

Appeal No. VA89/0/229

**AN BINSE LUACHÁLA**  
**VALUATION TRIBUNAL**  
**AN tACHT LUACHÁLA, 1988**  
**VALUATION ACT, 1988**

**Rehab Lotteries Limited**

**APPELLANT**

**and**

**Commissioner of Valuation**

**RESPONDENT**

RE: Shop, Showrooms, offices at basement and ground floor, 19-22, Dame Street (including Sth. Great Georges Street), County Borough of Dublin

**B E F O R E**

**Paul Butler**

**Barrister (Acting Chairman)**

**Brian O'Farrell**

**Valuer**

**Padraig Connellan**

**Solicitor**

**JUDGMENT OF THE VALUATION TRIBUNAL**  
**ISSUED ON THE 10TH DAY OF APRIL, 1991**

By notice of appeal dated 16th August, 1989, the appellants appealed against the determination of the Commissioner of Valuation fixing the valuation of the above described hereditaments at £260.00.

The grounds of appeal as set out in the Notice of Appeal are that the occupier should be exempt from rates. Pursuant to S.63 of the Poor Relief (Ireland) Act, 1838 the premises are used exclusively for charitable or public purposes and no private profit or use is directly derived from

them; pursuant to S.16 of the Valuation (Ireland) Act, 1852 the premises are altogether of a public nature or are used exclusively for charitable purposes.

By letter dated 23rd November, 1989 the Commissioner of Valuation declared his intention to appear at the hearing of the appeal and said that the grounds on which he intended to rely are that the user of the premises is not entitled to distinguishment as exempt from rates pursuant to S.63 of the Poor Relief (Ireland) Act, 1838 or S.16 of the Valuation (Ireland) Act, 1852.

### DESCRIPTION OF PROPERTY

Rehab Lotteries occupy the ground floor and basement of 19/22 Dame Street which is at the junction of Dame Street and South Great Georges Street.

The property is held on a 20 year lease from November 1987 with 5-year reviews. The initial rent is £18,000 per annum. A sum of £200,000 was spent on refurbishment.

The ground floor consists of 2 offices, photocopy room, public area for lottery ticket sales, prize redemption and display of prizes (cars etc.). The basement floor consists of office, computer room, 2 file stores, ticket-sorting area, canteen and toilets.

A written submission was received from Mr. Kevin Heery, B.Comm., a District Valuer with 20 years experience in the Valuation Office on the 4th December, 1989. In this he outlined the Commissioner's position regarding the appellants grounds of appeal as follows;

The Commissioner contends that the user of the premises is not entitled to distinguishment as exempt from rates pursuant to S.63 of the Poor Relief (Ireland) Act 1938 or S.16 of the Valuation (Ireland) Act 1852.

The Commissioner's policy has been to value as rateable retail shops run by charities for fund raising. Likewise the Commissioner has valued as rateable the offices of companies engaged in the organisation of lotteries.

Counsel for the Commissioner will cite case law and argue the legal issues involved.

It is to be noted that the following were valued as rateable by the Commissioner:

- (i) The National Lottery offices in the Irish Life Centre, Abbey Street Lower.
- (ii) Oxfam retail shop at 54 Sth. King Street.
- (iii) Y.P. Lotteries Ltd. at 4 Cavendish Row.
- (v) The Irish Hospitals Trust offices in Ballsbridge and Grafton Street.

He said that the initial rent on the hereditaments is £18,000 per annum and that a sum of £200,000 was spent on refurbishment. He said that Rehab Lotteries Limited make use of the building in organising, managing and promoting the various lotteries. There is a salaried staff of 20 people. He says that members of the public can purchase lottery tickets at the reception desk and that also cash prizes above £100 have been claimed directly from Rehab Lotteries Limited by personally presenting tickets or by posting them to Rehab Lotteries Ltd. He said that there is a nationwide chain of retail agents where cash prizes below £100 can be claimed and that this chain is of agencies coordinated by Rehab Lotteries Limited. He said that these agents make profit on the sale of lottery tickets. He said that the net proceeds of the lotteries are to be applied to or for the benefit of such charities as may be approved from time to time by the Board of Directors of Rehab Lotteries Limited.

Mr. Heery said that prior to the 1988 Revision the property was described as shop and basement with a rateable valuation of £395.00. In 1988 the property was listed by the Local Authority to

value reconstruction. No change was made in the rateable valuation although the description was amended to shop, showroom, offices and basement. He said that the appellant was aggrieved by this revision and appealed to the Commissioner of Valuation. Mr. Heery was deputed to inspect the premises and report to the Commissioner of Valuation and having considered that report and the submissions of the appellants, the Commissioner reduced the valuation to £260.00 but did not distinguish the property as exempt.

A written submission was received on the 24th January, 1990 from Mr. Derek Mitchell, Financial Controller, Rehab Lottery Limited. He said that the reason for seeking exemption was because the premises are used exclusively for charitable or public purposes and no private profit or use has been directly derived from them and pursuant to Section 16 of the Valuation (Ireland) Act, 1852 because the premises are altogether of a public nature and/or alternatively are used exclusively for charitable purposes. He said that quantum had been agreed between the parties. He said that the premises can be divided into different areas of activity as follows:-

Ground Floor

Front - Reception area where the Receptionist cum Telephonist sits. This area is used for accepting returns of tickets from shops, advancement of winnings to holders of winning tickets, waiting area for charities and suppliers. A small quantity of tickets are kept on the counter where people, generally in on other business, may purchase them. Sales of tickets from the premises for the financial year 1988/1989 amounted to 0.133% of total sales. The sale of tickets is a very minor part of the Receptionist cum Telephonist's functions and is done by only one person out of a staff of 21 in the building.

Back - general office area for accounts and prize redemptions.

### Basement

Comprises an open area where the ticket sorting takes place, the Chief Executive's office, a computer room, a kitchen and toilets. The rest of the area is used for storage. The entire basement area is unsuitable for offices. There is no natural lighting and ventilation is bad. More storage area is needed for Winning Tickets because of the requirement to return all Winning Tickets to the gardai. (Articles 2, 5 and 7 of the Periodical Lotteries Regulations, 1961, S.I. No. 212 of 1961). He said that it is intended to move all personnel from the basement and use the area only for storage. This is possible because Rehab is taking additional space on the third floor.

He said that the establishment of the National Lottery on 15 July, 1986 seriously affected traditional fund-raising activities for Charities in Ireland such as draws, raffles, pools and charitable competitions. Independent research carried out by Irish Marketing Surveys has shown that the percentage of adults supporting the traditional means of fund-raising dropped from 58% in 1987 to 22% in 1988. The operation of the National Lottery took £107,000,000 of disposable discretionary income out of the economy in 1987.

He said that in response to this, two of Ireland's leading Charities - The Rehabilitation Institute and the Central Remedial Clinic established Rehab to assist them and other charities to run lotteries which have now become known as 'Rehab Lottery Games' or 'Rehab Lotteries'. By using the administrative services of Rehab, many different Charities derive benefits from economies of scale, such as the sharing of a common distribution network, bulk ticket purchase, shared staff and lottery operation overheads. At the same time, they benefit from the facility of a lottery management operation run on a professional basis which is both owned and controlled by Charities.

He said that Rehab Lotteries Limited provides important rehabilitative work and training to people on the premises the subject of this appeal. Last year Rehab provided training to 7 trainees from the Rehabilitation Institute and now employs one person from the Rehabilitation Institute on a full time basis. In addition Rehab sends out much of its printing work to the Central Remedial Clinic.

Mr. Mitchell said that Rehab Lotteries is a limited liability company and was incorporated on 16th July 1987. Its registered office is situated at 19/22 Dame Street, Dublin 2, which premises is the subject of this valuation appeal. The Company Registration Number is 123795. The issued shares of the company are owned equally by the Rehabilitation Institute and the Central Remedial Clinic. Rehab is a non-profit making company. Rehab is bound by Article 2 of its Memorandum of Association to apply any profits or income arising out of any Rehab Lottery Game to or for the benefit of the Charity organising that game. Further, Article 6 of Rehab's Memorandum of Association provides that if, on the winding up, or dissolution of Rehab there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, that property shall not be paid to, or be distributed among the members of Rehab, but shall be given or transferred to such Charities as the members of Rehab may determine or, in default thereof, as may be determined by the President of the High Court.

He said that during the period November, 1987 to date, Rehab, acting as agent for various Charities, assisted these Charities in the conduct of lotteries which raised almost £4m for them.

Mr. Mitchell outlined the operation of Rehab Lottery Games as follows:-

Rehab Lottery games are lottery games organised under the provisions of Part IV of the Gaming and Lotteries Act, 1956 ('the Act') as amended. They are promoted and conducted wholly within Ireland in accordance with licences granted under that part of the Act. The name 'Rehab Lottery Games' describes the particular form of lottery game based on the distribution to retail outlets of lottery tickets with scratch panels. Each

Rehab Lottery Game is an entirely separate game and is for the benefit of only one Charity. The funds, prizes and tickets for each Charity are separately accounted for, and participation in each game is in no way influenced by participation in any other Rehab Lottery Game. The proceeds of each game are used only for the Charity by which the game is organised and promoted.

Each Rehab Lottery Game is organised and promoted by the Charity which it benefits. The Charity appoints Rehab as its agent to print the tickets, to arrange for their distribution, to arrange for the payment of prizes and the accounting for each lottery game. Each Charity must make application to the District Court for a licence to conduct its lottery game. Each such lottery is required by section 28 of the Act to be for a charitable or philanthropic purpose. The expenses of promotion, including commission, are limited by section 28 of the Act. Only Charities which have a licence authorising them to conduct a lottery game in accordance with the Act are eligible to use Rehab Lottery Games. Rehab only permits well established, well conducted and reputable charities to promote its games. Rehab Lottery Games, are, in turn, conducted in accordance with the highest professional standards with the assistance of Rehab which is non profit making, and, a specialist in the fair and professional promotion of lottery games.

Rehab acts as day to day agent for the particular Charity which is promoting its Rehab Lottery Game. This means that Rehab, in consultation with the Charity arranges for the printing of the tickets, the distribution of the tickets to the retailers, the conduct of weekly draws, the payment of prizes, and in consultation with the Charity and the licensee arranges the accounting for the proceeds of the Lottery and the payment of the entire net proceeds to the Charity for whom Rehab is acting.

Rehab also takes steps to acquaint the public with the nature of the games in which it acts as agent, the identity of the Charities who organise the games in question, the purposes for which the Charities use the proceeds and other promotional activities including publicity concerning each of the lotteries in which it is acting as agent.

He said that agency agreement would be signed by any charity wishing to appoint Rehab to assist it in the organisation of a lottery. This agreement provides at Clause 6 that Rehab must account for and remit the net proceeds of sales of the tickets for the particular Rehab Lottery Game to the charity by which the game is organised and promoted.

He said that each Rehab Lottery game is a separate and distinct lottery. Nobody buying a ticket from one Rehab Lottery Game participates in any way in any other Rehab Lottery Game. The term 'Rehab Lottery Game' simply identifies the type of game being played. The prize fund of each game is separate and the funds of each lottery are never added together for the purposes of providing a single prize.

Mr. Mitchell said that the Act provides that the total value of the prizes for any given week shall not exceed £10,000. Each game is organised on the basis of a weekly draw. The prize fund for each week can never, under the Rules of Competition, exceed £10,000. The weekly limit of £10,000 applies to each Rehab Lottery Game.

David J O'Neill ARICS of Messrs Hamilton Osborne King, Estate Agents Auctioneers and Valuers, presented a undated written submission received by the Tribunal on the 25th January, 1990. We do not propose to summarise the contents of that submission because, as here and after set out it emerged that there was agreement between the parties on quantum.



**Oral Hearing**

The oral hearing took place on the 26th January, 1990. Mr Donal O'Donnell, Barrister-at-Law, instructed by Messrs McCann Fitzgerald Solicitors appeared on behalf of the appellant and Aindrias O'Caoimh, Barrister-at-Law, instructed by the Chief State Solicitor appeared on behalf of the respondent.

Mr Derek Mitchell, Financial Controller with the appellant gave evidence which was broadly in line with the written submission here and before referred to. Cross-examined by Mr O'Caoimh, Mr Mitchell indicated that there were 18 full time employees in the Dame Street premises. He said that there were about 2,500 Rehab outlets nationwide. Annual sale of tickets amounted to approximately £14 million.

Mr James O'Driscoll of the Multiple Sclerosis Society of Ireland said that he was Honorary Treasurer of that Society but now was a council member thereof. He indicated that the total budget of the Society was about £400,000. State subvention amounted to £30,000 and the balance was funded by donation and fund raising. Rehab had a vital part to play in funding the Society (which is a charity); in the first year funding from Rehab amounted to about £120,000 and in the second year the same amounted to about £37,000. The tenor of his evidence was to the effect that his charity could not function properly without the aid in contributions received from Rehab. Cross-examined by Mr O'Caoimh, Mr O'Driscoll indicated that other sources included Church gate collections, flag days and concerts.

The next and final witness on behalf of the appellant was Mr O'Neill. It emerged in the course of Mr O'Neill's evidence that quantum was now agreed at £165.

Following further submissions the hearing adjourned to enable both parties to present written submissions as to what the situation would be should the Tribunal come to the conclusion that the hereditament is exempt save insofar as the ticket retail element is concerned.

Further written submission dated the 15th May, 1990 was received by the Tribunal on the 4th October, 1990 from the respondent and one dated 14th February, 1990 was received by the Tribunal on the 4th October, 1990 from the appellant. Much of the respondent's further submission dealt with what we call the "main issue", namely whether the hereditaments are entitled to exemption. With reference to the issue the sale of lottery tickets in a portion of the premises, it was submitted that it is irrelevant whether or not such use is subsidiary or incidental to the main user of the premises as the use of the premises is not in any event "charitable" within the construction of that term for rating purposes. It was submitted that even if the remainder were to be considered as charitable the sale of tickets to the public is not and the portions of the premises used for the sale are not sufficiently defined to accord any distinctions between the various portions of the subject premises. Reference was made to the decision of Kingsmill Moore J in the Barrington Hospital case [1957] I.R. 299 and further authorities.

It was submitted on behalf of the appellants that, should the Tribunal come to the conclusion that the hereditament is exempt insofar as the ticket element is concerned, the Tribunal must then consider whether the retail sale of tickets is "subsidiary and ancillary" to the main purpose and use of the premises. If so, then this would not deprive the premises of exemption.

Both of the further written submissions hereto and before referred to are annexed to this judgment pinned together at Appendix "A".

On the 10th December, 1990 the Tribunal sat and heard the parties further briefly on the said further submissions. No evidence was tendered at this stage.

The Tribunal holds with the appellant in finding as a matter of fact that the appellant is an organisation run solely to assist recognised charities in raising funds and that it is an organisation whose function it is to gather together certain of the administrative chores associated with the fund raising activities of small charities with small areas of interest under one roof and to allow those charities to benefit from the appellant's professional approach.

The Tribunal also accepts the validity of the respondent's policy in general to value as rateable retail shops run by charities for fund raising purposes. However, but for the sale of tickets on the premises the Tribunal is satisfied that the same cannot be described as a retail premises. The evidence established that the sale of tickets only took part in a small part of the reception area of the premises. Something in the order of 20,000 tickets were sold per annum from that reception desk as opposed to an annual turnover of approximately 14 million.

It has been submitted on behalf of the respondent that the portion of the premises used for the sale of tickets is not sufficiently defined to accord any distinguishing between the various portions of the premises. From the evidence adduced it is clear that, while they said portions have not been sufficiently defined, they are clearly capable of definition.

The Tribunal, therefore, determines that the premises are entitled to exemption but that a small percentage portion thereof should not be entitled to such exemption. It is directed, therefore, that the valuers on each side should visit the premises and use their best endeavours to come to agreement as to what portion of the premises is devoted to ticket sales. In the event of such agreement the Tribunal will make an order taking the same into consideration. In default of agreement within four weeks of the delivery of this judgment, the Tribunal will give each side the opportunity to present evidence upon which the Tribunal will be in a position to make its own apportionment.

