

Consumer Law—Buy Before You Sue: Standing to Sue for Ticket Scalping Requires Purchase—*Herman v. Admit One Ticket Agency LLC*, 912 N.E.2d 450 (Mass. 2009)

In Massachusetts, the legislature has long considered the act of reselling tickets for profit, or “ticket scalping,” as harmful to the public and thus has kept the practice heavily regulated.¹ Accordingly, it is illegal for a ticket reseller to charge consumers a price in excess of two dollars above face value, unless the additional cost can be wholly attributable to service charges.² In *Herman v. Admit One Ticket Agency LLC*,³ the Massachusetts Supreme Judicial Court (SJC) considered whether a potential buyer who received a quote for a ticket priced significantly above face value, has standing to sue the ticket reseller for violating the Anti-Scalping Statute, although no purchase took place.⁴ The SJC concluded that a prospective buyer lacks standing, as he would be unable to show that he was ready, willing, and able to buy a ticket at a lawful price unless he had actually purchased a ticket.⁵

Admit One Ticket Agency LLC (Admit One) is a licensed business engaged in the resale of tickets to, inter alia, Red Sox baseball games.⁶ Its business model consists of purchasing a large number of season tickets before the season begins, then reselling those tickets individually throughout the season at prices

1. See MASS. GEN. LAWS ch. 140, § 185D (2006) (regulating resale of tickets to public events). The legislature enacted the law, commonly known as the “Anti-Scalping Statute,” in 1924 as a response to the perceived need to protect “the public against fraud, extortion and similar abuses in the sale of tickets.” See *In re Opinion of the Justices*, 143 N.E. 808, 809 (Mass. 1924) (providing General Court’s response to Senate inquiry regarding constitutionality of proposed legislation); see also MASS. GEN. LAWS ch. 140, § 185A (2002) (mandating individuals to obtain license before reselling tickets as business venture); MASS. GEN. LAWS ch. 93A, § 2 (2006) (declaring deceptive or unfair business practices unlawful); *Lainer v. City of Boston*, 95 F. Supp. 2d 17, 19 (D. Mass. 2000) (concluding resale of tickets only precluded in course of business without a license). Part of what is commonly referred to as the Consumer Protection Act, chapter 93A entitles consumers to bring a private right of action against unlawful business practices. See MASS. GEN. LAWS ch. 93A, § 9(1) (2006).

2. See MASS. GEN. LAWS ch. 140, § 185D (2002) (defining service charges as those related solely to buying and selling tickets); *Commonwealth v. Santangelo*, 520 N.E.2d 1340, 1342 (Mass. App. Ct. 1988) (holding shift of acquisition costs from reseller to consumer contrary to legislative intent). The exception for service charges does not allow a licensed ticket reseller to recoup acquisition costs in excess of face value. *Commonwealth v. Santangelo*, 520 N.E.2d 1340, 1342 (Mass. App. Ct. 1988).

3. 912 N.E.2d 450 (Mass. 2009).

4. See *id.* at 454 (describing issue under consideration).

5. *Id.* at 456-57 (noting prospective buyer’s inability to readily ascertain lawful service charges within quoted price). Alongside a stated necessity to “keep a proper perspective on the merits of the case,” the SJC held that a plaintiff would be unable to prove that he or she was ready, willing, and able to buy a ticket at a lawful price because it is difficult for consumers to ascertain how much of the quoted ticket price constitutes permissible service charges. *Id.*

6. 912 N.E.2d at 452 (describing Admit One’s business).

dictated by market demand.⁷ Operating primarily online, Admit One's total revenue for 2005 was \$1.78 million, fifteen percent of which was profit.⁸

On May 22, 2005, Colman Herman went to Admit One's business location and requested price quotes for loge section seats for the upcoming Red Sox games against the New York Yankees and the Baltimore Orioles.⁹ While each ticket had a face value of approximately eighty-five dollars, Admit One offered to sell Herman tickets to the Yankees game for \$500 per ticket, and tickets to the Orioles game for \$165 per ticket.¹⁰ Refusing to purchase tickets to either game at the prices quoted, Herman left the store and later sent a demand letter to Admit One's principal, claiming that the offered prices violated the Anti-Scalping Statute.¹¹ Admit One's counsel responded by denying the offer was a violation and contended that even if it was Herman lacked standing to seek any redress from Admit One, because he did not purchase any tickets.¹²

Herman brought suit against Admit One alleging that it engaged in unfair business practices under the Consumer Protection Act by violating the Anti-Scalping Statute when it offered to sell him tickets far in excess of their face value.¹³ In a jury-waived trial, the Massachusetts District Court ruled in favor of Herman, noting that the legislative intent was to grant consumers the right to purchase tickets at a legally defined price.¹⁴ On appeal, the Massachusetts Appellate Division of the District Court reversed, placing a heavy emphasis on

7. *Id.* (explaining elements used to calculate individual ticket prices). Ticket prices vary depending on the opponent, if the Red Sox are winning, and the number of days before the game. *Id.*

8. *Id.* (identifying sales and operation costs). In 2005, Admit One conducted an estimated ninety-one percent of sales through the online auction site eBay, eight percent over the phone or via its website, and about one percent through in-store sales; all sales were non-cash transactions. *Id.* Admit One's owner/manager earned a salary of \$275,977 in 2005, representing that year's total profit. *Id.* at 452 n.3.

9. 912 N.E.2d at 453 (reviewing facts presented at trial). Herman unsuccessfully attempted to purchase tickets directly from the Red Sox box office for home games against the New York Yankees or the Baltimore Orioles. *Id.*

10. 912 N.E.2d at 453. The price difference between the two quotes illustrates Admit One's business model of allocating its acquisition and operational costs unevenly among sales, depending on the public demand for tickets to a particular game. *Id.* at 453 n.8. Due to high market demand, tickets for games against the New York Yankees were particularly expensive to obtain. *See id.* at 453.

11. *Id.* at 454 (describing events leading to suit). When questioned by Admit One's counsel about his intent to buy tickets at any price, Herman responded that he was willing to purchase tickets at face value, or "what the law allowed." *Id.* at 453-54.

12. *Id.* (stating Admit One's position towards Herman's claims).

13. *Id.* at 451-52. Herman brought his claim under the Consumer Protection Act, which grants a private right of action to any individual "injured by another person's use or employment of any method, act or practice declared to be unlawful by section two [of ch. 93A] or any rule or regulation issued thereunder." MASS. GEN. LAWS ch. 93A, § 9(I) (2006). The Attorney General promulgated a rule that declares an act or practice unfair if "[i]t is oppressive or otherwise unconscionable in any respect; or . . . [i]t fails to comply with . . . statutes . . . meant for the protection of the public's health, safety, or welfare promulgated by the Commonwealth . . . intended to provide the consumers of this Commonwealth protection." 940 MASS. CODE REGS. 3.16 (2004).

14. Herman v. Admit One Ticket Agency, LLC, No. 0656 CV 0368, 2007 WL 5746742 (Mass. Dist. Ct. Sept. 17, 2007) (noting Herman should not have to "salt his injury" by purchasing ticket to have standing). Substantively reviewing the ticket prices charged, the trial court found Admit One's service and membership fees went beyond the statutory limits on "service charges," and were in effect equal to a fifteen percent mark-up on each ticket sold. *Id.*

the plain meaning of the statutory language.¹⁵ Although the SJC recognized that offering tickets at prices inconsistent with the Anti-Scalping Statute is unfair and potentially actionable under the Consumer Protection Act, it held, pragmatically, that a plaintiff must purchase a ticket to obtain standing.¹⁶

“Ticket scalping” is the common name for the practice of reselling tickets to events at a price dictated by the marketplace, normally above the original advertised price or face value of a ticket.¹⁷ The secondary ticket market of today is a multi-billion dollar industry operating in a fragmented legal landscape torn between the values of free-market capitalism and consumer protection.¹⁸ Although judicial reactions to the practice of reselling tickets vary greatly in different parts of the country, scalping is currently against the law in Massachusetts.¹⁹

15. Herman v. Admit One, No. 08-ADMS-40002, 2008 WL 2550732, at *2 (Mass. App. Div. June 6, 2008) (applying plain language interpretation of the Anti-Scalping Statute’s prohibition of *reselling* tickets). The court emphasized that no transfer of tickets had occurred between Herman and Admit One. *Id.* Holding that Herman lacked standing, the appellate court did not rule on whether the act of selling tickets at an allegedly unlawful price could be considered an unfair trade practice under the Consumer Protection Act. *See id.* at *1 (noting violation of Anti-Scalping Statute required for Consumer Protection Act claim).

16. 912 N.E.2d at 454. The SJC noted that although a purchase was necessary in order to assert a claim under the Consumer Protection Act for violation of the Anti-Scalping Act, the mere offering of tickets for sale at prices inconsistent with the Anti-Scalping Act is an unfair practice in violation of the Consumer Protection Act. *Id.* at 456. Nonetheless, due to the difficulties for consumers to ascertain how much of the quoted ticket price constitutes permissible service charges, the SJC suggested that a plaintiff would lack the ability to prove the requisite for standing: readiness, willingness, and ability to buy a ticket at a lawful price. *Id.* at 456-57.

17. *See In re Opinion of the Justices*, 143 N.E. 808, 809 (Mass. 1924); *see also* Thomas A. Diamond, *Ticket Scalping: A New Look at an Old Problem*, 37 U. MIAMI L. REV. 71, 71 (1982); Stephen K. Happel & Marianne M. Jennings, *The Folly of Anti-Scalping Laws*, 15 CATO J. 65, 71 (Spring/Summer 1995) (noting term “scalping” encompasses all resale of tickets, regardless of profit).

18. *See* Jonathan Bell, Note, *Ticket Scalping: Same Old Problem With a Brand New Twist*, 18 LOY. CONSUMER L. REV. 435, 439 n.29 (2006) (reciting sales data estimates generated between 1998 and 2001); Daniel J. Glantz, Note, *For-bid Scalping Online?: Anti-Scalping Legislation in an Internet Society*, 23 CARDOZO ARTS & ENT. L.J. 261, 262-63 (2005) (identifying advent of Internet auctions as transforming ticket scalping industry); Scott D. Simon, Note, *If You Can’t Beat ‘em, Join ‘em: Implications for New York’s Scalping Law in Light of Recent Developments in the Ticket Business*, 72 FORDHAM L. REV. 1171, 1172 (2004) (quoting sales figure estimates from 1999 combining data from traditional scalping and ticket brokering); *see also* Stephen K. Happel & Marianne M. Jennings, *Creating a Futures Market for Major Ticket Events: Problems and Prospects*, 21 CATO J. 443, 445 (Winter 2002) (noting thirty states enacted statutes allowing regulation of ticket resale as of 2005); Happel & Jennings, *supra* note 17, at 71 (perceiving scalpers as “time brokers” selling tickets to consumers unwilling to spend time waiting); Simon, *supra*, at 1178-81 (describing practice of promoters intentionally underpricing tickets). *But see* Paul J. Criscuolo, Comment, *Reassessing the Ticket Scalping Dispute: The Application, Effects and Criticisms of Current Anti-Scalping Legislation*, 5 SETON HALL J. SPORT L. 189, 220-21 (1995) (noting states intervened after realizing negative effects of scalping outweigh benefits); Sheree Rabe, Note, *Ticket Scalping: Free Market Mirage*, 19 AM. J. CRIM. L. 57, 68-69 (1991) (arguing anti-scalping legislation helps protect citizens from scalpers’ interference with free market). Among the states that have outlawed scalping, courts have upheld anti-scalping legislation against constitutional challenges by recognizing that states have a “legitimate interest in ensuring public access to entertainment and sports events.” *See* Rabe, *supra*, at 65-66 (discussing standard upholding scalping regulations).

19. *See* MASS. GEN. LAWS ch. 140, §§ 185A, 185D (2006) (restricting resale of tickets). Section 185D states:

The legislature's stated purpose in controlling the sale of tickets to theaters or places of entertainment is to "safeguard[] the public against fraud extortion, exorbitant rates, and like abuses."²⁰ On the basis of this public policy, courts have been reluctant to grant exceptions to the ban on ticket scalping.²¹ Nonetheless, a statutory amendment has provided an exception to the application of the monetary cap on resale initially imposed by the Anti-Scalping Statute, whereby ticket resellers may add certain service charges to the price of a ticket without violating the statute.²² Despite the ban on ticket scalping, Massachusetts still has a thriving business market for the resale of tickets.²³

No licensee under section one hundred and eighty-five A shall resell any ticket or other evidence of right of entry to any theatrical exhibition, public show or public amusement or exhibition of any description at a price in excess of two dollars in advance of the price printed on the face of such ticket or other evidence of right of entry as the purchase price thereof[.]

MASS. GEN. LAWS ch. 140, § 185D (2006); *see also* Happel & Jennings, *supra* note 18, at 445 (describing state variations on anti-scalping laws). With no federal legislation on point, the states have taken different approaches to regulating ticket scalping, with twenty states not regulating the resale of tickets at all. *See* Happel & Jennings, *supra*, at 445.

20. *In re* Opinion of the Justices, 143 N.E. 808, 809 (Mass. 1924) (identifying intent of Massachusetts Senate). Concluding that the proposed Anti-Scalping Statute would pass constitutional muster, the court noted that the business of reselling tickets had become a "menace to the public welfare." *Id.* at 811. An indication of the legislative purpose can be found by the fact that the statute was placed under the title "Public Safety and Good Order." *See* MASS. GEN. LAWS ch. 140, § 185D (2006).

21. *See* Commonwealth v. Sovrensky, 169 N.E. 418, 418-19 (Mass. 1929) (upholding conviction for ticket scalping although evidence only showed single sale); *see also* Commonwealth v. Santangelo, 520 N.E.2d 1340, 1342 (Mass. App. Ct. 1988) (concluding passing acquisition costs to consumer would be contrary to legislative intent). Although the SJC has interpreted the Anti-Scalping Statute as applying only to persons engaged in the *business* of reselling tickets, a single sale was sufficient evidence to establish violation of statute. *See* Commonwealth v. Sovrensky, 169 N.E. 418, 419 (Mass. 1929). The court further concluded that a person may be in the scalping business without ever having concluded a sale, noting that "it is the occupation and not an isolated act which is forbidden[.]" *Id.*

22. *See* MASS. GEN. LAWS ch. 140, § 185D (2006). Amended in 1980, the second paragraph of the Anti-Scalping Statute now qualifies the two-dollar maximum resale mark-up: "a price in excess of the above maximum shall not be deemed in violation of this section if the amount in excess of the above maximum is solely attributable to service charges." *Id.* "Service charges" are described as costs related to obtaining and reselling the ticket, such as postage and phone calls, albeit not costs "related to the general business operation of [the ticket reseller]." *Id.* Furthermore, ticket resellers are allowed to impose an annual or per-order fee, provided the sale is a non-cash transaction. *Id.*

23. *See generally* Bruce Mohl, *Scalping Law? What Scalping Law?: Sellers, Regulators, and Police Brazenly Ignore a Statute Limiting Markups*, BOSTON GLOBE, Oct. 15, 2006, available at http://www.boston.com/business/articles/2006/10/15/scalping_law_what_scalping_law/ (noting Anti-Scalping Statute ignored by scalpers and law enforcement alike); Keith Reed, *Patriots Sue Ticket Reseller in Effort to Fight Scalping*, BOSTON GLOBE, Nov. 23, 2006, available at http://www.boston.com/sports/football/patriots/articles/2006/11/23/patriots_sue_ticket_reseller_in_effort_to_fight_scalping/ (suggesting current Massachusetts law clearly ineffective); *see also* NPS LLC v. StubHub, Inc., No. 06-4874-BLS-1, 2009 WL 995483, at *10 (Mass. Super. Jan. 26, 2009) (noting "the evidence is clear that some sellers (and buyers) are engaged in [scalping]"); Glantz, *supra* note 18, at 286-87 (suggesting advent of the internet may have made existing legislation too costly to enforce); Phyllis L. Zankel, Comment, *Wanted: Tickets—A Reassessment of Current Ticket Scalping Legislation and the Controversy Surrounding its Enforcement*, 2 SETON HALL J. SPORT L. 129, 141-42 (1992) (arguing outdated laws have created loopholes allowing ticket scalpers to circumvent anti-scalping legislation).

In addition to the Anti-Scalping Statute, a plaintiff has two potential causes of action against an alleged ticket scalper under the Massachusetts Consumer Act.²⁴ In order to obtain standing under the Act, the SJC has held that a consumer must establish a causal connection between a deceptive act and the consumer's injury.²⁵ Although not applied in the context of ticket scalping, the notion of a sufficient "injury" to bring a claim under the Consumer Protection Act has expanded over time.²⁶

In *Herman v. Admit One Ticket Agency LLC*, the SJC determined that a consumer must purchase a ticket in order to obtain standing to sue a reseller for an alleged violation of the Anti-Scalping Statute.²⁷

Although the SJC conceded that offering to sell tickets at prices inconsistent with the Anti-Scalping Statute violates the legislative intent of preventing unfair acts or practices, the court held that a plaintiff would be unable to base a consumer protection claim on a perceived violation of the Anti-Scalping Statute unless he first purchased a ticket.²⁸ The court reasoned that the exceptions within the Anti-Scalping Statute, which permit ticket resellers to impose certain fees beyond the two-dollar resale cap, made it practically impossible for a consumer to prove himself ready, willing, and able to purchase a lawfully priced ticket.²⁹ Because of a potential consumer's inability to ascertain what

24. MASS. GEN. LAWS ch. 93A, §§ 2, 9 (2006). A plaintiff can claim that excessive pricing either constitutes a "per se" violation of sections two and nine, or that such prices are inherently unfair and deceptive under section two, which would give plaintiff a cause of action independent of the Anti-Scalping Statute. *See Hershenow v. Enterprise Rent-a-Car Co. of Boston, Inc.*, 840 N.E.2d 526, 530-31 (Mass. 2006).

25. *See Hershenow v. Enterprise Rent-a-Car Co. of Boston, Inc.*, 840 N.E.2d 526, 528 (Mass. 2006) (concluding Consumer Protection Act requires proof of causal connection between deceptive act and consumer's loss); *Aspinall v. Philip Morris Cos., Inc.*, 813 N.E.2d 476, 486-87 (Mass. 2004) (identifying act as deceptive practice based on objective evaluation of act); *see also Slama v. Attorney Gen.*, 428 N.E.2d 134, 137 (Mass. 1981) (holding standing in any capacity requires plaintiff show injury from challenged action). A causal connection exists when an act "could reasonably be found to have caused a person to act differently from the way he [or she] otherwise would have acted." *Aspinall v. Philip Morris Cos., Inc.*, 813 N.E.2d 476, 486 (Mass. 2004) (alteration in original).

26. *See Hershenow v. Enterprise Rent-a-Car Co. of Boston, Inc.*, 840 N.E.2d 526, 528 (Mass. 2006) (recognizing 1979 amendment reducing restrictions did not eliminate causation requirement); *Hopkins v. Liberty Mut. Ins. Co.*, 750 N.E.2d 943, 951 n.12 (Mass. 2001) (recognizing 1979 amendment as legislative response to restrictive SJC decisions); *Leardi v. Brown*, 474 N.E.2d 1094, 1097 (Mass. 1985) (holding any invasion of legally protected interest as injury even if no actual damages); *see also MASS. GEN. LAWS ch. 93A, § 9(1)* (2006) (outlining standing requirements for private cause of action). The 1979 amendment to § 9(1) removed the requirement for a plaintiff to prove a loss of money or property, and now provides a private right of action to any person "who has been injured by another person's use or employment of any method, act or practice declared to be unlawful [under the Act]." MASS. GEN. LAWS ch. 93A, § 9(1) (2006).

27. 912 N.E.2d at 457. The court also noted that the cost of litigation vis-à-vis the price of a ticket favors the position that a plaintiff must purchase a ticket to obtain standing. *Id.* (discussing complexity of determining legitimate fees versus violations).

28. 912 N.E.2d at 457 (concluding consumer protection action based on violation of anti-scalping policy requires ticket purchase). The SJC held that, although the Anti-Scalping Statute only applies to completed sales, such a conclusion does not necessarily bar an action based on the Consumer Protection Act's ban on unfair acts or practices. *Id.* at 456.

29. 912 N.E.2d at 456-57 (noting potential purchaser's inability to gauge lawful elements of ticket price increase). The court noted that such a ticket price determination would be impossible absent thorough

constitutes a lawful price, and “to keep a proper perspective on the merits of the case,” the SJC concluded that proof of standing under the Anti-Scalping Statute requires that a plaintiff establish a rebuttable presumption of a violation, which he cannot do unless he purchased a ticket.³⁰

Even though the SJC correctly held that the practice of offering tickets at unlawful prices is inconsistent with current anti-scalping legislation, its decision to make standing dependent on a completed purchase is an illogical departure from traditional standing requirements and results in an outcome contrary to the intent and substance of the Anti-Scalping Statute.³¹ The SJC’s holding blurs the line between the requirements for standing and succeeding on the merits, in effect shifting the burden of determining factual scenarios from the trier of fact to the plaintiff.³² Instead of using the imprecise wording of the Anti-Scalping Statute as a basis for departing from the traditional standing rule, the SJC should have decided this case on its merits and provided much-needed guidance as to the Anti-Scalping Statute’s applicability to the current ticket resale market.³³

Because Massachusetts courts have been reluctant to grant exceptions to the Anti-Scalping Statute, the purchase requirement is unsupported by case law as it excludes a segment of consumers from the statute’s applicability.³⁴ By imposing this requirement, the court has effectively precluded persons of moderate means not only from purchasing tickets, but also from bringing a claim under the statute enacted to protect them.³⁵ Furthermore, the SJC’s interpretation of the standing requirement under the Anti-Scalping Statute leads

discovery. *Id.* at 457. Additionally, the court suggested that a consumer’s ability to ascertain the lawfulness of a ticket price is particularly difficult when, as in the instant case, non-cash transactions are involved because they allow the seller to impose an additional annual or per order fee. *Id.*

30. 912 N.E.2d at 457 (ruling standing requires a prima facie case). The SJC stated that the departure from its traditional treatment of standing as a threshold issue was founded on the complex nature of identifying a lawful price. *Id.*

31. Compare 912 N.E.2d at 456-57 (holding offers for sale at inflated prices unfair, yet unenforceable absent purchase), with MASS. GEN. LAWS ch. 140, § 185D (2006) (providing text of Anti-Scalping Statute); *supra* note 25 and accompanying text (outlining traditional standing analysis), and *supra* note 20 and accompanying text (stating legislative intent behind Anti-Scalping Statute).

32. See 912 N.E.2d at 457 (determining proof of standing elevated from threshold issue to prima facie showing); *id.* at 458 (Cowin, J., dissenting) (opining majority opinion requires plaintiff’s proof of success prior to trial).

33. See 912 N.E.2d at 456-57 (holding Anti-Scalping Statute’s imprecise exceptions require proof of prima facie case); see also Zankel, *supra* note 23, at 141 (noting poorly drafted statutes have created loopholes for scalpers, frustrating legislative implementation); *supra* note 23 and accompanying text (citing widespread disregard for anti-scalping legislation in Massachusetts).

34. See *supra* note 21 and accompanying text (citing prior reluctance to find exceptions to applicability of anti-scalping legislation); see also 912 N.E.2d at 457 (determining standing under Anti-Scalping Statute requires ticket purchase). Although the SJC identified that requiring a plaintiff to buy an illegally priced ticket would exclude those unable to afford the price from the statute’s applicability, its holding nonetheless carries that exact effect. See 912 N.E.2d at 456. This result is contrary to the statute’s stated purpose of protecting the public against exorbitant rates and other abuses in the ticket resale market. See *id.* at 455.

35. See 912 N.E.2d at 457 (limiting consumer protection claim based on Anti-Scalping Statute to plaintiff who purchased ticket).

to an irrational situation that fails to consider the statute's intended purpose: scalpers are allowed to charge unlawfully inflated prices but cannot actually go through with the transaction.³⁶

The SJC's standing analysis is a confusing departure from existing law.³⁷ Under the previously established standing analysis, Herman would have had to show a cognizable injury, or that Admit One's price quotes "acted as a powerful obstacle to [the] exercise of [Herman's] legal rights."³⁸ The Anti-Scalping Statute provides Herman the legal right to purchase tickets at a legally defined price.³⁹ However, instead of completing a traditional standing analysis, the SJC elevated the standing requirement due to the difficult task of determining a lawful price under the Anti-Scalping Statute.⁴⁰ Still, the perceived complexities of the Anti-Scalping Statute are not relevant to the issue of standing but rather to the issue of whether Admit One was, *in fact*, charging an unlawful price.⁴¹

Herman v. Admit One Ticket Agency LLC illustrates the current friction in the ticket resale market between the competing interests of free-market capitalism and consumer protection. By requiring a plaintiff to purchase a ticket at an inflated price to obtain standing, the SJC has effectively excluded consumers of moderate means from the protection of the Anti-Scalping Statute. This outcome is contrary to the legislature's stated intent of safeguarding the public against excessive prices. The SJC misstated the issue at bar, using the poorly drafted Anti-Scalping Statute as an excuse to reinvent the standing requirements. Absent legislative changes to the rules governing ticket resale in Massachusetts, the court should have followed the clear intent and purpose of the Anti-Scalping Statute, which is to prevent the advertisement and sale of

36. See *supra* note 20 and accompanying text (describing legislature's stated purpose of anti-scalping legislation); see also 912 N.E.2d at 456 (noting statutory purpose to protect public not only from completed purchases). The enactment of the Anti-Scalping Statute is a reflection of the need to protect the public from abuses in the sale of tickets. See *In re* Opinion of the Justices, 143 N.E. 808, 809 (Mass. 1924) (stating Massachusetts Senate's legislative intent behind Anti-Scalping Statute). Beyond the broad concept of public welfare, the statute was also enacted to protect the individual consumer. *Id.* at 811.

37. See 912 N.E.2d at 458 (Cowan, J., dissenting) (critiquing majority opinion's rationale for applying non-traditional standing rule). Compare 912 N.E.2d at 457 (noting complexity in determining lawful ticket fees requires departure from traditional standing rule), with *supra* notes 25-26 and accompanying text (describing traditional standing rule in consumer protection cases).

38. See *Hershenow v. Enterprise Rent-a-Car Co. of Boston, Inc.*, 840 N.E.2d 526, 528 (Mass. 2006) (recharacterizing meaning of "injury" in consumer protection claim); *supra* notes 25-26 and accompanying text (outlining application of traditional standing rule). Under the traditional standing analysis in consumer protection cases, a plaintiff is not required to prove a monetary or physical injury, but merely "the invasion of any legally protected interest." See *Leardi v. Brown*, 474 N.E.2d 1094, 1101 (1985) (interpreting meaning of "injury" in consumer protection statute).

39. See *supra* note 19 (quoting Anti-Scalping Statute's limit on resale price).

40. See 912 N.E.2d at 457 (noting complexity in determining lawful ticket fees requires departure from traditional standing rule); *supra* note 22 and accompanying text (describing statutory exceptions to monetary cap on reselling tickets).

41. See 912 N.E.2d at 458 (Cowan, J., dissenting) (critiquing majority opinion's reliance on perceived complexity in determining lawful price).

1038

SUFFOLK UNIVERSITY LAW REVIEW

[Vol. XLIII:1031

tickets at prices well in excess of their face value.

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