajiv Goonetilleke
High Court Judge