

Third Circuit Affirms Landmark New Jersey Supreme Court Ruling for the National Football League

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Just days before the world is set to focus its attention on Atlanta's Mercedes-Benz Stadium for Super Bowl LIII, the United States Court of Appeals for the Third Circuit issued an opinion adopting the New Jersey Supreme Court's findings in a landmark decision issued earlier this month which Haynes Boone obtained in favor of its client, the National Football League.

The Third Circuit's decision, issued on January 31, affirmed an earlier decision by the United States District Court in New Jersey which granted Haynes Boone's motion to dismiss a class action brought to challenge the NFL's distribution of tickets to Super Bowl XLVIII.

The action, *Josh Finkelman v. National Football League*, concerned the NFL's distribution of tickets to Super Bowl XLVIII, which was held at MetLife Stadium in East Rutherford, New Jersey in 2014 – and was billed as the first Super Bowl ever played outdoors in a cold-weather city. In January 2014, Mr. Finkelman, who purchased two tickets to Super Bowl XLVIII on the secondary market for prices in excess of face value, filed a putative class action in the United States District Court of New Jersey against the NFL and four of its affiliates relating to the league's distribution of Super Bowl tickets. Finkelman alleged that the NFL's distribution of tickets to Super Bowl XLVIII violated New Jersey state law.

The law at issue, Section 35.1 of the New Jersey Consumer Fraud Act, establishes that:

It shall be an unlawful practice for a person, who has access to tickets to an event prior to the tickets' release for sale to the general public, to withhold those tickets from sale to the general public in an amount exceeding 5% of all available seating for the event. (N.J. Sta. Ann. § 56:8-19.)

Finkelman argued that the NFL's distribution of tickets to Super Bowl XLVIII necessarily violated the statute because it is widely known that 99 percent of all Super Bowl Tickets are not released for sale to the general public. Instead, Finkelman alleged that the NFL typically distributed 99 percent of all Super Bowl tickets to its teams and business partners and the remaining 1 percent of tickets to winners of the NFL's Super Bowl ticket lottery.

The NFL argued that its distribution practices for Super Bowl XLVIII did not violate the New Jersey law because the 5 percent restriction only applied to tickets that, in the first instance, were designated for release for sale to general public. Because the only tickets that were even arguably released for sale to the general public were the 1 percent of tickets released for sale through the NFL's ticket lottery – none of which Finkelman alleged were withheld – the NFL argued that Finkelman could not demonstrate a statutory violation.

Haynes Boone successfully obtained dismissal of Finkelman's claims on two separate occasions before the New Jersey District Court. However, in December 2017, the United States Court of

Appeals for the Third Circuit reversed the district court's decision to dismiss the case on standing grounds and certified the state law question to the New Jersey Supreme Court for its review.

On January 9, 2019, the New Jersey Supreme Court found in favor of the NFL. In a unanimous, 7-0 ruling, the court found that the NFL's distribution of Super Bowl XLVIII tickets did not violate New Jersey law. The court agreed with the NFL's argument that its distribution of 99 percent of all tickets to its teams and business partners did not violate the statute because those tickets were never destined for public sale. The only tickets that the court found were released for public sale were the 1 percent of tickets released through the NFL's lottery. However, because there was no allegation that any of "those tickets" were withheld from sale to the lottery winners, Finkelman could not demonstrate a statutory violation.

The NFL was represented by New York Partner Jonathan Pressment and Associate William Feldman.

The following publications reported the district court ruling:

[*The Associated Press*](#)

[*Bloomberg Law*](#) (Subscription required)

[*Law360*](#) (Subscription required)

[*Law360*](#) (Subscription required)

[*New Jersey Law Journal*](#)