



INTEROFFICE MEMO

Gary Grief, Executive Director

Alfonso D. Royal III, Charitable Bingo Operations Director

To: J. Winston Krause, Chairman
Carmen Arrieta-Candelaria, Commissioner
Peggy A. Heeg, Commissioner
Doug Lowe, Commissioner
Robert Rivera, Commissioner

From: Bob Biard, General Counsel *RB*

Date: December 1, 2016

Re: Consideration of the Status and Possible Approval of Orders in Enforcement Cases

The Legal Services Division staff recommends that the Commission approve each of the proposed orders in the enforcement cases presented under this item.

Note on Tabs A-G: For this meeting only, staff will present two orders for the lottery non-sufficient funds license revocation cases (instead of one order). We are transitioning to a new process for these cases, at the request of the State Office of Administrative Hearings (SOAH). Going forward, in cases where the licensee does not appear, SOAH will not issue a proposal for decision (PFD) based on an evidentiary record as it has done in the past, but instead will remand such cases to the Commission for disposition based solely on the licensee's failure to appear. At the December 1 meeting, we will present one order for the last of the cases where SOAH issued a PFD (Tabs A and B), and one order for cases remanded to the Commission to dispose of on a default basis (Tabs C through G).

Please let me know if you have any questions.

Commission Order No. 17-0009

Date: DECEMBER 1, 2016

DOCKET NO. 362-16-5380 *et al.*

IN THE MATTER OF	§	BEFORE THE TEXAS
	§	
THE REVOCATION OF CERTAIN	§	
LOTTERY RETAILER LICENSES	§	LOTTERY COMMISSION

ORDER OF THE COMMISSION

During an open meeting at Austin, Texas, the Texas Lottery Commission finds that after proper and timely notice was given, the above-styled cases were heard by Administrative Law Judges who made and filed Proposals for Decision containing the Administrative Law Judge's Findings of Fact and Conclusions of Law. The Proposals for Decision were properly served and all parties were given an opportunity to file exceptions and replies as part of the record herein.

The Texas Lottery Commission, after review and due consideration of the Proposals for Decision, and exceptions and replies filed, if any, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judges as if fully set out and separately stated herein. All proposed Findings of Fact and Conclusions of Law not specifically adopted herein are hereby denied.

NOW, THEREFORE, IT IS ORDERED that the licenses for the Lottery Retailers listed on Attachment A, which is incorporated into this Order for all purposes, are hereby revoked.

Commission Order No. 17-0009

Date: DECEMBER 1, 2016

Passed and approved at the regular meeting of the Texas Lottery Commission at Austin, Texas, on the 1ST day of DECEMBER, 2016.

Entered this 1ST day of DECEMBER, 2016.

J. WINSTON KRAUSE, CHAIRMAN

CARMEN ARRIETA-CANDELARIA,
COMMISSIONER

PEGGY A. HEEG, COMMISSIONER

DOUG LOWE, COMMISSIONER

ROBERT RIVERA, COMMISSIONER

Commission Order No. 17-0009

Date: DECEMBER 1, 2016

ATTACHMENT A

TAB NO.	SOAH DOCKET NO.	LOTTERY RETAILER	LOTTERY LICENSE NO.
A.	362-16-5380	Karma Foods Houston, Inc. D/B/A EZ Travel Plaza	180965
B.	362-16-5381	Karma Foods Houston, Inc. D/B/A EZ Food Mart #2	181270

SOAH DOCKET NO. 362-16-5380

TEXAS LOTTERY COMMISSION
LOTTERY OPERATIONS DIVISION,
Petitioner

v.

KARMA FOODS HOUSTON, INC.,
AGENT D/B/A EZ TRAVEL PLAZA
SALES AGENT LICENSE NO. 180965,
Respondent

§
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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Lottery Commission (Staff) seeks the revocation of a lottery sales agent's license held by Karma Foods Houston, Inc., Agent d/b/a EZ Travel Plaza (Licensee) on the grounds that it failed to have sufficient funds available to cover electronic funds transfers to the account of the Texas Lottery Commission (the Commission). The Administrative Law Judge (ALJ) recommends revocation of the license.

On August 18, 2016, a hearing to consider Staff's allegations was conducted by ALJ Gary W. Elkins, at the State Office of Administrative Hearings, William P. Clements Building, 300 W. 15th Street, Fourth Floor, Austin, Texas. Staff appeared through Stephen White, Assistant General Counsel for the Commission. Licensee did not appear and was not represented at the hearing. After Staff established jurisdiction and notice as required by law, the hearing proceeded on a default basis. Therefore, the allegations and applicable law are discussed only in the Findings of Fact and Conclusions of Law below.

I. FINDINGS OF FACT

1. Karma Foods Houston, Inc., Agent d/b/a EZ Travel Plaza (Licensee), Wharton, Texas, is a lottery sales agent licensed by the Texas Lottery Commission (the Commission). Licensee holds license number 180965.
2. On July 28, 2016, staff of the Commission sent a notice of hearing informing Licensee of the

final hearing date, location of the hearing, and the allegations it intended to prove at the hearing; the notice was sent by certified mail, return receipt requested to Licensee's address as it appears in the Commission's records.

3. The notice of hearing advised Licensee in 12-point bold face type that failure to appear at the hearing would result in the factual allegations in the notice being admitted as true, and that the relief sought in the notice may be granted by default.
4. The hearing described in Finding of Fact No. 2 was held on August 18, 2016, in the William P. Clements Building, 300 W. 15th Street, Fourth Floor, Austin, Texas.
5. Licensee did not appear and was not represented at the hearing.
6. On June 22, 2016, Licensee failed to have sufficient funds in the amount of \$1,912.95 available to cover an electronic transfer of funds to the Commission's account and owed the Commission that amount for the sale of lottery tickets.
7. The amounts described in Finding of Fact No. 6 were for the sale of lottery tickets less Licensee's commissions and credits for the amounts of cash prizes Licensee paid.

II. CONCLUSIONS OF LAW

1. The Texas Lottery Commission (the Commission) has jurisdiction over this matter pursuant to the Texas Lottery Act (the Act), Tex. Gov't Code Ann. § 466.155.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to Tex. Gov't Code Ann. ch. 2003.
3. Based upon Findings of Fact Nos. 2 and 3, proper and timely notice of the hearing was effected upon Licensee pursuant to the Administrative Procedure Act, Tex. Gov't Code Ann. §§ 2001.051-2001.052, § 466.155(b) of the Act, and 16 Tex. Admin. Code § 401.205(a)(4).
4. Based on Findings of Fact Nos. 3 and 5, and Conclusion of Law No. 3, a default should be entered against Respondent pursuant to 1 Tex. Admin. Code § 155.501.
5. Based on Findings of Fact Nos. 6 and 7, Licensee violated § 466.351 of the Act and 16 Tex. Admin. Code § 401.351, which require the timely deposit of lottery ticket sales proceeds into a bank account to be held in trust for and owed to the Commission.
6. Based on Findings of Fact Nos. 6 and 7, Licensee violated 16 Tex. Admin. Code § 401.352, which requires a licensee to have sufficient funds on deposit to cover electronic transfers of funds to the Commission.
7. Pursuant to the Act and 16 Tex. Admin. Code §§ 401.158 and 401.352(a), the Commission has authority to suspend or revoke a lottery sales agent's license for the violations described in the foregoing Conclusions of Law.

8. Based on the foregoing Conclusions of Law, the Commission is warranted in revoking Texas Lottery Sales Agent License Number 180965, issued to Karma Foods Houston, Inc., Agent d/b/a EZ Travel Plaza of Wharton, Texas.

SIGNED September 12, 2016.



**GARY W. ELKINS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

SOAH DOCKET NO. 362-16-5381

TEXAS LOTTERY COMMISSION	§	BEFORE THE STATE OFFICE
v.	§	
KARMA FOODS HOUSTON, INC.	§	OF
AGENT D/B/A EZ FOOD MART #2	§	
SALES AGENT LICENSE NO. 181270	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Lottery Commission (Staff) requested the revocation of a lottery sales agent's license held by Karma Foods Houston, Inc., Agent d/b/a EZ Food Mart #2 (Licensee) on the grounds that Licensee failed to have sufficient funds available to cover electronic funds transfers to the account of the Texas Lottery Commission (the Commission). The Administrative Law Judge (ALJ) recommends revocation of the license.

On August 18, 2016, in Austin, Texas, ALJ Gary W. Elkins conducted a hearing to consider Staff's allegations. Stephen White, Assistant General Counsel, represented the Commission. Licensee did not appear and was not represented at the hearing. After Staff established jurisdiction and notice, the hearing proceeded on a default basis. Therefore, the allegations and applicable law are discussed only in the Findings of Fact and Conclusions of Law below.

I. FINDINGS OF FACT

1. Karma Foods Houston, Inc., Agent d/b/a EZ Food Mart #2 (Licensee), Houston, Texas, is a lottery sales agent licensed by the Texas Lottery Commission (the Commission). Licensee holds license number 181270.
2. On July 28, 2016, staff of the Commission (Staff) sent notice of hearing informing Licensee of the final hearing date, location of the hearing, and the allegations it intended to prove at the hearing. The notice was sent by certified mail, return receipt requested, to Licensee's address as it appears in the Commission's records.


3. The notice of hearing informed Licensee in 12-point, bold face type that failure to appear at the hearing would result in the factual allegations in the notice of hearing being admitted as true, and that the relief sought in the notice may be granted by default.
4. The hearing described in Finding of Fact No. 2 was held on August 18, 2016, at the State Office of Administrative Hearings, located in the William P. Clements Building at 300 West 15th Street, Austin, Texas.
5. Licensee did not appear and was not represented at the hearing.
6. Licensee holds licenses to sell lottery tickets at: 1) Karma Foods Houston, Inc., Agent d/b/a EZ Food Mart #2; and 2) Karma Foods Houston, Inc., Agent d/b/a EZ Travel Plaza. Licensee, at both above-named locations, failed to hold in trust and deliver to the State of Texas proceeds from the sale of lottery tickets, which resulted in the revocation of those licenses.

II. CONCLUSIONS OF LAW

1. The Texas Lottery Commission (the Commission) has jurisdiction over this matter pursuant to the Texas Lottery Act (the Act), Texas Government Code § 466.155.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a Proposal for Decision with proposed Findings of Fact and Conclusions of Law, as provided by Texas Government Code ch. 2003.
3. Based upon Findings of Fact Nos. 2 and 3, proper and timely notice of the hearing was effected upon Licensee pursuant to the Administrative Procedure Act, Texas Government Code §§ 2001.051-2001.052; § 466.155(b) of the Act; and 16 Texas Administrative Code § 401.205(4).
4. Based upon Findings of Fact Nos. 2 through 5 and Conclusion of Law No. 3, a default should be entered against Licensee, pursuant to 1 Texas Administrative Code § 155.501.
5. Based upon Finding of Fact No. 6, Licensee violated § 466.351 of the Act and 16 Texas Administrative Code § 401.351, which require the timely deposit of lottery ticket sales proceeds into a bank account to be held in trust for and owed to the Commission.
6. Based on Finding of Fact No. 6, Licensee violated 16 Texas Administrative Code §401.352, which requires a licensee to have sufficient funds on deposit to cover electronic transfers of funds to the Commission.

7. Pursuant to § 466.155 of the Act and 16 Texas Administrative Code §§ 401.158 and 401.352(a), the Commission has authority to suspend or revoke a lottery sales agent's license for the violations described in the foregoing Findings of Fact and Conclusions of Law.
8. Based upon the foregoing Findings of Fact and Conclusions of Law, the Commission is warranted in revoking Texas Lottery Sales Agent License No. 181270, issued to Karma Foods Houston, Inc., Agent d/b/a EZ Food Mar #2 of Houston, Texas.

SIGNED September 12, 2016.



GARY W. ELKINS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

Commission Order No. 17-0010

Date: DECEMBER 1, 2016

**TEXAS LOTTERY COMMISSION,
PETITIONER**

VS.

**THE REVOCATION OF CERTAIN
LOTTERY RETAILER LICENSES,
RESPONDENTS**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

ORDER OF THE COMMISSION

During an open meeting at Austin, Texas, the Texas Lottery Commission (Commission) heard the license revocation cases listed on Attachment A hereto, in which the Texas Lottery Ticket Sales Agent (Respondent) in each referenced case did not appear at the scheduled hearing before the State Office of Administrative Hearings (SOAH) to respond to the allegations set forth in the Commission's notice of hearing.

I. Findings of Fact

1. Timely and adequate notice of the hearings in the referenced cases before SOAH was provided to each Respondent, pursuant to TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052, and 1 TEX. ADMIN. CODE § 155.401. Each notice of hearing included a disclosure in at least 12-point, bold-face type, that the factual allegations listed in the notice could be deemed admitted, and the relief sought in the notice of hearing might be granted by default against the party that fails to appear at hearing.

Commission Order No. 17-0010

Date: DECEMBER 1, 2016

2. After timely and adequate notice was given in each case, each case was heard by a SOAH Administrative Law Judge (ALJ). In each case, the Respondent did not appear at the hearing.

3. The Commission, by and through its attorney of record, filed a motion to dismiss each of the referenced cases from the SOAH docket and to remand each case to the Commission for informal disposition, in accordance with TEX. GOV'T CODE ANN. § 2001.058(d-1) and 1 TEX. ADMIN. CODE § 155.501(d).

4. The ALJ dismissed the referenced cases from the SOAH docket and remanded these cases to the Commission for informal disposition under TEX. GOV'T CODE ANN. § 2001.056.

II. Conclusions of Law

1. The Commission has jurisdiction over this matter pursuant to TEX. GOV'T CODE ANN. § 466.155 and 16 TEX. ADMIN. CODE, Chapter 401.

2. The Respondent in each of the cases listed on Attachment A violated the State Lottery Act and the Commission's Rules as set forth in the Commission's notice of hearing applicable to such Respondent. Specifically, each Respondent failed to deposit money due to the State received from lottery ticket sales under the State Lottery Act, in violation of TEX. GOV'T CODE ANN. § 466.351 and 16 TEX. ADMIN. CODE §§ 401.51 and 401.352.

3. The relief sought by the Commission Staff is fair, reasonable, and adequately protects the public.

Commission Order No. 17-0010

Date: DECEMBER 1, 2016

III. Order

NOW, THEREFORE, IT IS ORDERED that, after review and due consideration of the administrative record, each of the cases listed on Attachment A hereto, which is incorporated into this Order for all purposes, is hereby disposed by default, and:

1. All allegations set forth in each notice of hearing in the cases listed on Attachment A are deemed admitted; and

2. The Lottery Ticket Sales Agent License for each Respondent in the cases listed on Attachment A are hereby revoked.

Passed and approved at the regular meeting of the Texas Lottery Commission at Austin, Texas, on the 1ST day of December, 2016.

Entered this 1ST day of December, 2016.

J. WINSTON KRAUSE, CHAIRMAN

CARMEN ARRIETA-CANDELARIA,
COMMISSIONER

PEGGY A. HEEG, COMMISSIONER

DOUG LOWE, COMMISSIONER

ROBERT RIVERA, COMMISSIONER

Commission Order No. 17-0010

Date: DECEMBER 1, 2016

ATTACHMENT A

Tab No.	SOAH DOCKET NO.	LOTTERY TICKET SALES AGENT NAME	SALES AGENT ADDRESS	LOTTERY LICENSE NO.
C.	362-17-0063	S&M Development Inc. D/B/A \$1 Store	312 S. Watson Rd. Arlington, TX 76010	176351
D.	362-17-0064	Yahya Investments, Inc. D/B/A Shop N Go	3119 Commercial Ave. San Antonio, TX 78221	177079
E.	362-17-0260	Donna Tortilleria & Bakery Inc. D/B/A La Providencia	609 East Evans Pharr, TX 78577	174047
F.	362-17-0261	Will Boese LLC D/B/A I40 Convenience	900 Spur 228 Amarillo, TX 79111	180881
G.	362-17-0546	U S S Concepts Inc. D/B/A Spencer 8 Citgo	3615 Pine Valley Dr. Pearland, TX 77581	175394

DOCKET NO.: SEE ATTACHMENT A

IN THE MATTER OF § BEFORE THE STATE OFFICE
§
THE REVOCATION § OF
OF CERTAIN LOTTERY RETAILER §
LICENSES § ADMINISTRATIVE HEARINGS


ORDER REMANDING CASE(S) TO COMMISSION

On September 29, 2016, a hearing was convened before the State Office of Administrative Hearings (SOAH) on the revocation of the lottery sales agent license held by each retailer listed on Attachment A. Notice of the hearing was provided to each retailer in accordance with 1 Texas Administrative Code § 155.501(b)(2). The Texas Lottery Commission (Commission) served the notice of hearing via certified mail at each retailer's last known address as it appears in the Commission's records, as authorized by 16 Texas Administrative Code § 401.205(4). Each notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing would be held; a reference to the particular sections of the statutes and rules involved; a short, plain statement of the factual matters asserted; and a statement in at least 12-point, bold-face type that the factual allegations listed in the notice could be deemed admitted and the relief sought might be granted by default against a party that failed to appear at the hearing.

The Commission's staff (Staff) appeared at the hearing. None of the referenced retailers appeared. Based on a retailer's failure to appear, Staff filed a motion to dismiss the summary license suspension case from SOAH's docket and to remand the case to the Commission for informal disposition in accordance with Texas Government Code § 2001.058(d-1) and 1 Texas Administrative Code § 155.501(d). The ALJ concludes that the motion has merit and should be granted.

Accordingly, the motion to dismiss each case listed on Attachment A is granted, and the case is dismissed from SOAH's docket and remanded to the Commission for informal disposition under Texas Government Code § 2001.056.

Signed October 13, 2016.



GARY W. BLKINS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

TEXAS LOTTERY COMMISSION
REVOCATION HEARINGS
STATE OFFICE OF ADMINISTRATIVE HEARINGS
ATTACHMENT A
HEARING HELD: September 29, 2016

SOAH DOCKET NO.	LOTTERY TICKET SALES AGENT NAME	SALES AGENT ADDRESS	LOTTERY LICENSE NO.
362-17-0063	S&M Development, Inc. D/B/A \$1 Store	312 S. Watson Rd Arlington, TX 76010	176351
362-17-0064	Yahya Investments, Inc. D/B/A Shop N Go	3119 Commercial Ave. San Antonio, TX 78221	177079

DOCKET NO.: SEE ATTACHMENT A

IN THE MATTER OF § BEFORE THE STATE OFFICE
§
THE REVOCATION OF § OF
CERTAIN LOTTERY RETAILER §
LICENSES § ADMINISTRATIVE HEARINGS

ORDER REMANDING CASE(S) TO COMMISSION

On October 13, 2016, a hearing was convened before the State Office of Administrative Hearings (SOAH) on the revocation of the lottery sales agent license held by each retailer listed on Attachment A. Notice of the hearing was provided to each retailer in accordance with 1 Texas Administrative Code § 155.501(b)(2). The Texas Lottery Commission (Commission) served the notice of hearing via certified mail at each retailer's last known address as it appears in the Commission's records, as authorized by 16 Texas Administrative Code § 401.205(4). Each notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing would be held; a reference to the particular sections of the statutes and rules involved; a short, plain statement of the factual matters asserted; and a statement in at least 12-point, bold-face type that the factual allegations listed in the notice could be deemed admitted and the relief sought might be granted by default against a party that failed to appear at the hearing.

The Commission's staff (Staff) appeared at the hearing. None of the referenced retailers appeared. Based on a retailer's failure to appear, Staff filed a motion to dismiss the summary license suspension case from SOAH's docket and to remand the case to the Commission for informal disposition in accordance with Texas Government Code § 2001.058(d-1) and 1 Texas Administrative Code § 155.501(d). The ALJ concludes that the motion has merit and should be granted.

Accordingly, the motion to dismiss each case listed on Attachment A is granted, and the case is dismissed from SOAH's docket and remanded to the Commission for informal disposition under Texas Government Code § 2001.056.

Signed October 19, 2016.



GARY W. ELKINS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

TEXAS LOTTERY COMMISSION
REVOCATION HEARINGS
STATE OFFICE OF ADMINISTRATIVE HEARINGS
ATTACHMENT A
HEARING HELD: October 13, 2016

SOAH DOCKET NO.	LOTTERY TICKET SALES AGENT NAME	SALES AGENT ADDRESS	LOTTERY LICENSE NO.
362-17-0260	Donna Tortilleria & Bakery Inc., Agent D/B/A La Providencia	609 East Evans Pharr, TX 78577	174047
362-17-0261	Will Boese LLC, Agent D/B/A I40 Convenience	900 Spur 228 Amarillo, TX 79111	180881

DOCKET NO.: SEE ATTACHMENT A

IN THE MATTER § BEFORE THE STATE OFFICE
OF THE REVOCATION OF §
CERTAIN LOTTERY RETAILER § OF
LICENSES § ADMINISTRATIVE HEARINGS


ORDER REMANDING CASE(S) TO COMMISSION

On October 27, 2016, a hearing was convened before the State Office of Administrative Hearings (SOAH) on the revocation of the lottery sales agent license held by each retailer listed on Attachment A. Notice of the hearing was provided to each retailer in accordance with 1 Texas Administrative Code § 155.501(b)(2). The Texas Lottery Commission (Commission) served the notice of hearing via certified mail at each retailer's last known address as it appears in the Commission's records, as authorized by 16 Texas Administrative Code § 401.205(4). Each notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing would be held; a reference to the particular sections of the statutes and rules involved; a short, plain statement of the factual matters asserted; and a statement in at least 12-point, bold-face type that the factual allegations listed in the notice could be deemed admitted and the relief sought might be granted by default against a party that failed to appear at the hearing.

The Commission's staff (Staff) appeared at the hearing. None of the referenced retailers appeared. Based on a retailer's failure to appear, Staff filed a motion to dismiss the summary license suspension case from SOAH's docket and to remand the case to the Commission for informal disposition in accordance with Texas Government Code § 2001.058(d-1) and 1 Texas Administrative Code § 155.501(d). The ALJ concludes that the motion has merit and should be granted.

Accordingly, the motion to dismiss each case listed on Attachment A is granted, and the case is dismissed from SOAH's docket and remanded to the Commission for informal disposition under Texas Government Code § 2001.056.

Signed November 3, 2016.


HUNTER BURKHALTER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

TEXAS LOTTERY COMMISSION
REVOCAION HEARINGS
STATE OFFICE OF ADMINISTRATIVE HEARINGS
ATTACHMENT A
HEARING HELD: October 27, 2016

SOAH DOCKET NO.	LOTTERY TICKET SALES AGENT NAME	SALES AGENT ADDRESS	LOTTERY LICENSE NO.
362-17-0546	U S S Concepts Inc., Agent D/B/A Spencer & Citgo	3615 Pine Valley Dr. Pearland, TX 77581	175394

Commission Order No. 17-0011

Date: DECEMBER 1, 2016

DOCKET NO. 362-16-5599

TEXAS LOTTERY COMMISSION PETITIONER	§	BEFORE THE STATE OFFICE
	§	
	§	
VS.	§	OF
	§	
S. AWAD ENTERPRISES, INC. D/B/A SAMMY'S AUTO CARE & COLLISION CENTER RESPONDENT	§	
	§	
	§	ADMINISTRATIVE HEARINGS

ORDER OF THE COMMISSION

TO: S. Awad Enterprises, Inc.
D/B/A Sammy's Auto Care
& Collision Center
14403 Memorial Dr.
Houston, TX 77079-6705

During an open meeting at Austin, Texas, the Texas Lottery Commission (Commission) heard the license revocation case listed on Attachment A hereto, in which the Respondent did not appear at the scheduled hearing before the State Office of Administrative Hearings (SOAH) to respond to the allegations set forth in the Commission's notice of hearing.

I. Findings of Fact

1. Timely and adequate notice of the hearing in the referenced case before SOAH was provided to the Respondent, pursuant to TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052 and 1 TEX. ADMIN. CODE § 155.401. The notice of hearing included a disclosure in at least 12-point, bold-face type, that the factual allegations listed in the

Commission Order No. 17-0011

Date: DECEMBER 1, 2016

notice could be deemed admitted, and the relief sought in the notice of hearing might be granted by default against the party that fails to appear at hearing.

2. After timely and adequate notice was given to the Respondent, the case was heard by a SOAH Administrative Law Judge (ALJ). The Respondent did not appear at the hearing.

3. The Commission, by and through its attorney of record, filed a motion to dismiss the case from the SOAH docket and to remand the case to the Commission for informal disposition, in accordance with TEX. GOV'T CODE ANN. § 2001.058(d-1) and 1 TEX. ADMIN. CODE § 155.501(d).

4. The ALJ dismissed the case from the SOAH docket and remanded the case to the Commission for informal disposition under TEX. GOV'T CODE ANN. § 2001.056.

II. Conclusions of Law

1. The Commission has jurisdiction over this matter pursuant to TEX. GOV'T CODE ANN. § 466.155 and 16 TEX. ADMIN. CODE, Chapter 401.

2. The Respondent violated the State Lottery Act and the Commission's Rules as set forth in the Commission's notice of hearing.

3. The relief sought by the Commission Staff is fair, reasonable, and adequately protects the public.

III. Order

NOW, THEREFORE, IT IS ORDERED that, after review and due consideration

Commission Order No. 17-0011

Date: DECEMBER 1, 2016

of the administrative record, the contested case listed on Attachment A hereto, which is incorporated into this Order for all purposes, is hereby disposed of by default, and:

1. All allegations set forth in the Commission's notice of hearing in the case are deemed admitted; and
2. The Lottery Ticket Sales Agent License listed on Attachment A is hereby revoked.

Passed and approved at the regular meeting of the Texas Lottery Commission at Austin, Texas, on the 1ST day of December, 2016.

Entered this 1ST day of December, 2016.

J. WINSTON KRAUSE, CHAIRMAN

CARMEN ARRIETA-CANDELARIA,
COMMISSIONER

PEGGY A. HEEG, COMMISSIONER

DOUG LOWE, COMMISSIONER

ROBERT RIVERA, COMMISSIONER

Commission Order No. 17-0011

Date: DECEMBER 1, 2016

ATTACHMENT A

Tab No.	SOAH DOCKET NO.	LOTTERY TICKET SALES AGENT NAME	SALES AGENT ADDRESS	LOTTERY LICENSE NO.
H.	362-16-5599	S. Awad Enterprises, Inc. D/B/A Sammy's Auto Care & Collision Center	14403 Memorial Dr. Houston, TX 77079-6705	151457

DOCKET NO. 362-16-5599

IN THE MATTER OF	§	BEFORE THE STATE OFFICE
	§	
THE REVOCATION OF	§	OF
S. AWAD ENTERPRISES, INC.	§	
D/B/A SAMMY'S AUTO CARE &	§	ADMINISTRATIVE HEARINGS
COLLISION CENTER	§	

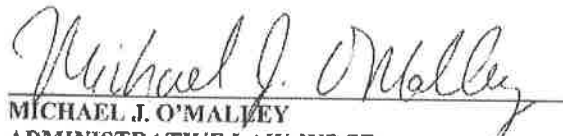
ORDER OF DISMISSAL AND REMAND

A hearing on this matter was convened on October 26, 2016, before the State Office of Administrative Hearings (SOAH). Timely and adequate notice of the hearing was provided to S. Awad Enterprises, Inc. d/b/a Sammy's Auto Care & Collision Center (Respondent) in accordance with Texas Government Code §§ 2001.051 and 2001.052, and 1 Texas Administrative Code §§ 155.401 and 155.501(b)(2). The Texas Lottery Commission (Commission) served the notice of hearing via certified mail at Respondent's last known address as it appears in the Commission's records, as authorized by 16 Texas Administrative Code § 401.205(4). The notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing would be held; a reference to the particular sections of the statutes and rules involved; a short, plain statement of the factual matters asserted; and a statement in at least 12-point, bold-face type that the factual allegations listed in the notice could be deemed admitted and the relief sought might be granted by default against a party that failed to appear at the hearing.

The Commission's staff (Staff) appeared at the hearing. Respondent did not appear at the hearing. Based on Respondent's failure to appear, Staff filed a motion to remand, requesting dismissal of the case from SOAH's docket and remanding it to the Commission for informal disposition in accordance with Texas Government Code § 2001.058(d-1) and 1 Texas Administrative Code § 155.501(d). The ALJ concludes that the motion has merit and should be granted.

Accordingly, the motion to remand is granted, and the case is dismissed from SOAH's docket and remanded to the Commission for informal disposition under Texas Government Code § 2001.056.

SIGNED October 26, 2016.


 MICHAEL J. O'MALLEY
 ADMINISTRATIVE LAW JUDGE
 STATE OFFICE OF ADMINISTRATIVE HEARING

Commissioners:

J. Winston Krause,
Chairman

Carmen Arrieta-Candelaria

Peggy A. Heeg

Doug Lowe

Robert Rivera



TEXAS LOTTERY COMMISSION

Gary Grief, *Executive Director*

Alfonso D. Royal III, *Charitable Bingo Operations Director*

FIRST CLASS UNITED STATES MAIL
and
CERTIFIED MAIL NO. 91 7199 9991 7031 0813 4843

August 23, 2016

S. Awad Enterprises, Inc.
D/B/A Sammy's Auto Care & Collision Center
14403 Memorial Dr.
Houston, TX 77079-6705

**RE: NOTICE OF FINAL HEARING ON REVOCATION OF LOTTERY LICENSE;
DOCKET NO. 362-16-5599;
TEXAS LOTTERY TICKET SALES AGENT LICENSE NO. 151457**

Dear Sir/Madam:

Be advised that this letter is formal notice that a final public hearing to consider the revocation of the above-referenced lottery license, pursuant to the provisions of the TEX. GOV'T. CODE, Chapters 466, 2001, and 2003; 1 TEX. ADMIN. CODE 155; and 16 TEX. ADMIN. CODE, Chapter 401, will be held, as follows:

TIME OF HEARING:	9:00 a.m.
DATE OF HEARING:	October 26, 2016
LOCATION OF HEARING:	State Office of Administrative Hearings William P. Clements Building 300 West 15th St. 4th Floor Austin, Texas 78701

I.

Factual Matters Asserted

On April 15, 2016, Sammy's Auto Care & Collision Center was notified by letter of its failure to offer a minimum of two instant games for sale if two or more games are available from the Lottery as required by TEX. ADMIN. CODE § 401.158(b)(18). Sammy's Auto Care & Collision Center continues to violate the requirement in TEX. ADMIN. CODE § 401.158(b)(18). Accordingly, its license is subject to suspension or revocation pursuant to the provisions of TEX. GOV'T CODE ANN. § 466.155(a)(5); TEX. ADMIN. CODE § 401.158(b)(18) and (41).

II.
Legal Authority and Jurisdiction

The Texas Lottery Commission has jurisdiction over this matter pursuant to the State Lottery Act, TEX. GOV'T CODE ANN. § 466.155, and 16 TEX. ADMIN. CODE, Chapter 401.

The State Office of Administrative Hearings has jurisdiction over this matter pursuant to TEX. GOV'T CODE ANN., Chapter 2003.

III.
Applicable Statutes and Rules

TEX. GOV'T CODE ANN. § 466.151(e) states:

The director may issue a license to a person only if the director finds that the person's experience, character, and general fitness are such that the person's participation as a sales agent will not detract from the integrity, security, honesty, and fairness of the operation of the lottery.

TEX. GOV'T CODE ANN. § 466.155(a)(5) states:

After a hearing, the director shall deny an application for a license or the commission shall suspend or revoke a license if the director or commission, as applicable, finds that the applicant or sales agent: ... has violated this chapter or a rule adopted under this chapter.

TEX. GOV'T CODE ANN. § 466.155(c) states:

At a hearing, an applicant or sales agent must show by a preponderance of the evidence why the application should not be denied or the license suspended or revoked.

16 TEX. ADMIN. CODE § 401.158(b)(18) and (41) states in part:

Without limiting the commission's ability to consider factors listed in §401.153(b) of this title as grounds for suspension or revocation of a license issued under this subchapter, the commission may also suspend or revoke a license for reasons including, but not limited to, any of the following:

(18) licensee fails to offer a minimum of two instant ticket games for sale if two or more instant games are available from the Lottery; ... and

(41) licensee has violated a provision of the State Lottery Act, Government Code, Chapter 466 or a rule adopted under the State Lottery Act.

16 TEX. ADMIN. CODE § 401.158(a) states in pertinent part:

The commission may suspend or revoke any license issued under this subchapter if the commission finds that any factor listed as grounds for denial of a license under § 401.153(b) of this title (relating to Qualifications for License) or any factor listed in subsection (b) of this section apply to the licensee.

All visitors to the William P. Clements Building without an agency or DPS issued ID card will be required to sign a log and receive a visitor's pass. Persons going to a hearing at the State Office of Administrative Hearings will need to identify to the security officer the hearing that they are attending. Persons must provide the officer with the SOAH docket number to be allowed access to the hearing room. Individuals should allow additional time to go through the security process. Failure to provide the docket number may result in delaying the individual's arrival to the hearing.

PLEASE NOTE: This notice of hearing is not a summons. If you do not oppose the revocation of your license, your appearance at the hearing is not required. If you do oppose the revocation of your license, you have the right to appear and present evidence.

PURSUANT TO TITLE 16 TEXAS ADMINISTRATIVE CODE § 401.229 AND TITLE 1 TEXAS ADMINISTRATIVE CODE § 155.55, FAILURE TO APPEAR AT THE HEARING MAY RESULT IN THE ALLEGATIONS AGAINST YOU SET OUT IN THE NOTICE OF HEARING BEING ADMITTED AS TRUE AND THE RELIEF REQUESTED MAY BE GRANTED BY DEFAULT.

The hearing is conducted under authority of the State Lottery Act, Texas Government Code Annotated, Chapters 466.155 and 466.160; together with Title 16 of the Texas Administrative Code, Chapters 401.153, 401.158-159, and 401.201-227.

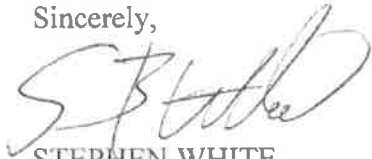
The State Office of Administrative Hearings (SOAH) is now offering you the ability to receive service of orders and other documents issued by SOAH through email rather than mail or fax. To elect to receive service of SOAH-issued documents by email, go to the SOAH website (www.soah.state.tx.us), click on the "Service by Email" tab, and follow the instructions. **NOTE: Your request to receive SOAH-issued documents by email does not change the procedures you must follow in order to file documents with SOAH. The requirements for filing documents and providing copies to the other parties are set out in Sections 155.101 and 155.103 of SOAH's Procedural Rules, which are available on SOAH's website under the "Procedural Rules" tab.**

All hearings are formal due-process matters governed by and conducted in accordance with law, including the Texas Government Code, Chapters 2001 and 466, the Texas Rules of Civil Procedures, the Texas Rules of Civil Evidence, and Title 16 of the Texas Administrative Code, Chapter 401.

A court reporter will be present, and a record of the proceedings will be created. It is, however, the sole and exclusive responsibility of each party to request and pay for any printed transcript.

The Commission reserves the right to amend this Notice of Hearing.

Sincerely,



STEPHEN WHITE
Assistant General Counsel
Texas Lottery Commission

CERTIFICATE OF SERVICE

Pursuant to the Texas Rules of Civil Procedures, Rule 21a, Texas Government Code, Chapter 466.155(b) and to Title 16 the Texas Administrative Code, Chapter 401.222, I do hereby certify that on this the 23rd day of August, 2016, a true and correct copy of the foregoing *Notice of Final Hearing on Revocation of Lottery License* has been served by First Class United States Mail and Certified Mail No. 91 7199 9991 7031 0813 4843, by depositing each mailing in a post office or official depository under the care and custody of the United States Postal Service, enclosed in a postpaid wrapper properly addressed to S. Awad Enterprises, Inc., D/B/A Sammy's Auto Care & Collision Center, 14403 Memorial Dr., Houston, TX 77079-6705.



STEPHEN WHITE
Assistant General Counsel
Texas Lottery Commission
P.O. Box 16630
Austin, Texas 78761-6630
(512) 344-5465
(512) 344-5189 Fax

cc: State Office of Administrative Hearings
Lottery Operations, Retailer Services Department

Commission Order No. 17-0016

Date: DECEMBER 1, 2016

DOCKET NO. 362-16-3511.B

TEXAS LOTTERY COMMISSION	§	BEFORE THE TEXAS
PETITIONER	§	
	§	
VS.	§	
	§	
VFW POST 2427 TOMBALL	§	
RESPONDENT	§	LOTTERY COMMISSION

ORDER OF THE COMMISSION

TO: Mr. Tony Lozano
VFW Post 2427 Tomball
P.O. Box 219
Tomball, TX 77377-0219

During an open meeting at Austin, Texas, the Texas Lottery Commission finds that, after proper and timely notice was given, the above-styled case was heard by an Administrative Law Judge who made and filed a Proposal for Decision containing the Administrative Law Judge's Findings of Fact and Conclusions of Law. The Proposal for Decision was properly served and all parties were given an opportunity to file exceptions and replies as part of the record herein.

The Texas Lottery Commission, after review and due consideration of the Proposal for Decision, and exceptions and replies filed, if any, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge as if fully set out and separately stated herein. All proposed Findings of Fact and Conclusions of Law not specifically adopted herein are hereby denied.

Commission Order No. 17-0016

Date: DECEMBER 1, 2016

NOW, THEREFORE, IT IS ORDERED that the license to conduct bingo issued to VFW Post 2427, of Tomball, Texas is hereby revoked.

Passed and approved at the regular meeting of the Texas Lottery Commission at Austin, Texas, on the 1ST day of DECEMBER, 2016.

Entered this 1ST day of DECEMBER, 2016.

J. WINSTON KRAUSE, CHAIRMAN

CARMEN ARRIETA-CANDELARIA,
COMMISSIONER

PEGGY A. HEEG, COMMISSIONER

DOUG LOWE, COMMISSIONER

ROBERT RIVERA, COMMISSIONER

State Office of Administrative Hearings



Lesli G. Ginn
Chief Administrative Law Judge

November 4, 2016

2016 NOV - 7 PM 2: 26
GENERAL COUNSEL

VIA INTERAGENCY

Gary Grief
Executive Director
Texas Lottery Commission
611 East 6th Street
Austin, Texas 78701

**RE: Docket No. 362-16-3511.B; Texas Lottery Commission v. VFW POST
2427 TOMBALL**

Dear Mr. Grief:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with Texas Administrative Code title 1, § 155.507(c), a SOAH rule found at <www.soah.state.tx.us>.

A handwritten signature in cursive script that reads "Laura M. Valdez".

LAURA M. VALDEZ
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

LMV/et

cc: Stephen White, Assistant General Counsel, Texas Lottery Commission, 611 E. 6th, Austin Texas 78701 - VIA INTERAGENCY MAIL
Tony Lozano, VFW Post 2427 Tomball, P.O. Box 219 Tomball, TX 77377-0219 -VIA REGULAR MAIL

354257

SOAH DOCKET NO. 362-16-3511.B

TEXAS LOTTERY COMMISSION,
Petitioner

v.

VFW POST 2427 TOMBALL,
Respondent

§
§
§
§
§
§
§
§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff (Staff) of the Charitable Bingo Operations Division of the Texas Lottery Commission (Commission) proposes revocation of the license of VFW Post 2427 Tomball (Post 2427/Respondent) to conduct charitable bingo operations on the basis that Respondent has violations of the statutes and rules regarding bingo operations. After considering the evidence and arguments presented, the Administrative Law Judge (ALJ) finds that Post 2427 should have its license to conduct charitable bingo operations revoked.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The hearing convened on September 7, 2016, in Austin, Texas, before ALJ Laura M. Valdez. Staff appeared and was represented by Stephen White, Assistant General Counsel. Respondent appeared and was represented *pro se* by the post commander at the time of the alleged violations, Bill Schaffer, the current post commander, Aaron Isaacs, and the bookkeeper for Post 2427, Candace Baines. The hearing concluded and the record closed that day. There are no contested issues of notice or jurisdiction in this proceeding. Therefore, those matters are addressed in the findings of fact and conclusions of law without further discussion here.

II. DISCUSSION

This is a very straightforward case. Staff alleges that the following violations are established by the documentary records and evidence:

1. Post 2427 failed to have positive net proceeds for the fourth quarter of 2014 through the third quarter of 2015, in violation of Texas Occupations Code (Code) § 2001.451(g)(1) and 16 Texas Administrative Code § 402.452.
2. Post 2427 failed to file a supplement to its quarterly report for the period ending March 31, 2016, in violation of Code § 2001.504 and 16 Texas Administrative Code § 402.600. Specifically, Post 2427 failed to file a Charitable Distributions Details for Conductors and Unit Member form.

To support its allegations, Staff presented the testimony of Joy Bishop, the Accounting Services Coordinator for the Commission, as well as certified business records. Ms. Bishop testified that Post 2427 held a conductor license issued by the Commission from October 31, 2014 to October 30, 2015.¹ She stated that on November 9, 2015, Post 2427 was notified that it failed to have positive net proceeds for the fourth quarter of 2014 through the third quarter of 2015, in violation of Code § 2001.451(g)(1) and 16 Texas Administrative Code § 402.452.² The notice further explained that due to the violation, Post 2427 was currently ineligible for a license to conduct bingo, unless a waiver form was filed with the Commission seeking waiver from the requirement to conduct bingo operations resulting in positive proceeds, and including a business plan which would document how the Post intends to come into compliance and rectify the violation.³ The notice gave Post 2427 until November 30, 2015, to file the waiver form. Post 2427's waiver form was filed on June 9, 2016, and requested a waiver because "we showed a loss profit for the year Oct. 1, 2014-Sept. 30, 2015" and did not submit a business plan detailing how the Post would come into compliance.⁴ Ms. Bishop stated that Post 2427's request for waiver was denied.

¹ Commission Ex. 2.

² Commission Ex. 1.

³ 16 Tex. Admin. Code § 402.450(e).

⁴ Commission Ex. 8.

Ms. Bishop also testified that on February 22, 2016, the Commission sent notice again to Post 2427 notifying it that the Commission intended to initiate administrative disciplinary action against Post 2427 because it: (1) failed to have positive net proceeds for the fourth quarter of 2014 through the third quarter of 2015, in violation of Code § 2001.451(g)(1) and 16 Texas Administrative Code § 402.452, and (2) failed to file a supplement to its quarterly report for the period ending March 31, 2016, in violation of Code § 2001.504 and 16 Texas Administrative Code § 402.600. Specifically, Post 2427 failed to file a Charitable Distributions Details for Conductors and Unit Member form.⁵ Post 2427 did not dispute Staff's evidence. Therefore, Staff's evidence sufficiently establishes the two violations alleged.

At the hearing, Post 2427 essentially conceded its violations and admitted the allegations, but contended that they were due to a lack of education about the requirements. Currently, Post 2427 is attempting to get its financial situation straightened out, but it has been having difficulty doing so. The Post's representative offered no legal defense to the evidence of violations, but rather indicated that the Post hoped to get its financial situation cleaned up and make sure that it was in compliance with the law regarding its bingo operations. Mr. Isaacs indicated that it was his understanding that as Post 2427 commander, his primary objective was to make sure that the Post's bingo taxes were paid and current. Mr. Isaacs testified that he was not focused on making sure that the bingo operations were not running quarterly negative profit proceeds.

In light of Staff's evidence and Post 2427's own admissions, it is undisputed that Post 2427 had negative net proceeds for the time periods alleged and failed to submit a supplement to its quarterly report, specifically, Post 2427 failed to submit the requisite Charitable Distributions Details for Conductors and Unit Member form. Post 2427 bookkeeper Ms. Baines testified that it has been attempting to document and maintain the proper records to show that its financial activities are compliant with the applicable bingo statutes and rules. Because Post 2427 did not challenge the factual allegations and because Staff's evidence proves the allegations, the ALJ finds no reason to discuss the evidence and allegations in any greater detail.

⁵ Commission Ex. 3.

Because Staff has shown the alleged violations by Post 2427, the ALJ concludes that its license should be revoked. In support of this recommendation, the ALJ makes the following findings of fact and conclusions of law.

III. FINDINGS OF FACT

1. The staff (Staff) of the Charitable Bingo Operations Division of the Texas Lottery Commission (Commission) seeks to revoke the license of VFW Post 2427 Tomball (Post 2427) to conduct charitable bingo on the basis that Post 2427, while previously licensed, had two violations of the statutes and rules regarding bingo operations.
2. Post 2427 held a conductor license issued by the Commission from October 31, 2014 to October 30, 2015.
3. On February 22, 2016, the Commission sent a notice of Opportunity to Show Compliance with Law to Post 2427 setting forth the reasons for revocation.
4. On August 25, 2016, the Commission issued an amended notice of hearing in this matter.
5. The notice of hearing informed Post 2427 of the date, time, and location of the hearing; the factual matters to be considered; the legal authority under which the hearing would be held; and the statutory provisions applicable to the matters asserted.
6. The hearing convened on September 7, 2016, in Austin, Texas, before Administrative Law Judge Laura M. Valdez. The Commission appeared and was represented by Stephen White, Assistant General Counsel. Respondent appeared and was represented *pro se* by the Post commander at the time of the alleged violations, Bill Schaffer, the current Post commander, Aaron Isaacs, and the bookkeeper for Post 2427, Candace Baines.
7. The hearing concluded and the record closed on September 7, 2016.
8. Post 2427 failed to have positive net proceeds for the fourth quarter of 2014 through the third quarter of 2015.
9. Post 2427 failed to file a supplement to its quarterly report for the period ending March 31, 2016. Specifically, Post 2427 failed to file a Charitable Distributions Details for Conductors and Unit Member form.

IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this proceeding pursuant to Texas Occupations Code (Code) ch. 2001.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with findings of fact and conclusions of law, as provided by Texas Government Code ch. 2003.
3. Proper and timely notice was effected upon Post 2427 in accordance with the Administrative Procedure Act, Texas Government Code ch. 2001, in that the notice of hearing sent contained the date, time, and location of the hearing; the factual matters to be considered; the legal authority under which the hearing would be held; and the statutory provisions applicable to the matters asserted.
4. Post 2427 violated Code § 2001.451(g)(1) and 16 Texas Administrative Code § 402.452, by failing to have positive net proceeds for the fourth quarter of 2014 through the third quarter of 2015.
5. Post 2427 violated Code § 2001.504 and 16 Texas Administrative Code § 402.600, by failing to file a Charitable Distributions Details for Conductors and Unit Member form supplement to its quarterly report for the period ending March 31, 2016.
6. Under Code § 2001.353, a license may be suspended or revoked for failure to comply with Chapter 2001 of the Code or a Commission rule.
7. Based on the foregoing Findings of Fact and Conclusions of Law, Post 2427's license should be revoked pursuant to Code § 2001.353.

SIGNED: November 4, 2016.



LAURA M. VALDEZ

ADMINISTRATIVE LAW JUDGE

STATE OFFICE OF ADMINISTRATIVE HEARINGS

Commission Order No. 17-0018

Date: DECEMBER 1, 2016

DOCKET NO. 362-16-1513.B

TEXAS LOTTERY COMMISSION, PETITIONER	§ § §	BEFORE THE TEXAS
VS.	§ §	
JULAM INVESTMENTS, INC. RESPONDENT	§ §	LOTTERY COMMISSION

ORDER OF THE COMMISSION

TO: Mr. Hayward Rigano
Attorney at Law
P.O. Box 3384
Longview, TX 75606

On October 13, 2016, the Texas Lottery Commission entered a final order in the above-styled case, revoking the commercial lessor license of Julam Investments, Inc.

During an open meeting at Austin, Texas, the Commission considered the *Motion for Rehearing of Texas Lottery Commission's Decision to Revoke the License of Julam Investments, Inc.* filed on November 7, 2016, by Julam Investments, Inc., and the *Texas Lottery Commission's Response to Julam Investments, Inc.'s Motion for Rehearing* filed on November 21. After review and due consideration of the foregoing:

IT IS ORDERED by the Texas Lottery Commission that Julam Investments, Inc.'s *Motion for Rehearing* is DENIED.

Commission Order No. 17-0018

Date: DECEMBER 1, 2016

Passed and approved at the regular meeting of the Texas Lottery Commission at Austin, Texas, on the 1ST day of DECEMBER, 2016.

Entered this 1ST day of DECEMBER, 2016.

J. WINSTON KRAUSE, CHAIRMAN

CARMEN ARRIETA-CANDELARIA,
COMMISSIONER

PEGGY A. HEEG, COMMISSIONER

DOUG LOWE, COMMISSIONER

ROBERT RIVERA, COMMISSIONER

Commission Order No. 17-0007

Date: OCTOBER 13, 2016

DOCKET NO. 362-16-1513.B

TEXAS LOTTERY COMMISSION	§	BEFORE THE TEXAS
PETITIONER	§	
	§	
VS.	§	
	§	
JULAM INVESTMENTS, INC.	§	
RESPONDENT	§	LOTTERY COMMISSION

ORDER OF THE COMMISSION

TO: Mr. Hayward Rigano
Attorney at Law
P.O. Box 3384
Longview, TX 75606

During open meeting at Austin, Texas, the Texas Lottery Commission finds that, after proper and timely notice was given, the above-styled case was heard by an Administrative Law Judge who made and filed a Proposal for Decision containing the Administrative Law Judge's Findings of Fact and Conclusions of Law. The Proposal for Decision was properly served and all parties were given an opportunity to file exceptions and replies as part of the record herein.

The Texas Lottery Commission, after review and due consideration of the Proposal for Decision, and exceptions and replies filed, if any, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge as if fully set out and separately stated herein. All proposed Findings of Fact and Conclusions of Law not specifically adopted herein are hereby denied.


Commission Order No. 17-0007

Date: OCTOBER 13, 2016

NOW, THEREFORE, IT IS ORDERED that the commercial lessor license of Julam Investments, Inc. of Fort Worth, Texas is hereby revoked.

Passed and approved at the regular meeting of the Texas Lottery Commission at Austin, Texas, on the 13TH day of OCTOBER, 2016.


Entered this 13TH day of OCTOBER, 2016.



J. WINSTON KRAUSE, CHAIRMAN



CARMEN ARRIETA-CANDELARIA,
COMMISSIONER



PEGGY A. HEEG, COMMISSIONER



DOUG LOWE, COMMISSIONER



ROBERT RIVERA, COMMISSIONER

CASE SUMMARY

PARTY NAME/STATUS: Texas Lottery Commission Staff, Petitioner

DOCKET NO./CASE NAME: 362-16-1513.B; Julam Investments, Inc., Respondent

ISSUES:

1. Were the gaming devices operated by Respondent at the Lucky Star Bingo hall illegal gambling devices and unauthorized games of chance within the meaning of TEX. OCC. CODE ANN. §2001.416? [Yes]
2. Does it matter whether the gaming devices were on or off the bingo premises? [No]
3. Did the gaming devices at Lucky Star Bingo hall award players bingo equipment in violation of 16 TEX. ADMIN. CODE § 402.211(f)? [Yes]
4. What is an appropriate sanction for such violations? [Revocation of Respondent's license]

KEY FACTS:

Respondent, Julam Investments, Inc. is a licensed commercial lessor that leased bingo premises at the Lucky Star Bingo hall. An owner and officer of Respondent operated gaming devices in a room adjoining the Lucky Star Bingo hall. Players could exchange points won on the gaming devices for bingo pull-tabs. The owner and officer of Respondent split the proceeds from the gaming devices with the owner of the gaming devices. The charities that conducted bingo at the bingo hall did not receive any of the proceeds from the gaming devices. The Administrative Law (ALJ) found Respondent operated illegal gambling devices in violation of TEX. OCC. CODE ANN. § 2001.416 and TEX. ADMIN. CODE § 402.211(f), and recommended revocation of its license.

The ALJ recommended revoking Respondent's commercial lessor license because Respondent "after repeatedly being notified by the Commission of illegal gambling devices, Respondent continued to operate the illegal gambling devices and blatantly ignored the Commission."

LEGAL PRINCIPLES INVOLVED:

The ALJ determined the gaming devices were illegal gambling devices for three reasons: (1) because the gaming devices awarded credits exchangeable for bingo pull-tabs. Bingo pull-tabs are not "non-cash merchandise prizes, toys or novelties." (citing *Hardy v. State*, 102 S.W.3d 123 (Tex. 2003); and TEX. ATT'Y GEN. OP. No.GA-0812 (2010)); (2) because players could accrue points on a card that allowed players to play the machines in the future (citing *State v. \$1,7600.00 In U.S. Currency*, 406 S.W.3d 177 (Tex. 2013) in which the Supreme Court held "non-immediate right to replay" was "thing a value" as defined in Texas Penal Code §47.01(9)); and (3) the gaming machines were not solely for bona fide amusement purposes as required by Texas Penal Code §47.01(4)(B). The ALJ also held that it was "irrelevant" whether the devices were on or off the bingo premises. The issue in determining whether an unauthorized game of chance was allowed during a bingo occasion in violation of TEX. OCC. CODE ANN. § 2001.416 is whether the activities between the unauthorized games and the bingo operations were "impermissibly intertwined." The ALJ also held Respondent violated 16 Administrative Code § 402.211(f) because the gaming devices awarded players credits exchangeable for bingo pull-tabs.

ACTION REQUESTED:

Adopt the ALJ's proposed findings of fact and conclusions and law and recommended sanction of revocation of Respondent's license.

CASE SUMMARY

PARTY NAME/STATUS: JULAM INVESTMENTS, INC./RESPONDENT

DOCKET NO./CASE NAME: 362-16-1513.B TEX. LOTTERY COMM'N VS. JULAM INVESTMENTS, INC.

ISSUE(S): Did Julam allow other games of chance to be played during a bingo session?
Did Julam allow bingo products to be used as a prize?

KEY FACTS: Julam Investments, Inc. was the commercial lessor at the Lucky Star Bingo in White Settlement, Texas. The bingo hall was open for over 10 years. At all times since its inception, the bingo hall was separated into two rooms. One room had bingo and the other room had some type of game. The Bingo hall portion of the building would be closed off from the gameroom during bingo sessions. At no time was any type of bingo allowed into the gameroom. The gameroom allowed the patrons to win a prize called a bingo buck. This buck was then allowed to be exchanged for items in the bingo hall.

The Texas Lottery Commission audited and investigated the hall on numerous occasions. Starting in 2009, the Commission knew how the bingo hall was set up with the gameroom and the type of games being operated as well as the prize being offered. The Commission investigated the hall on three different occasions from 2009 to 2014. At no time did anyone from the Commission or the Charitable Bingo division inform Julam that there was an issue about the games or the prize being offered until three weeks before the hall closed because of economic reasons and the poor health of the owner.

LEGAL PRINCIPLES INVOLVED: Julam questions the action taken by the commission and the action requested. Why was this issue not raised prior to the August 2015 notice of violation? Julam was at this time in severe decline due to the economic situation of the hall and the declining health of its owner, Ruby Morgan. Ms. Morgan stated that had someone simply told her there was an issue with the games and the prizes, she would have corrected the problem. But for at least six years the Commission knew of the issue and simply waited until Ms. Morgan was not in any condition to contest the issue and filed this action. The legal principle of laches should have prevented the Commission from now trying to strip Ms. Morgan of the only property she now has left, her bingo lessor license held by Julam. Further, the Commission failed to prove that the game in question was even a "game of chance". They called it an eight liner, but offered no evidence as how the game was set up or how it operated.

ACTION REQUESTED: Ms. Morgan as the owner of Julam Investments, Inc. simply states that if she has violated any rule or law of the Commission that it was not intentional. She was in declining health for the last few years the hall was open. She simply wants a chance to sell Julam Investments, Inc. and recoup some of the money she used to buy Julam. She understands that rules change and she should have kept up better with what was required of her as an owner. . She has no desire to ever operate or be involved in any type of bingo operation in the future and would agree to be banned from ever doing so.

DOCKET NO. 362-16-1513.B

TEXAS LOTTERY COMMISSION	§	BEFORE THE
V.	§	TEXAS
JULAM INVESTMENTS, INC.	§	LOTTERY COMMISSION

MOTION FOR REHEARING OF TEXAS LOTTERY COMMISSION'S DECISION TO
REVOKE THE LICENSE OF JULAM INVESTMENTS, INC.

TO THE HONORABLE COMMISSIONERS OF THE TEXAS LOTTERY COMMISSION,
COMES NOW, JULAM INVESTMENTS, INC., through their attorney of record and files
this their Motion for Rehearing of the Decision to Revoke the bingo license of Julam
Investments, Inc., and would respectfully show unto the Commission as follows:

I.

Julam Investments, Inc. ("Julam"), believes the Texas Lottery Commission ("Commission") made an error in deciding that Julam had violated certain rules of the Commission and related statutes. We will address each violation in this Motion and demonstrate the facts or lack thereof that affects each issue.

The Commission addressed this case on October 13, 2016, at the Commission's public meeting. The result of the meeting was that the Commission without further finding or comment adopted the Findings of Fact and Conclusions of Law of the Administrative Law Judge ("ALJ").

Judge Michael O'Malley was the ALJ assigned to this case. His Proposal for Decision was delivered on June 27, 2016 and contained 12 Findings of Fact and 9

Conclusions of Law. Julam would state that Findings of Fact 3, 4, 5, 6, 8 and 9 are without sufficient evidence or facts to substantiate these findings and should be overruled. Julam would state that Conclusions of Law 5, 6, 7, 8 and 9 are without sufficient evidence or facts to substantiate them and should therefore be overruled.

II.

ERRONEOUS FINDINGS OF FACT

Finding of Fact No. 3: The Texas Lottery Commission's (Commission's) allegation in this case involve the operation of illegal gaming devices, commonly referred to as "eight liners".

The allegation in this case was that Julam allowed games of chance to be operated during a bingo session within the area of the bingo hall. The Commission offered no evidence during the hearing to substantiate what type of game or device was being operated in the room. No evidence was presented at the Commission meeting either that demonstrated what type of game or device was present in the room. No evidence is in the record in this case that substantiates this Finding of Fact.

Finding of Fact No. 4: Respondent, by and through Ruby Morgan, operated gaming devices in a room inside the Lucky Star Bingo Hall.

The evidence at the hearing was that the room was adjacent to the bingo hall, separated by a wall with two doors in it. See Exhibit 8, pp 248-253. (Exhibit refers to the exhibits admitted at the hearing and the pp refers to the stamped page numbers assigned to the exhibits by the Commission.) No bingo activities were ever conducted in the room where the games were being operated. See *Id.* As previously stated, no evidence was presented as to what type of games or devices were present. See Discussion of Finding of Fact No.

3. hereinabove.

Finding of Fact No 5: The gaming machines were operated at the Lucky Star Bingo Hall during licensed bingo occasions while bingo was being conducted.

It is true that the games or devices were being operated in the separate room during times when bingo was being conducted, the room where the games were being operated was not part of the bingo hall, as no bingo activities were ever conducted in the room adjacent to the bingo hall. See *Id.*

Finding of Fact No. 6: Players of the gaming machines could only exchange their accrued points for bingo pull-tabs during the licensed bingo times.

The points earned on the games or devices could be exchanged for other items in the bingo hall such as daubers, snacks or any other item not controlled by the Commission rules or regulations. See Exhibit 8 pp. 215-255 and p. 273.

Finding of Fact No. 8: The Play Texas pull-tab game pays out cash prizes up to \$105.26.

No evidence was presented at the hearing or offered in way of exhibit that set out how much the pull tab paid out as a prize.

Finding of Fact No. 9: The Commission warned Respondent that the Attorney General had held that gaming devices that awarded tickets exchangeable for regulated bingo products, including bingo pull-tabs, were illegal gambling devices and violated Texas Occupations Code § 2001.416.

The Attorney General Opinion that the ALJ was referring to was Opinion GA-0812. The opinion was never given to Respondent, as there is no evidence that it was delivered to them. See Exhibit 8 pp. 241-243. The Commission introduced at the hearing in Exhibits

12, 13, 14, 15 and 16 but forgot to include the CMRR or some other evidence that such were delivered to the Respondent. The Commission did produce one witness who stated it was her job to mail out certain items to the licensees but could not ascertain that such was sent specifically to Respondent. This so-called notice of violations or conduct that could be a violation amount to no evidence of notice or insufficient evidence of notice.

III.

ERRONEOUS CONCLUSIONS OF LAW

Conclusion of Law No. 5: The gaming machines at the Lucky Star Bingo Hall were illegal gambling devices as defined under Texas Penal Code § 47.01(4).

No evidence was presented at the hearing before the ALJ that substantiates this conclusion. The only statement was by the Commission's attorney that the game or devices were eight liners. A review of the Texas Penal Code will demonstrate there is no legal definition for "eight liner". Several court cases have described a game as an eight liner but none of that evidence was introduced in this case. These games could have been virtually anything, they could have been games on a 3 by 3 matrix that were games of skill, they could have been games of skill, not subject to the Texas Penal Code, they could have been slot machines, but no evidence was introduced by any of the Commission's witness's as to how these games operated and how they were played.

The ALJ states on page 9 of his Proposal that Julam is incorrect in that the Commission did not show evidence of the games being operated by chance. He suggests that the pictures taken by Ding Ayuma were evidence of the games having an element of chance. The report has nine pictures. Four of the pictures show a game. Two pictures show a patron at a game but you can not see the screen. Two are of the screen only and

the game is not being played. How does this show the games have an element of chance? No one is actually playing one that can be seen. No description is offered by Mr. Ayuma in his report on how the game operated. No one testified at the hearing on how the game operated. All of the statements by the ALJ in his proposal for decision are conclusions he offered that are not supported by the record. This clearly shows his bias but we can correct this issue by reviewing the evidence and seeing that the evidence is lacking.

No evidence was introduced to substantiate this Conclusion of Law or insufficient evidence was introduced to substantiate this Conclusion of Law.

Conclusion of Law No. 6: The gaming machines operated at the Lucky Star Bingo did not meet the Texas Penal Code § 47.01(4)(B) exception because the devices that award points or credits for bingo products are not "noncash merchandise prizes toys, or novelties."

Again, there is no evidence presented at the hearing as to what kind of games or devices were being operated at the room adjacent to the bingo hall. These could have been games of skill and therefore not subject to the Texas Penal Code. They could have been almost anything. But since the Commission chose not to introduce evidence as to what kind of game or device it was, there is no evidence or insufficient evidence to substantiate this Conclusion of Law.

Conclusion of Law No. 7: Respondent conducted or allowed a game of chance other than bingo or raffle conducted under Chapter 2002 in violation of Texas Occupations Code §2001.416.

First, the games or devices were in a room separated from the bingo playing area by a wall. See Exhibit 7, p 186 and Exhibit 8, p. 273 and RR 41. No one was allowed to play

bingo in the room where the games were located. See Exhibit 5, p. 63. Also, the evidence in this case does not prove that the game at issue was a game of chance, as previously stated the Commission has failed to produce any evidence or insufficient evidence that the games or devices being complained of were in fact games of chance.

Conclusion of Law No. 8: The gaming machines at the Lucky Star Bingo Hall awarded players with bingo equipment, as defined in § 2001.002(5) of the Texas Occupations Code, in violation of Texas Administrative Code § 402.211(f).

The evidence at the hearing was that the points on a players game could be exchanged for a bingo buck, not bingo equipment. See Exhibit 8. Pull-tabs are not even listed as Bingo Equipment in § 2001.002(5) of the Texas Occupations Code. If it is not listed how could a licensee be on notice that pull tabs are part of bingo equipment. It could not. Thus once again the Commission has failed to provide evidence or what evidence it has presented is insufficient to prove this allegation of awarding bingo equipment from the devices or games.

Conclusion of Law No. 9: Respondent's commercial lessor license is subject to revocation pursuant to Texas Occupations Code § 2001.353(1) and 2001.554(a)(5).

Respondent would state this conclusion is erroneous since the Commission offered very little and in fact no evidence as to its actual allegations which were:

1. That Julam allowed games of chance, other than bingo, to be conducted during a bingo session, in violation of TEX. OCC. CODE § 2001.416(a).

2. That Julam used a game of chance to award bingo equipment as defined in TEX. OCC. CODE § 2001.002(5), in violation of TEX. ADMIN. CODE § 402.211(f).

See Exhibit 1, p. 1-2.

These allegations were unproven to any degree of evidentiary standard. No evidence was introduced as to the game or its operation. No evidence was introduced as to any aspect of the notice of potential violations. No evidence was introduced as to why for 10 years no mention was ever made to Respondent that it was or could be violating the law until it was on the precipice of closing. The evidence in this case lacks any substance of the violations and should be found to be so lacking.

IV.

ARGUMENT AND CASE LAW

The Respondent Julam Investments, Inc., would state that the evidentiary standard for the Commission to prevail is the substantial evidence standard. The crux of a substantial-evidence analysis is whether the agency's findings of underlying fact are reasonable in light of the evidence from which they were purportedly inferred. *Granek v. Texas State Bd. of Med. Exam'rs*, 172 S.W.3d 761, 778 (Tex. App.—Austin 2005, no pet.); *John E. Powers, Agency Adjudications* 163-64 (1990). Julam feels that the Commission has failed to meet this burden.

No evidence was introduced about the games. What were the games, how did they operate, how were points awarded, what did a player have to do to earn points, thus effectively ignoring all reasonable inquiries in favor of the Commission's attorney stating these were eight liners and proceeding. This is not evidence. Attorney statements are not evidence. There is but one conclusion, the Commission failed to meet its burden of proof.

The ALJ makes the conclusion that the games at issue were games of chance because of a picture taken by one of the Commission's investigators shows a picture of the game. This investigator was not called at the hearing to testify on what he saw. The only

evidence is a picture. How he makes the leap from a picture that show a game or device to conclude it is a game of chance demonstrates the complete lack of knowledge of evidence and what it takes to demonstrate substantial evidence.

The ALJ also suggests that the operation of the bingo hall and the game room were impermissibly intertwined for four primary reasons, all of which over look the fact that the games were in a separate room where no bingo games or items were played or sold. First, the bingo bucks were exchangeable for other items as the record reflects. Second, the game room had no connection with the bingo hall, bingo was never conducted in the gameroom and games were never played in the bingo hall. Third, the rooms were separated by a wall, which clearly is an indication that the businesses were to be operated separately. And finally, fourth, it is inconsequential that the gameroom was open during bingo sessions as they were separate businesses.

The rules and regulations for bingo do not prevent a person from owning other games, operating other games or having a financial interest in other businesses, the only question is did Julam allow games of chance to be operated in the bingo hall during a bingo session? The answer is clearly no.

V.

CONCLUSION

In closing, Julam would state that the ALJ Proposal for Decision which was adopted by the Commission was not based upon the proper standard of evidence. The lack of factual evidence is very pervasive in the decision and most of the conclusion reached by

the ALJ are based upon facts which are not taken together any evidence that a violation occurred. Julam respectfully request the Commission to review its determination and overturn this decision.

Respectfully submitted:

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P.O. BOX 3384
Longview, Texas 75606
(903) 238-9770
(903) 238-8273 FAX

By: _____


HAYWARD M. RIGANO, II
State Bar Number 16915950

ATTORNEY FOR RESPONDENT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been forwarded to Stephen White, Assistant General Counsel, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78764, this 7th day of November 2016.

By: _____


HAYWARD M. RIGANO, II

SOAH DOCKET NO. 362-16-1513.B

TEXAS LOTTERY COMMISSION
Petitioner

v.

JULAM INVESTMENTS, INC.
Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

**TEXAS LOTTERY COMMISSION'S RESPONSE TO JULAM INVESTMENTS, INC.'S
MOTION FOR REHEARING**

TO THE HONORABLE COMMISSIONERS OF THE TEXAS LOTTERY COMMISSION:

COMES NOW the Texas Lottery Commission, Charitable Bingo Operations Division (the Commission), and files this Response to Julam Investments, Inc.'s *Motion For Rehearing of the Texas Lottery Commission's Decision to Revoke the License of Julam Investments, Inc.* For the reasons discussed below, the Commission should deny Julam's Motion for Rehearing.

I.

On October 13, 2016, the Texas Lottery Commission adopted the proposed Findings of Fact, Conclusions of Law, and recommendation of Administrative Law Judge (ALJ) Michael O'Malley to revoke the commercial lessor license of Respondent Julam Investments Inc. On November 7, 2016, Respondent filed its motion for rehearing asserting six Findings of Fact and five Conclusions of Law that were not supported by the evidence.

II.

Response to Alleged Erroneous Findings of Fact

1. Respondent asserts in its Motion for Rehearing that there is no evidence to support Finding of Fact No. 3, which states: "The Texas Lottery Commission's (Commission's) allegation in this case involve the operation of illegal gaming devices, commonly referred to as

‘eight-liners.’” The Notice of Hearing admitted into evidence in this matter stated the allegations, which included the following:

Julam Investments, Inc. allowed a game of chance other than charitable bingo or a charitable raffle to be conducted during bingo occasions at the Lucky Star Bingo Hall, in violation of TEX. OCC. CODE ANN. §§ 2001.159(a)(6) and 2001.416, and TEX. ADMIN. CODE § 402.211(f). Specifically, Julam Investments, Inc. allowed the operation of 64 gambling devices, commonly known as “eight-liners” in a “game room” located inside the Lucky Star Bingo Hall.

Finding of Fact No. 3 simply states what the allegation is in this case. The facts and law supporting the allegation are detailed in Judge O’Malley’s other eleven Findings of Fact, nine Conclusions of Law and fifteen page Proposal for Decision. The alleged lack of evidence supporting the allegation is addressed below.

2. Respondent asserts that there is no evidence to support Finding of Fact No. 4, which states: “Respondent, by and through Ruby Morgan, operated gaming devices in a room inside the Lucky Star Bingo Hall.” Respondent asserts that the gaming devices were in a room “adjacent to the bingo hall, separated by a wall with two doors in it”. This is a distinction without meaning. A room adjacent to the bingo hall in the same building, separated by a wall with doors leading to the bingo play area is “a room inside the Lucky Star Bingo Hall”. The Administrative Law Judge correctly described the layout of the bingo hall and location of the gambling illegal gambling devices. Respondent also incorrectly asserts that no bingo activities were ever conducted in the room where the gambling devices were located. In fact, players of the gambling devices were awarded “bingo bucks” in the game room that were then exchanged for entry into bingo games.¹ Respondent also incorrectly asserts that there was no evidence as to what type of games or devices were present. In fact, there was testimony and investigative

¹ Exhibit 4, Exhibit 5.

reports documenting between 64 and 73 gaming machines, along with photographs of the machines.²

3. Next Respondent discusses Finding of Fact No. 5, although he does not seem to dispute its accuracy. Finding of Fact No. 5 states: “The gaming machines were operated at the Lucky Star Bingo Hall during licensed bingo occasions while bingo was being conducted in his motion for rehearing, but then acknowledges in his discussion that “It is true that the games or devices were being operated in the separate room during times when bingo was being conducted.”

4. Respondent disputes Finding of Fact No. 6, which states, “Players of the gaming machines could only exchange their accrued points for bingo pull-tabs during the licensed bingo times.” He cites to Exhibit 8 pp. 215-255 and p. 273, which is the deposition of Ruby Morgan, an owner and officer of Julam Investments, Inc. In fact, Ms. Morgan specifically testified that “at some point” the only thing that could be redeemed for the bingo bucks awarded to the players of the gaming devices were Play Texas pull-tabs. Exhibit 8, pp. 244-245. This admission demonstrates that Finding of Fact No. 6 is correct, even if perhaps at one point merchandise other than Play Texas pull-tabs could be obtained with the bingo bucks.

5. Respondent disputes Finding of Fact No. 8, which states, “The Play Texas pull-tab game pays out cash prize up to \$105.26”, asserting “no evidence was presented at the hearing or offered in way of exhibit that set out how much the pull tab paid out as a prize.” In fact, the investigative report of Anthony Kozak states that each deal of the Play Texas pull tab pays 5 winners \$105.26, and a copy of an advertisement for the Play Texas pull tab that shows each deal of the Play Texas pull tab pays 5 winners \$105.26. Exhibit 6, p. 87.

² Exhibit 4, Exhibit 5, Exhibit 6

6. Respondent disputes Finding of Fact No. 9, which states: “The Commission warned Respondent that the Attorney General had held that gaming devices that awarded tickets exchangeable for regulated bingo products, including bingo pull-tabs, were illegal gambling devices and violated Texas Occupations Code § 2001.416.” Respondent acknowledges in his Motion for Rehearing that a Commission witness testified that Exhibits 12, 13, 14, 15, and 16, which are all written warnings in one form or another informing Respondent that gaming devices that award bingo products such as pull-tabs constituted illegal gambling, were in fact provided to Respondent.

III.

Response to Alleged Erroneous Conclusions of Law

1. Respondent disputes Conclusion of Law No. 5, which states: “The gaming machines at the Lucky Star Bingo Hall were illegal gambling devices as defined under Texas Penal Code 47.01(4).” Respondent asserts there was no evidence to support this conclusion. The Texas Penal Code defines an illegal gambling device as “Any electronic, electromechanical, or mechanical contrivance not excluded under Paragraph (B) that for a consideration affords the player an opportunity to obtain anything of value, **the award of which is determined solely or partially by chance**, even though accompanied by some skill, whether or not the prize is automatically paid by the contrivance.”³ The Texas Attorney General has held that the definition of gambling devices cited above only requires proof that “at least **some element of chance** in the operation of a game”.⁴ The Houston Court of Appeals has held that if a gaming device incorporates “any element of chance, even if the exercise of skill also influences the outcome”, then it is an illegal gambling device.⁵

³ TEX. PEN. CODE ANN. § 47.01(4).

⁴ Op. Tex. Att’y Gen. No. H-1153 (1978).

⁵ *State v. Gambling Device*, 859 S.W.2d 519, 523 (Tex. App.—Houston [1st Dist.] 1993, writ denied).

Eight-liner gaming machines have been described as “electronic machines resembling a slot machines and are commonly called eight-liners because they can pay out in eight separate ways - three across, three down, and two diagonally. These machines operate by displaying a three-by-three-grid of symbols or ‘icons’ with a winning combination being any three matching symbols in a line.”⁶ Photographs and descriptions of the machines in the inspection report of Ding Ayuma, and investigative reports of Charlaine Brannon and Anthony Kozak show that the machines were eight-liner gaming devices.⁷ Investigator Kozak testified about his investigation of Mark Olmstead, the undisputed owner of the eight-liners at the Lucky Star Bingo Hall, that Mr. Olmstead promoted on his website “the use of eight-liner gambling machines in conjunction with the Play Texas Pull-Tabs. The investigation revealed that it was to circumvent the Penal Code definition of illegal gambling devices.”⁸ The Texas Supreme Court quoted with approval an investigator’s description that “eight-liners are electronic devices that operate at least partially by chance.”⁹ Accordingly, the eight-liners at the Lucky Star Bingo Hall were games of chance under Texas law.

2. Respondent disputes Conclusion of Law No. 6, which states: “The gaming machines operated at the Lucky Star Bingo did not meet the Texas Penal Code § 47.01(4)(B) exception because the devices that award points or credits for bingo product are not ‘noncash merchandise prizes toys or novelties.’” Respondent disputes Conclusion of Law No. 6, not because it disputes the conclusion that “the devices that award points or credits for bingo product are not noncash merchandise prizes toys or novelties”, but for the same reason it disputes Conclusion of Law No. 5, that “there is no evidence presented at the hearing as to what kind of games or devices were

⁶ *State v. Wofford*, 34 S.W.3d 671, 676 (Tex. App.—Austin 2000, no pet.)

⁷ Tr. at 33-34, 49-53; TLC Exhibits 4, 5 and 6.

⁸ Tr. at 49.

⁹ *Hardy v. State*, 102 S.W.3d 123, 125 (Tex. 2003).

being operated.” The Staff demonstrated in its response in Section III, paragraph 1, above, that there is ample evidence regarding “what kind of games or devices were being operated”.

3. Respondent disputes Conclusion of Law No. 7, which states: “Respondent conducted or allowed a game of chance other than bingo or raffle conducted under Chapter 2002 in violation of Texas Occupations Code § 2001.416.” Respondent again asserts that because the gambling devices were in a separate room inside the bingo hall, Respondent did not conduct or allow their operation. Respondent makes this argument even though the Respondent’s owner, Ruby Morgan and the manager of the bingo hall, Donnie Morgan, both acknowledge under oath in their deposition testimony that Ruby Morgan leased the gaming machines and oversaw the operation of the gaming machines at the Lucky Star Bingo Hall.¹⁰ Both Ms. Morgan and Mr. Morgan also acknowledged under oath that the machines allowed players to accrue points for future play and awarded Bingo Bucks to players, which were then exchanged for Play Texas pull-tabs.¹¹ Ms. Morgan testified she split the net proceeds from the gaming machines with the owner of the gambling devices, Mark Olmstead.¹² The evidence is substantial that Respondent, by and through its owner, Ruby Morgan, and bingo hall manager, Donnie Morgan, operated or allowed the operation of the gambling devices at the bingo hall.

4. Respondent disputes Conclusion of Law No. 8, which states: “The gaming machines at the Lucky Star Bingo Hall awarded players with bingo equipment, as defined in 2001.002(5) of the Texas Occupations Code, in violation of Texas Administrative Code 402.211(f).” Respondent disputes this conclusion because bingo pull-tabs are not specifically listed in the definition of bingo equipment in TEX. OCC. CODE ANN. § 2001.002(5), which defines bingo

¹⁰ TLC Exhibit 7, pgs. TLC TRIAL000149 - TLC TRIAL000151; TLC Exhibit 8, pgs. TLC TRIAL000225 - TLC TRIAL000232

¹¹ *Id.*

¹² TLC Exhibit 8, pgs. TLC TRIAL000225 - TLC TRIAL000232.

equipment as “equipment used, made, or sold for the purpose of use in bingo”. While it is true TEX. OCC. CODE ANN. § 2001.002(5) does not specifically state pull-tabs are bingo equipment, the Code Construction Act states: “‘Includes’ and ‘including’ are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded.”¹³ A bingo pull-tab meets the general definition of “equipment used, made, or sold for the purpose of use in bingo”. Further, a pull-tab is also an “entry into a bingo game”, which 16 TEX. ADMIN CODE § 402.211(f) also clearly prohibits being awarded as a bingo prize.

5. Respondent disputes Conclusion of Law No. 9, which states: “Respondent’s commercial lessor license is subject to revocation pursuant to Texas Occupations Code §§ 2001.353(1) and 2001.554(a)(5).” Respondent asserts that it was never warned that its operation of the gaming devices “could be violating the law until it was on the precipice of closing.” In fact, as Licensing and Accounting Manager Desira Glenn testified, revocation of Respondent’s license is appropriate because Respondent continued to violate the Bingo Enabling Act after being repeatedly warned by the Commission about the operation of the illegal gambling devices.¹⁴ Ms. Glenn, along with Jean Humes, a Commission auditor, testified how the Charitable Bingo Operations Division sent letters to all bingo licensees, including Respondent,¹⁵ published articles in the Division’s newsletter and website,¹⁶ and held discussions at the Commission’s Public Meetings,¹⁷ all for the purpose of notifying bingo licensees of the Attorney General’s Opinions holding eight-liners that award points or credits are illegal gambling devices,

¹³ TEX. ADMIN. CODE 311.005(13). See also *Entergy Gulf States, Inc. v. Summers*, 282 S.W.3d 433, 440-41 (Tex. 2009) (“we are restrained from circumventing Legislative intent by excluding from a non-exhaustive list [a similar term]”).

¹⁴ Tr. at 73- 75.

¹⁵ TLC Exhibit 13, TLC Exhibit 14; and Tr. at 64-66; and Tr. at 73-74.

¹⁶ TLC Exhibit 14; and Tr. at 66-68; and Tr. at 73-74.

¹⁷ TLC Exhibit 15; and Tr. at 64-66; and Tr. at 73-74.

and the Commission's intent of taking action against bingo licensees that operate or allow the operation of such devices. Of particular importance is the Director of the Charitable Bingo Operation Division's letter dated October 14, 2014, notifying all bingo licensees of the Commission's adoption of Charitable Bingo Administrative Rule, 16 TEX. ADMIN. CODE § 402.211, in which the Commission clearly stated that eight-liners that awarded bingo products would not be tolerated.¹⁸ Ms. Glenn went on to testify as to the adverse effect eight-liners have had on the Bingo industry.¹⁹ Despite the Commission's attempts to bring Respondent into compliance, Respondent continued to operate or allow the operation of the illegal gambling devices.

IV.

Response to Argument and Case Law

Respondent asserts that "the evidentiary standard for the Commission to prevail is the substantial evidence standard", citing *Granek v. Texas State Bd. of Med. Exam'rs*, 172 S.W.3d 761, 778 (Tex. App—Austin 2005, no pet.). In fact what the Court of Appeals stated in *Granek* was "that the proper standard of proof in agency factual determinations is preponderance of the evidence", clearly rejecting Dr. Granek's assertion that the proper standard is "a clear and convincing" standard of proof. *Id.* at 777. The Texas Supreme Court has stated that "the legal test of the reasonableness of an order of an administrative agency is whether it is reasonably supported by substantial evidence and not whether it is supported by a preponderance of the evidence." *S. Canal Co. v. State Bd. of Water Engineers*, 159 Tex. 227, 233, 318 S.W.2d 619, 623 (1958). The Texas Supreme Court has described "substantial evidence as only "more than a mere scintilla" of evidence, and that "the evidence in the record actually may preponderate against the decision of the agency and nonetheless amount to substantial evidence. The true test

¹⁸ TLC Exhibit 13, TLC Exhibit 14; and Tr. at 64-66; and Tr. at 73-74.

¹⁹ Tr. at 73-74.

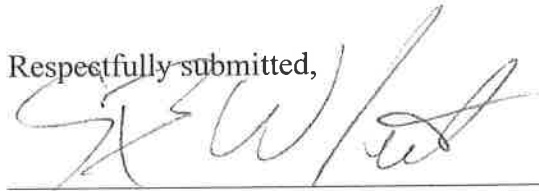
is not whether the agency reached the correct conclusion, but whether some reasonable basis exists in the record for the action taken by the agency.” *Texas Health Facilities Com'n v. Charter Med.-Dallas, Inc.*, 665 S.W.2d 446, 452–53 (Tex. 1984) citing *Alamo Express, Inc. v. Union City Transfer*, 158 Tex. 234, 309 S.W.2d 815, 823 (1958); *Lewis v. Metropolitan Savings and Loan Association*, 550 S.W.2d 11, 13 (Tex.1977); *Gerst v. Nixon*, 411 S.W.2d 350, 354 (Tex.1966). The evidence in this case is clearly more than a scintilla of evidence that Respondent violated TEX. OCC. CODE ANN. § 2001.416 and TEX. ADMIN. CODE § 402.211(f).

The purpose of a motion for a rehearing is to give the agency notice that an appeal will be prosecuted if the final order is not changed. *Suburban Util. Corp. v. Public Util. Com'n*, 652 S.W.2d 358, 364 (Tex.1983). Therefore, allegations in the motion must be specific enough to fairly point out the alleged error so that the agency can either correct it or prepare to defend itself on appeal. *Id.* at 365. Respondent’s blanket assertions that there is no evidence to support certain Findings of Fact and Conclusions of Law fail to fairly point out any alleged error, especially given that that the record here is replete with evidence supporting the Findings of Fact and Conclusions of Law.

V. Conclusion

For the reasons discussed above, the Commission should deny Respondent Julam Investments, Inc.’s *Motion for Rehearing of the Texas Lottery Commission’s Decision to Revoke the License of Julam Investments, Inc.*

Respectfully submitted,



Stephen White
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Texas Lottery Commission
P.O. Box 16630
Austin, Texas 78761-6630
Telephone: (512) 344-5465
Facsimile: (512) 344-5189

CERTIFICATE OF SERVICE

I certify that on November 21, 2016, a true and correct copy of the *Texas Lottery Commission's Response to Julam Investments, Inc.'s Motion for Rehearing* was served on the following individual at the location and in the manner indicated below, pursuant to 1 TEX. ADMIN. CODE § 155.103 and TEX. R. CIV. P. 191.5.

Via Facsimile: (903) 238-8273

Hayward M. Rigano, II
P.O. Box 3384
Longview, TX 75606



Stephen White
Assistant General Counsel

DOCKET NO. 362-16-1513.B

TEXAS LOTTERY COMMISSION § BEFORE THE STATE OFFICE
 §
V. §
 § OF
JULAM INVESTMENTS, INC. §
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 § ADMINISTRATIVE HEARINGS
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PROPOSAL FOR DECISION

I. INTRODUCTION

The Respondent in this case is Julam Investments, Inc. (Respondent or Julam). The Texas Lottery Commission's (Commission's or TLC's) allegations in this case involve the operation of illegal gaming devices. Specifically, the Commission asserts that Julam allowed the operation of illegal gambling devices during the course of numerous bingo occasions. The issues in this case are: (1) whether the gaming devices operated at the bingo hall were illegal gambling devices as defined in Texas Penal Code (Penal Code) § 47.01(4); (2) if the gaming devices were illegal gambling devices, whether Respondent conducted or allowed the operation of the illegal gambling devices during a bingo occasion in violation of Texas Occupations Code (Occupations Code) § 2001.416; (3) whether the gaming devices at Lucky Star Bingo Hall awarded players "bingo equipment" in violation of 16 Texas Administrative Code § 402.211(f); and (4) if any of the issues are decided in favor of the Commission, whether the Commission can revoke Julam's lessor license under Occupations Code §§ 2001.353 and 2001.554.¹

The Commission requests that Respondent's license be revoked in addition to administrative penalties. Respondent does not believe that it operated illegal gambling devices during a bingo occasion in violation of Occupations Code § 2001.416 and, therefore, it asserts no penalty should be assessed.

¹ The Commission has the burden to prove its allegations by a preponderance of the evidence. 1 Tex. Admin. Code § 155.427.

In summary, the gaming devices at Lucky Star Bingo Hall were illegal gambling devices that do not fall within the “fuzzy animal” exception to Penal Code § 47.01(4). Furthermore, Julam allowed or conducted unauthorized games of chance during a bingo occasion in violation of Occupations Code § 2001.416. Finally, Julam awarded the players of the gaming machines “bingo products” in violation of 16 Texas Administrative Code § 402.211(f). Therefore, the ALJ recommends revocation of Respondent’s commercial lessor license.

II. NOTICE AND JURISDICTION

The hearing convened on March 29, 2016, before ALJ Michael J. O'Malley at the State Office of Administrative Hearings (SOAH) in the William P. Clements Building, 300 West 15th Street, Fourth Floor, Austin, Texas. The Commission was represented by attorney Stephen White. Julam was represented by attorney Hayward Rigano. The record closed on June 10, 2016, after the parties filed post-hearing briefs.

III. BACKGROUND

Julam is licensed by the Commission as a commercial bingo lessor. Julam leased bingo premises to licensed conductors at the Lucky Star Bingo Hall, located at 7840 White Settlement Rd., Fort Worth, Texas. Ruby Morgan is an owner and the designated business contact for Julam. Ruby Morgan’s son, Donnie Morgan, Jr., is a registered bingo worker and was the bingo hall manager and a designated bingo operator at Lucky Star Bingo Hall.

Julam implemented a “Bingo Bucks” redemption process,² whereby players would: (1) pay cash to play the gaming machines, (2) accrue points on a card that could be used for either (a) future play or (b) obtaining bingo pull-tabs, and (3) if the player chose to redeem the “Bingo Bucks” for bingo pull-tabs, then the player could go from the game room to the main hall to do so.

² TLC Ex. 9 at 300-03.

The pull-tabs used by Julam were designed to award players high percentages of payouts. Play Texas Pull-Tabs, the type used by Julam, had a payout rate of 94.66 percent.³ In a package of 3,920 pull-tabs, 3,915 of those tabs were winners.⁴ Commission Investigator Anthony Kozak testified that Mark Olmstead, the lessor of the gaming machines at Lucky Star Bingo Hall, stated that the Play Texas Pull-Tab was the ideal pull-tab to play with because it provided a payout approaching a one-for-one cash basis.⁵ In other words, according to Mr. Kozak, using Play Texas Pull-Tabs was promoted as a way of almost paying cash for gaming machines.⁶

**IV. WERE THE GAMING DEVICES OPERATED AT LUCKY STAR BINGO HALL
ILLEGAL GAMBLING DEVICES AND AN UNAUTHORIZED GAME OF
CHANCE WITHIN THE MEANING OF SECTION 2001.416 OF THE BINGO
ENABLING ACT?**

Occupation Code § 2001.416 . Other Games.

- (a) A game of chance other than bingo or a raffle conducted under Chapter 2002 may not be conducted or allowed during a bingo occasion.
* * *
- (c) The commission shall adopt rules for the implementation of this section.
- (d) This section does not prohibit the exhibition and play of an amusement machine that is not a gambling device as defined by Section 47.01, Penal Code.

Penal Code § 47.01(4) defines an illegal gambling device and the “fuzzy animal” exception:

(4) “Gambling device” means any electronic, electromechanical, or mechanical contrivance not excluded under Paragraph (B) that for a consideration affords the player an opportunity to obtain anything of value, the award of which is determined solely or partially by chance, even though accompanied by some skill, whether or not the prize is automatically paid by the contrivance. The term:

³ Tr. at 52-53.

⁴ Tr. at 52-53.

⁵ Tr. at 52-53.

⁶ Tr. at 52-53.

(A) includes, but is not limited to, gambling device versions of bingo, keno, blackjack, lottery, roulette, video poker, or similar electronic, electromechanical, or mechanical games, or facsimiles thereof, that operate by chance or partially so, that as a result of the play or operation of the game award credits or free games, and that record the number of free games or credits so awarded and the cancellation or removal of the free games or credits; and

(B) does not include any electronic, electromechanical, or mechanical contrivance designed, made, and adapted solely for bona fide amusement purposes if the contrivance rewards the player exclusively with noncash merchandise prizes, toys, or novelties, or a representation of value redeemable for those items, that have a wholesale value available from a single play of the game or device of not more than 10 times the amount charged to play the game or device once or \$5, whichever is less.

A. Commission's Position and Argument

The Commission asserts that the gaming devices operated at Lucky Star Bingo Hall were illegal gambling devices under Penal Code § 47.01(4) for three primary reasons: (1) the Texas Attorney General has held in two recent opinions that gaming devices that award players with bingo products or points redeemable for bingo products do not fall within the "fuzzy animal" exception of Penal Code § 47.01(4); (2) Lucky Star Bingo Hall used devices that were not solely for bona fide amusement purposes; and (3) Lucky Star Bingo Hall used devices that allowed players to accrue points for future play.

First, the Commission argues that the Attorney General has held in two opinions that any bingo product or credit for further play is not a "non-cash merchandise prize, toy, or novelty," and, therefore, any gaming device that awards players with such prizes is an illegal gambling device. In Tex. Att'y Gen. Op. GA-0812, the Attorney General relied on a plain reading of Penal Code § 47.01(4) and Texas Supreme Court decisions, such as *Hardy v. State*, 102 S.W.3d 123, 132 (Tex. 2003), in opining that eight-liners that allow players to exchange points or credits exchangeable for bingo products do not fall within the § 47.01(4)(B) "fuzzy animal" exception, and are per se illegal gambling devices. Tex. Att'y Gen. Op. No. GA-0812 (2010). Furthermore, the Commission argues, the Attorney General stated that "courts have consistently concluded that cash or credit to be used for further play is an award of value to the recipient and not a noncash merchandise prize, toy, or novelty falling under the 'fuzzy animal' exception of

section 47.01(4)(B),” and that “awards for bingo cards or pull-tab bingo are analogous to awarding credit for further play.” *Id.*

The Commission further asserts that Tex. Att’y Gen. Op. GA-0913 addressed the question of whether an eight-liner machine that dispenses tickets for prizes redeemable only at the bingo hall in which the machine is located is a gambling device under Penal Code § 47.01(4). There, the Attorney General concluded that the eight-liners issued tickets redeemable for items that were not noncash merchandise prizes, toys, or novelties, and therefore the machines did not meet the exception to an illegal gambling device under Penal Code § 47.01(4)(B). Tex. Att’y Gen. Op. GA-0913 (2012).

Second, the Commission argues that Penal Code § 47.01(4)(B) requires that, to fit within the exception, a gaming machine must be “designed, made and adapted solely for bona fide amusement purposes.” The Commission asserts that awarding bingo products such as instant pull-tabs has the additional effect of encouraging individuals to play bingo games. Therefore, the gaming devices used in Lucky Star Bingo Hall do not qualify for the “fuzzy animal” exception of Penal Code § 47.01(4)(B).

Third, the Commission argues that the Texas Supreme Court in *State v. \$1,760 in U.S. Currency* found that a gaming device that allows a player to accrue points for future play is an illegal gambling device even if no prizes are awarded. There, the Court observed that “thing of value” as defined in § 47.01(9) of the Texas Penal Code is “any benefit, but does not include an unrecorded and immediate right of replay not exchangeable for value.” *State v. \$1,760 in U.S. Currency*, 406 S.W.3d 177, 179-80 (Tex. 2013). The Court then held that non-immediate rights of replay for gaming machines are not “novelties” for the purposes of § 47.01(4)(B). *Id.* at 180-81. Here, the Commission asserts that it is undisputed that players of the gaming machines used in Lucky Star Bingo Hall allowed players to accrue points on a card, enabling them to play the eight-liners at a later time, which qualifies them as illegal gambling devices.

The Commission further asserts that Julam allowed games of chance to be conducted during a bingo occasion for two reasons: (1) the bingo product prize could only be claimed and

fulfilled during a bingo occasion on the bingo premises and (2) the gaming machines were located in a room in the back of Lucky Star Bingo Hall where the doors were open while bingo was being conducted. The Commission, therefore, argues that the operation of the gaming machines occurred on the actual bingo premises.⁷

B. Julam's Position and Argument

Julam argues that it did not allow games of chance to be conducted during a bingo session in violation of Occupations Code § 2001.416(a) for two reasons: (1) the Commission failed to meet its burden to prove that games of chance occurred in the game room of Lucky Star Bingo Hall; and (2) the game room of Lucky Star Bingo Hall was outside the bingo hall's premises.

Julam first claims that there is no evidence in the record to suggest the games in the game room were games of chance. Julam states that the investigators never played the gaming devices or observed how they were played by others.

Julam second argues that the room where the games were located was not part of the bingo hall premises and, therefore, not under the Commission's control. Julam supports this argument with three main points: (1) the game room was not under the control of bingo organizations or a part of bingo operations; (2) no one was allowed to play bingo in the game room; and (3) there was no impermissible intertwining of the game room and the bingo hall, primarily because the game room was separated from the bingo hall with a wall and has a door leading outdoors.

⁷ Occupations Code §2001.002(22) ("Premises" means the area subject to the direct control of and actual use by a licensed authorized organization or group of licensed authorized organizations to conduct bingo. The term includes a location or place").

C. ALJ's Analysis

The Commission must prove by a preponderance of the evidence that the gaming devices operated at Lucky Star Bingo Hall were illegal gaming devices involving a game of chance and did not qualify for the “fuzzy animal” exception found in Penal Code § 47.01(4)(B).

The Commission was correct in its assertion that the gaming devices in Lucky Star Bingo Hall were illegal gambling devices that do not fall within the “fuzzy animal” exception to § 47.01(4) for two primary reasons: (1) the machines only awarded either (a) “Bingo Bucks,” which were redeemable for Play Texas Pull-Tabs, or (b) points that the player could accrue on a card for future play; and (2) the gaming machines were not solely for bona fide amusement purposes.

First, the Attorney General, Supreme Court, and Commission have held that gaming machines that reward players with coupons redeemable for bingo cards, card-minding devices, and pull-tab bingo are illegal gambling devices that do not meet the “fuzzy animal” exception to § 47.01(4). In *Tex. Att’y Gen. Op. GA-0812*, the Attorney General pointed out that Texas courts have consistently concluded that cash or credit for further play is an award of value to the recipient and therefore is excluded from the “fuzzy animal” exception. *Tex. Att’y Gen. Op. No. GA-0812 (2010)*. The Attorney General further stated that awards for bingo cards or pull-tab bingo are analogous to awarding points or credit for further play—the player would otherwise have to pay to play bingo. *Id.* The Attorney General then concluded that eight-liners that award bingo cards, card-minding devices and pull-tab bingo do not award players the noncash merchandise required by Penal Code § 47.01(4)(B). *Id.*

Similarly, in *Tex. Att’y Gen. Op. GA-0913* the Attorney General addressed whether an eight-liner machine that dispenses tickets for prizes redeemable only at the bingo hall in which the machine is located is a “gambling device” under § 47.01(4). *Tex. Att’y Gen. Op. GA-0913 (2012)*. After reviewing the law under *Tex. Att’y Gen. Op. GA-0812* and available Texas court opinions, the Attorney General concluded that the machines in question did not meet the “fuzzy animal” exception because the players would be awarded valuable bingo play cards—which are not “noncash merchandise prizes, toys, or a representation of value redeemable for

those items”— and so the machines would not reward players “exclusively with noncash merchandise prizes, toys, or a representation of value redeemable for those items.” *Id.* The gaming machines were therefore illegal gambling devices under Penal Code § 47.01(4). *Id.*

The Texas Supreme Court recently addressed a scenario similar to the one here in *State v. \$1,7600.00 In U.S. Currency*. There, the machines in question accepted points that the players purchased with cash, and once the player played the game, the eight-liner dispensed tickets for every five hundred points won. *State v. \$1,760 in U.S. Currency*, 406 S.W.3d 177, 179 (Tex. 2013). The players could use those tickets to either (a) redeem store merchandise that did not exceed a wholesale value of \$5 or (b) receive credits to replay another machine. *Id.* The Court construed § 47.01(4)(B) to preclude the non-immediate right of replay because both the tickets redeemable for merchandise and the non-immediate right of replay provided the player with benefits and thus counted as “things of value” as defined in Penal Code § 47.01(9). *Id.* at 179-80. Furthermore, the Court stated that the non-immediate right of replay is not a “novelty”—tangible articles similar to “noncash merchandise prizes”—and thus, the machines in question did not award players exclusively with noncash merchandise prizes, toys, or novelties as required by Penal Code § 47.01(4)(B). *Id.* at 180-81.

In addition to the Attorney General and Supreme Court, the Commission (based on a SOAH decision) also addressed similar circumstances in *Texas Lottery Commission v. Bullard*. There, the Commission asserted that the Respondents violated Occupations Code § 2001.416 by utilizing a “Bingo Bucks” redemption process, where a player of the gaming machine could purchase points for play on the machines, and play the game to accrue points on a card. *Texas Lottery Commission v. Bullard*, SOAH Docket No. 362-12-4672.B *et al.* (Feb. 11, 2013). Points accumulated in the game room could be exchanged in the game room for “Bingo Bucks.” *Id.* The “Bingo Bucks” were a representation of value awarded to players for every 500 points accrued on the eight-liner devices. *Id.* The “Bingo Bucks” could then be taken next door and exchanged for pull-tabs and other similar bingo merchandise. *Id.* The decision held that the eight-liners constituted illegal gambling devices that did not fit within the “fuzzy animal” exception:

In this case, a single play on a .50 cent wager could allow a player to win 500 points which could then be exchanged for bingo paper in which the player could then win \$750.00 cash playing bingo. Even if the bingo prize was five dollars or less, the eight-liner devices would still be illegal gambling devices because they potentially award players cash, regardless of the amount.

Id. The *Bullard* decision followed the law as framed by the Attorney General and Supreme Court to reach the conclusion that machines such as the ones used in *Bullard* are illegal gambling devices that do not award players noncash merchandise, as is required by Penal Code § 47.01(4)(B).

Julam is incorrect in its assertion that the record lacks evidence to support the Commission's claim that the machines in the game room of Lucky Star Bingo Hall involved chance as a part of their operation. Ding Ayuma's investigative report from August 2012 includes photographs of the game room, players playing the games in the game room, and the gaming machines.⁸ The photographs support the Commission's allegations that (1) players in the game room used cash to buy credit for the right to play the games (at the "recharge station"⁹) and (2) the game involved chance as a part of their operation. For example, the photograph of the "Fantasy Fortune" gaming machine illustrates the way many of the machines operated: a player uses credit to initiate the game, then pushes one of only four buttons to start/stop the wheels, and certain combinations of symbols yield certain payouts.¹⁰ Although one could argue some amount of skill is involved in the operation of such a gaming machine, Penal Code § 47.01(4) only requires that the award "is determined solely or partially by chance."

Here, there is no dispute that the gaming machines allowed players to accrue points on a card for future play in the game room or redemption for bingo products, such as instant bingo pull-tabs, in the bingo hall. The Attorney General, Texas courts, and the Commission have held that gaming machines that award players with such benefits do not qualify for the "fuzzy animal" exception. Thus, because the gaming machines in Lucky Star Bingo Hall rewarded players with

⁸ TLC Ex. 4 at 52-55.

⁹ TLC Ex. 4 at 51.

¹⁰ TLC Ex. 4 at 51, 55.

“Bingo Bucks”, a medium of exchange redeemable for merchandise that would otherwise cost money, the gaming machines were illegal gambling devices under Penal Code § 47.01(4).

Second, the gaming machines used at Lucky Star Bingo Hall were not solely for bona fide amusement purposes as required by Penal Code § 47.01(4)(B). In Tex. Att’y Gen. Op. GA-0913, the Attorney General emphasized that because of the Penal Code’s broad prohibition on gambling devices and narrow exclusionary provisions, the very nature of an eight-liner machine renders it highly suspect; therefore, to qualify for the narrow exception, it must satisfy the plain language of Penal Code § 47.01(4)(B). Tex. Att’y Gen. Op. GA-0913 (2012). The Attorney General construed Penal Code § 47.01(4)(B) to include only those machines that are in good faith intended, produced, and made fit only for the single, limited purpose of entertainment. *Id.* Furthermore, Texas courts have previously found that eight-liner machines may be used for gambling purposes and, because the machine’s sole purpose is not entertainment, it does not qualify for the exception under Penal Code § 47.01(4)(B). *Id.*

Here, the evidence proves that the machines leased to Ms. Ruby (on behalf of Julam) by Mr. Olmstead (on behalf of i Play Texas LLC) and used at the Lucky Star Bingo Hall game room were made fit for purposes other than bona fide amusement. The i Play Texas LLC website states that the machines and Bingo Buck redemption process would help bingo halls make large profits for charitable organizations.¹¹ Furthermore, in his investigative report, Mr. Kozak stated that he met with Mr. Olmstead, who explained that his machines were compliant with Texas law because his machines “never pay out more than ten times the cost of a wager, and never more than \$5.00.”¹² Lastly, as was the case in *Bullard*, awarding bingo pull-tabs encourages individuals to play other bingo games as well. Thus, the record establishes that the devices leased to Lucky Star Bingo Hall were produced and made fit for three purposes other than amusement: (1) profit-making, (2) gambling, and (3) encouraging gaming machine players to play bingo.

¹¹ TLC Ex. 6 at 87.

¹² TLC Ex. 6 at 88-89.

The evidence also shows that Julam allowed unauthorized games of chance to occur during a bingo occasion in violation of Occupations Code § 2001.416 because (1) the location of the game room is irrelevant to the analysis and (2) the activities between the game room and the bingo hall were impermissibly intertwined. First, as in *Bullard*, whether Respondent allowed operation of the gaming machines on the bingo premises is irrelevant. This argument takes away from the real issue of whether another game of chance occurred during a bingo occasion. Furthermore, although the game room may have been separated by a wall, as was the case in *Bullard*, players came to Lucky Star Bingo Hall to play both bingo and the gaming machines.

Second, the operation of the bingo hall and the game room were impermissibly intertwined for four primary reasons: (1) the only prize offered to gaming machines players were “Bingo Bucks” that could be exchanged for bingo pull-tabs only during a bingo occasion,¹³ and bingo pull-tabs are a form of bingo that can only be played on a bingo premises during an authorized bingo occasion;¹⁴ (2) the gaming machines were leased and operated by Ruby Morgan, an owner and officer of Respondent; (3) the gaming machines were in the same building as the bingo hall, separated only by a wall with two open doors leading directly to the bingo play area; and (4) the game room was open and operational while bingo was actually being conducted.¹⁵

**V. DID THE GAMING DEVICES AT LUCKY STAR BINGO HALL
AWARD PLAYERS BINGO EQUIPMENT IN VIOLATION OF
16 TEXAS ADMINISTRATIVE CODE § 402.211(f)?**

Texas Administrative Code title 16, § 402.211(f) states:

(f) A game of chance, other than bingo conducted under Chapter 2001 of the Occupations Code, a charitable raffle conducted under Chapter 2002 of the Occupations Code and a door prize game conducted under § 2001.420(c) of the Occupations Code, may not award bingo equipment, as defined in § 2001.002(5) of the Occupations Code, or entry into a bingo game as a prize.

¹³ TLC Ex. 7 at 164.

¹⁴ Tex. Occ. Code § 2001.002(6).

¹⁵ TLC Ex. 7 at 174; TLC Ex. 4 at 48.

“Bingo equipment” means equipment used, made, or sold for the purpose of use in bingo. The term:

(A) includes:

- (i) a machine or other device from which balls or other items are withdrawn to determine the letters and numbers or other symbols to be called;
- (ii) an electronic or mechanical cardminding device;
- (iii) a pull-tab dispenser;
- (iv) a bingo card;
- (v) a bingo ball; and
- (vi) any other device commonly used in the direct operation of a bingo game; and

(B) does not include:

- (i) a bingo game set commonly manufactured and sold as a child’s game for a retail price of \$20 or less unless the set or a part of the set is used in bingo subject to regulation under this chapter; or
- (ii) a commonly available component part of bingo equipment such as a light bulb or fuse.¹⁶

A. Commission’s Position and Argument

The Commission asserts that proper construction of 16 Texas Administrative Code § 402.211(f) leads to the result that gaming devices that award players “Bingo Bucks” redeemable for Texas pull-tabs award “bingo products” for three reasons. First, Texas Occupations Code § 2001.002(5) uses the term “includes,” which, according to the Code Construction Act, is a term of enlargement. Accordingly, use of the term does not create a presumption that components not expressed are excluded. Second, bingo pull-tabs meet the definition of “equipment used, made, or sold for the purpose of use in bingo.” Third, a pull-tab by its very essence is an “entry into a bingo game,” which 16 Texas Administrative Code § 402.211(f) prohibits being awarded as a prize.

B. Julam's Position and Argument

Julam asserts that the Commission has failed to prove that Julam violated 16 Texas Administrative Code § 402.211(f) for two primary reasons. First, Julam again claims that the Commission has failed to submit any evidence to suggest the gaming machines in Lucky Star

¹⁶ Tex. Occ. Code § 2001.002(5).

Bingo Hall involved any chance. Second, Julam claims that Texas Administrative Code § 402.211(f) is both penal in nature and drafted with specifically enumerated items to be included as “bingo equipment” and, therefore, the statute should be strictly construed in favor of Julam.

C. ALJ’s Analysis

The gaming devices at Lucky Star Bingo Hall awarded players “bingo equipment” for purposes of 16 Texas Administrative Code § 402.211(f). Because it has already been established that the gaming devices at Lucky Star Bingo Hall involved chance as a part of its operation, whether Julam violated 16 Texas Administrative Code § 402.211(f) turns on the interpretation of the statute.

Julam is incorrect in its assertion that, because the statute lists certain items to be included in the definition of “bingo equipment,” the legislature intended pull-tabs to be excluded from the definition of “bingo equipment.” First, the fact that the statute lists certain items that constitute “bingo equipment” is tempered by the use of the term “includes.” The Commission properly points out that the statute gives the term an expansive meaning, in that the legislature did not intend to limit “bingo equipment” to the five listed items in Occupations Code § 2001.002(5). Second, the significance behind the statute’s list of certain items that constitute “bingo equipment” is further diminished by the fact that, after listing the five items to be included as “bingo equipment,” § 2001.002(5)(vi) broadly includes under the definition “any other device commonly used in the direct operation of a bingo game.” Therefore, bingo pull-tabs meet the general definition of “equipment used, made, or sold for the purposes of use in bingo.”

Furthermore, the Commission correctly states that bingo pull-tabs operate as “entry into a bingo game as a prize.”¹⁷ This argument is bolstered by the Attorney General’s opinion in *Tex. Att’y Gen. Op. GA-0812*. The Attorney General emphasized that the gaming machines in question did not meet the “fuzzy animal” exception because, among other reasons, the awarding

¹⁷ 16 Tex. Admin. Code § 402.211(f).

of bingo pull-tabs gave the eight-liner players an opportunity to enter into a bingo game without having to pay money. Tex. Att'y Gen. Op. No. GA-0812 (2010).

VI. WHAT IS AN APPROPRIATE SANCTION IF ONE OR MORE OF THE VIOLATIONS IS FOUND TO BE TRUE?

A. Commission's Position and Argument

The Commission takes the position that revocation of Julam's license, in addition to monetary penalties, is appropriate because Julam was aware that operation of such gaming devices as found in Lucky Star Bingo Hall during a bingo occasion constituted a violation of Occupations Code § 2001.416 and 16 Texas Administrative Code § 402.211(f). The Commission points to evidence that suggests that the Commission and Charitable Bingo Operations Division provided information to all licensees regarding Attorney General opinions holding that gaming machines that award points for further play or redemption for Bingo merchandise do not fall within the "fuzzy animal" exception of Penal Code § 47.01(4). Desira Glenn, along with Jean Humes, a Commission auditor, testified how the Charitable Bingo Operations Division sent letters to all bingo licensees,¹⁸ published articles in the Division's newsletter and website,¹⁹ as well as host public meetings²⁰ for the purpose of notifying licensees of current Attorney General opinions.

B. Julam's Position and Argument

Julam takes the position that, if the ALJ finds Julam in violation of Occupations Code § 2001.416 or Penal Code § 402.211(f), the ALJ should only assess a fine against Julam because revocation of its license would be a miscarriage of justice. Julam asserts that any violation was not willful.

¹⁸ TLC Ex. 13; TLC Ex. 14; Tr. at 64-66; 73-74

¹⁹ TLC Ex. 14; Tr. at 66-68; 73-74

²⁰ TLC Ex. 15; Tr. at 64-66; 73-74

C. ALJ's Analysis

Under Occupations Code §§ 2001.353(2) and 2001.554(a)(5), Julam's lessor license is subject to revocation or suspension. An administrative penalty is also allowed under Occupations Code §§ 2001.601. Title 16 of the Texas Administrative Code, § 402.706(j) provides a list of aggravating and mitigating factors to consider in assessing a penalty, including seriousness of the violation, history of violations, efforts to correct violations, and any other matter that justice may require.

The ALJ recommends that Respondent's lessor license be revoked. After repeatedly being notified by the Commission of illegal gambling devices, Respondent continued to operate the illegal gambling devices and blatantly ignored the Commission. Ms. Glenn, along with Jean Humes, a Commission auditor, testified how the Charitable Bingo Operations Division sent letters to all bingo licensees,²¹ published articles in the Division's newsletter and website,²² as well as host public meetings²³ for the purpose of notifying licensees of current Attorney General opinions. Furthermore, in a letter dated October 14, 2014, the Commission notified all bingo licensees of the Commission's adoption of the Charitable Bingo Administrative Rule in which the Commission made it clear that it would not tolerate eight-liners that awarded bingo products.²⁴ For these reasons, the ALJ recommends that Respondent's license be revoked.²⁵

VII. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Findings of Fact

1. Respondent Julam Investments, Inc. (Respondent) is a licensed commercial lessor. Respondent leased a bingo premises to licensed bingo conductors at the Lucky Star Bingo Hall, located at 7840 White Settlement Rd., Fort Worth Texas.

²¹ TLC Exs. 13 and 14; Tr. at 64-66; 73-74

²² TLC Ex. 14; Tr. at 66-68; 73-74

²³ TLC Ex. 15; Tr. at 64-66; 73-74

²⁴ TLC Exs. 13 and 14; Tr. at 64-66.

²⁵ The Commission did not provide evidence of a monetary/administrative penalty; therefore, the ALJ does not recommend an administrative penalty be assessed against Julam.

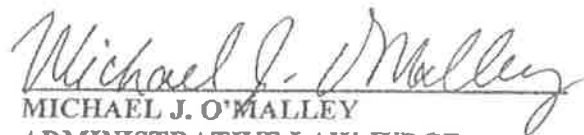
2. Ruby Morgan is an owner, officer, director, and business contact for Respondent.
3. The Texas Lottery Commission's (Commission's) allegations in this case involve the operation of illegal gaming devices, commonly referred to as "eight-liners."
4. Respondent, by and through Ruby Morgan, operated gaming devices in a room inside the Lucky Star Bingo Hall.
5. The gaming machines were operated at the Lucky Star Bingo Hall during licensed bingo occasions while bingo was being conducted.
6. Players of the gaming machines could only exchange their accrued points for bingo pull-tabs during the licensed bingo times.
7. The "Bingo Bucks" could then be exchanged for Play Texas Pull Tabs. Bingo pull-tabs are a form of bingo regulated by the Commission.
8. The Play Texas pull-tab game pays out cash prizes up to \$105.26.
9. The Commission warned Respondent that the Attorney General had held that gaming devices that awarded tickets exchangeable for regulated bingo products, including bingo pull-tabs, were illegal gambling devices and violated Texas Occupations Code § 2001.416.
10. On December 18, 2015, the Commission served a notice of hearing that included: a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
11. The hearing convened on March 29, 2016, before ALJ Michael J. O'Malley at the State Office of Administrative Hearings (SOAH) in the William P. Clements Building, 300 West 15th Street, Fourth Floor, Austin, Texas. The Commission was represented by attorney Stephen White. Julam was represented by attorney Hayward Rigano.
12. The record closed on June 10, 2016, after the parties filed post-hearing briefs.

B. Conclusions of Law

1. The Commission has jurisdiction over this matter pursuant to the Bingo Enabling Act, Texas Occupations Code Ch. 2001.

2. SOAH has jurisdiction over this matter pursuant to Texas Government Code Ch. 2003.
3. Notice of the hearing was provided as required by Texas Government Code §§ 2001.051-.052.
4. The Commission had the burden to prove the allegations by a preponderance of the evidence. 1 Tex. Admin. Code § 155.427.
5. The gaming machines at the Lucky Star Bingo Hall were illegal gambling devices as defined under Texas Penal Code § 47.01(4).
6. The gaming machines operated at the Lucky Star Bingo Hall did not meet the Texas Penal Code § 47.01(4)(B) exception because the devices that award points or credits for bingo products are not “noncash merchandise prizes, toys, or novelties.”
7. Respondent conducted or allowed a game of chance other than bingo or raffle conducted under Chapter 2002 in violation of Texas Occupations Code § 2001.416.
8. The gaming machines at the Lucky Star Bingo Hall awarded players with bingo equipment, as defined in §2001.002(5) of the Texas Occupations Code, in violation of Texas Administrative Code § 402.211(f).
9. Respondent’s commercial lessor license is subject to revocation pursuant to Texas Occupations Code §§ 2001.353(1) and 2001.554(a)(5).

SIGNED June 27, 2016.



MICHAEL J. O'MALLEY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

