

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

GINA M. LAYDEN,)
)
 Petitioner,)
)
 vs.) Case No. 03-2966
)
 DEPARTMENT OF EDUCATION,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER

Pursuant to notice, a hearing was conducted in this case pursuant to Section 120.569, Florida Statutes, and Section 120.57(1), Florida Statutes, on September 22, 2003, by video teleconference at sites in Fort Lauderdale and Tallahassee, Florida, before Stuart M. Lerner, a duly-designated Administrative Law Judge of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Gina M. Layden, pro se
10823 Cypress Glenn Drive
Coral Springs, Florida 33071

For Respondent: Jose Blas Lorenzo, Jr., Esquire
Department of Education
Office of Student Financial Assistance
1940 North Monroe Street, Suite 70
Tallahassee, Florida 32303

STATEMENT OF THE ISSUE

Whether the full amount of the lottery prize winnings (remaining after deduction of federal tax withholding) that Petitioner claimed (on behalf of herself and 13 other members of her "Lotto pool") should be used to offset the debt Petitioner owes the Department of Education, Office of Student Financial Assistance.

PRELIMINARY STATEMENT

By letter dated July 2, 2003, the Department of Education, Office of Student Financial Assistance (OSFA) advised Petitioner that the Florida Department of the Lottery had "transmitted [Petitioner's] prize of \$3,262.00" to OSFA after being notified by OSFA that Petitioner owed OSFA \$12,389.88, and that OSFA "plan[ned] to apply the total amount of [Petitioner's] \$3,262.00 prize to this unpaid claim." In a letter dated July 21, 2003, Petitioner requested a hearing on OSFA's announced intention to take such action. The matter was referred to DOAH on August 15, 2003.

As noted above, the final hearing in this case was held on September 22, 2003. Petitioner was the only witness to testify at the hearing. In addition to Petitioner's testimony, nine exhibits (Respondent's Exhibits 1 through 9) were offered and received into evidence.

October 10, 2003, was established as the deadline for the filing of proposed recommended orders. On October 10, 2003, OSFA filed a proposed recommended order, which the undersigned has carefully considered. Petitioner has not filed any post-hearing submittal.¹

FINDINGS OF FACT

Based upon the evidence adduced at hearing, and the record as a whole, including the factual stipulations of the parties,² the following findings of fact are made:

1. Petitioner is in default on three student loans that OSFA, as guarantor, purchased (upon Petitioner's default) from the lender on December 27, 2001, and continues to hold.

2. As of September 10, 2003, Petitioner owed OSFA \$12,503.79 on these defaulted loans.

3. In May of 2003, Petitioner participated in a "Lotto pool" with 13 other individuals. Pool members agreed to contribute equally to the purchase of Florida lottery tickets and to share equally in any winnings. Petitioner was assigned the task of purchasing the tickets on behalf of the pool.

4. One of the tickets Petitioner purchased was a winner (having five of the six selected numbers). The amount of the prize, after making an appropriate deduction for federal income tax withholding, was \$3,262.00.

5. On behalf of the pool, Petitioner submitted the winning ticket, with her name on it, to the Florida Department of the Lottery to claim the prize. At the request of the Florida Department of the Lottery, she completed an Internal Revenue Service (IRS) Form 5754. On the form, among other things, she identified the others in the pool with whom she intended to share the proceeds of the prize.

6. On May 27, 2003, Olga Roca, a Program Specialist with OSFA, sent the following letter to the Florida Department of the Lottery:

I hereby certify that the above referenced person [Petitioner] has an outstanding defaulted student[] loan. Under terms of § 24.115, F.S, I am requesting that lottery prize money won by that person be transmitted to the Florida Department of Education to be credited toward that debt. The balance due including interest accrued as of 6/11/03 totals \$12,389.88.

7. By letter dated June 2, 2003, the Florida Department of the Lottery advised Petitioner that, "[p]ursuant to Section 24.115(4), Florida Statutes, [it had] disbursed [her] winnings according to [Ms. Roca's May 27, 2003, letter]."

8. A month later, on July 2, 2003, OSFA sent Petitioner a letter informing her that it "plan[ned] to apply the total amount of [her] \$3,262.00 prize to [her] unpaid claim."³ It is this proposed agency action which is the subject of the instant controversy.

CONCLUSIONS OF LAW

9. DOAH has jurisdiction over the subject matter of this proceeding and of the parties hereto.

10. Petitioner does not dispute OSFA's claim that she is in default on three student loans held by OSFA and, as a result, owes OSFA in excess of \$12,000.00.

11. She disagrees with OSFA, however, that the entire amount of the prize she claimed on behalf of the pool should be used to offset this indebtedness. It is her position that only her share of the prize (1/14 of \$3,262.00 or \$233.00) is subject to such offset and that the remainder of the proceeds should go to the 13 other members of the pool in equal shares.⁴

12. The law does not support Petitioner's position.

13. Section 24.115, which is part of the Florida Public Education Lottery Act,⁵ addresses the subject of the "[p]ayment of [lottery] prizes." It provides, in pertinent part, as follows:

(1) The department [of the lottery] shall promulgate rules to establish a system of verifying the validity of tickets claimed to win prizes and to effect payment of such prizes; . . .

* * *

(4) It is the responsibility of the appropriate state agency . . . to identify to the department [of the lottery], in the form and format prescribed by the department

[of the lottery], persons owing an outstanding debt to any state agency Prior to the payment of a prize of \$600 or more to any claimant having such an outstanding obligation, the department [of the lottery] shall transmit the amount of the debt to the agency claiming the debt and shall authorize payment of the balance to the prize winner after deduction of the debt. . . .

14. Exercising the rulemaking authority granted it by the Legislature, the Florida Department of the Lottery adopted an emergency rule, Rule 53ER02-61, Florida Administrative Code, describing the "[p]rocedures for [a]warding [p]rizes." The rule, which has been in effect since November 15, 2002, provides, in pertinent part, as follows:

Procedures for Awarding Prizes

* * *

(7) Regardless of how many persons or entities claim an ownership interest in a winning ticket, payment will be made to only one person or entity.

(8) The person to whom payment will be made for winning tickets submitted to the Lottery shall be determined as follows:

(a) If only one name appears on the back of the ticket, payment will be made to that person or entity.

* * *

(i) Any claimant of a prize of \$600 or more, and any person whose name appears on an Internal Revenue Service (IRS) Form 5754 filed by a claimant whose portion of the prize is \$600 or more, will be compared to

the State Owed Debt system. All persons ultimately entitled to receive Florida Lottery winnings from a claim valued at \$600 or more filed by a legal entity, other than a corporation whose shares are publicly traded, will be compared to the State Owed Debt system. If such claimant or other person is identified as owing an outstanding debt to a state agency . . . as provided in subsection 24.115(4), Florida Statutes, following deduction of federal tax withholding, the remaining prize amount will be allocated as follows:

1. If the debt is owed by the claimant, notwithstanding taxability interests set forth on an IRS Form 5754, an amount sufficient to cover the amount owed, up to the total remaining prize amount, will be transferred to the state agency owed the debt. Any monies remaining after federal tax withholding and after collection of the debt will be paid to the claimant and reported as taxable as directed in the IRS Form 5754.

2. If the debt is of a person whose name appears on an IRS Form 5754 and subparagraph 1. is inapplicable, or who is entitled to receive Lottery winnings claimed by a legal entity, an amount sufficient to cover the person's debt, but not to exceed his or her percentage interest in the prize or entity, will be transferred to the state agency owed the debt. The monies remaining will be paid to the claimant on the ticket.

15. "As a part of playing Lotto, [Petitioner] by contract agreed to [and is therefore bound by] these announced [procedures]" set forth in Rule 53ER02-61, Florida Administrative Code. Miller v. State, Department of Lottery, 638 So. 2d 172 (Fla. 1st DCA 1994).

16. Inasmuch as Petitioner is the "claimant," as that term is used in Rule 53ER02-61, Florida Administrative Code, and the amount she owes OSFA exceeds the prize winnings remaining "following deduction of federal tax withholding," Subsection (8)(i) of Rule 53ER02-61 requires that OSFA receive (and apply as an offset against her indebtedness) the entire amount of these remaining winnings, notwithstanding that, under Petitioner's agreement with the other members of the pool, she was to receive only 1/14 of any prize winnings, with the rest of the proceeds to be distributed equally among the other 13 pool members.⁶

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that OSFA take the action proposed in its July 2, 2003, letter to Petitioner.

DONE AND ENTERED this 13th day of October, 2003, in
Tallahassee, Leon County, Florida.



STUART M. LERNER
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 13th day of October, 2003.

ENDNOTES

1/ All citations are to Florida Statutes (2003) unless otherwise indicated.

2/ At the outset of the final hearing, Petitioner stated that she did not dispute any of the assertions made in the Statement of Facts contained in OSFA's Response to Order [of] Pre-Hearing Instructions. The undersigned has accepted these undisputed factual assertions as true and accurate. See Gunn Plumbing, Inc. v. The Dania Bank, 252 So. 2d 1, 4 (Fla. 1971)("A stipulation properly entered into and relating to a matter upon which is appropriate to stipulate is binding upon the parties and the Court."); Johnson v. Johnson, 663 So. 2d 663, 665 (Fla. 2d DCA 1995)("[T]o foster the legal policy of encouraging stipulations to minimize litigation and expedite resolution of disputes, the law provides that '(s)uch stipulations should be enforced if entered into with good faith and not obtained by fraud, misrepresentation, or mistake, and not against public policy.'"); EGYB, Inc. v. First Union National Bank of Florida, 630 So. 2d 1216, 1217 (Fla. 5th DCA 1994)("Unless grounds for rescission or withdrawal are shown, the trial court is bound to strictly enforce the agreement between the parties."); and Robertson v. Robertson, 106 So. 2d 590, 593 (Fla. 2d DCA

1958)("It is undisputed that a court must accept as true facts which are undisputed . . .")."

3/ Petitioner has already paid the other pool members (from the proceeds of a loan she obtained) the amount they each would receive if OSFA did not take this proposed agency action.

4/ OSFA has not challenged, and therefore the undersigned has not addressed, Petitioner's standing to make this argument. Cf. Krivanek v. Take Back Tampa Political Committee, 625 So. 2d 840, 842 (Fla. 1993)("With regard to the first issue, we find that Krivanek has waived the right to raise the issue of standing because this issue has been raised for the first time in her petition to this Court. The issue of standing should have been raised as an affirmative defense before the trial court, and Krivanek's failure to do so constitutes a waiver of that defense, precluding her from raising that issue now.").

5/ See Section 24.101 ("This act may be cited as the "Florida Public Education Lottery Act.").

6/ Had a pool member not "owing an outstanding debt to any state agency or owing child support collected through a court" claimed the prize winnings for the pool instead of Petitioner, OSFA would not have been entitled to receive, as an offset against Petitioner's indebtedness, any portion of the prize winnings since Petitioner's share of the winnings would be less than \$600.00.

COPIES FURNISHED:

Gina M. Layden
10823 Cypress Glen Drive
Coral Springs, Florida 33071

Jose Blas Lorenzo, Jr., Esquire
Department of Education
Office of Student Financial Assistance
1940 North Monroe Street, Suite 70
Tallahassee, Florida 32303

Honorable Jim Horne
Commissioner of Education
Turlington Building, Suite 1514
325 West Gaines Street
Tallahassee, Florida 32399-0400

Daniel J. Woodring, General Counsel
Department of Education
1244 Turlington Building
325 West Gaines Street
Tallahassee, Florida 32399-0400

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.