

INTEROFFICE MEMO

Gary Grief, Executive Director

Alfonso D. Royal III, Charitable Bingo Operations Director

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

From: Bob Biard, General Counsel *RGB*

Date: February 8, 2018

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

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

Date: FEBRUARY 8, 2018

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

ORDER OF THE COMMISSION

During an open meeting in 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 and 155.501(b). 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.

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

Date: FEBRUARY 8, 2018

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 §§ 401.351 and 401.352.

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 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

Commission Order No. 18-0044

Date: FEBRUARY 8, 2018

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

Passed and approved at the regular meeting of the Texas Lottery Commission in Austin, Texas, on the 8TH day of FEBRUARY, 2018.

Entered this 8TH day of FEBRUARY, 2018.

J. WINSTON KRAUSE, CHAIRMAN

CARMEN ARRIETA-CANDELARIA,
COMMISSIONER

DOUG LOWE, COMMISSIONER

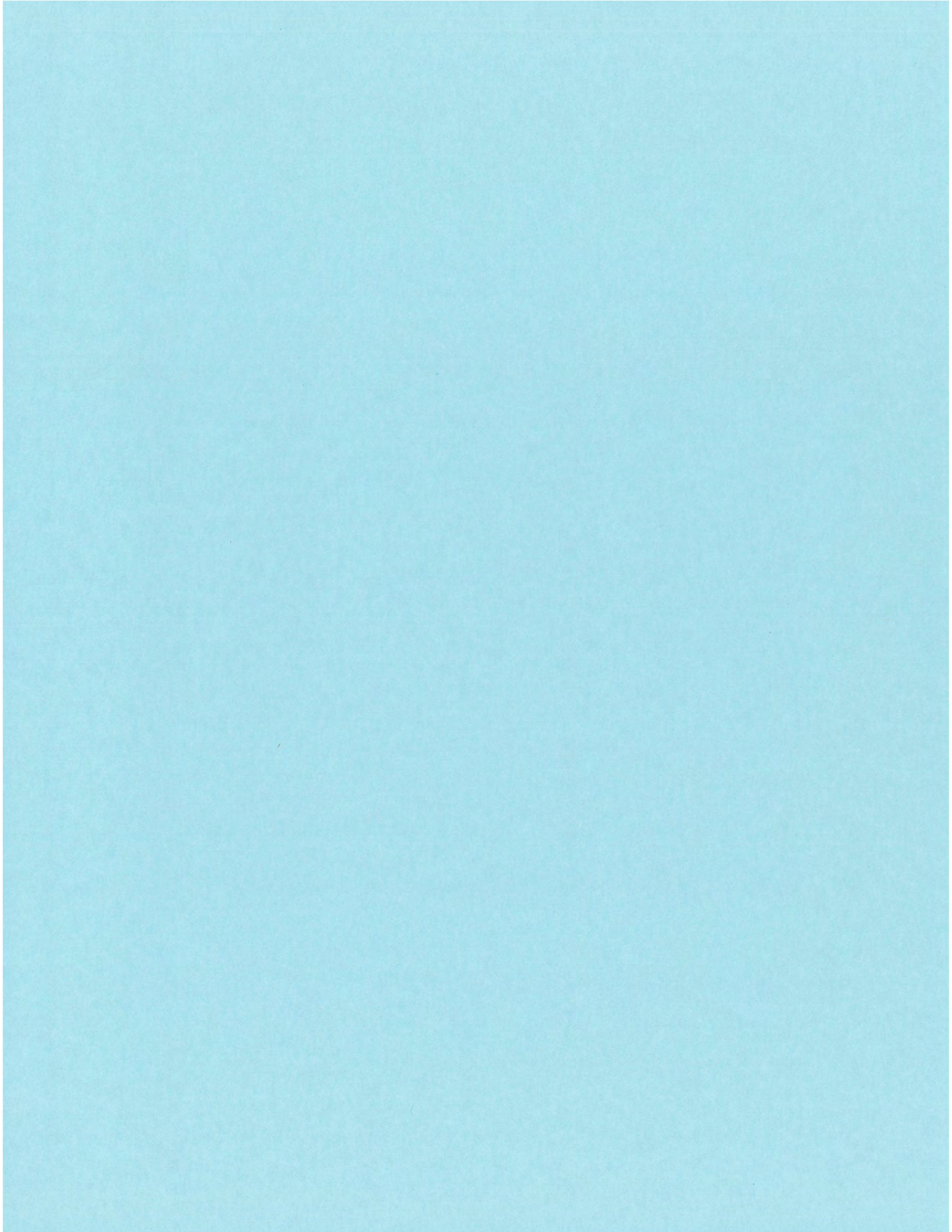
ROBERT RIVERA, COMMISSIONER

Commission Order No. 18-0044

Date: FEBRUARY 8, 2018

ATTACHMENT A

TAB NO.	SOAH DOCKET NO.	TICKET SALES AGENT NAME	TICKET SALES AGENT ADDRESS	LOTTERY LICENSE NO.
A.	362-18-0962	Fadi & Adel Enterprises LLC d/b/a Southmost Stop	914 Altamesa Brownsville, TX 78526	174854
B.	362-18-0963	Mannat Investment LLC d/b/a Jag's #1	500 E. Palestine Ave. Palestine, TX 75801	179083
C.	362-18-0965	Westoaks Plaza LLC d/b/a On Point	5426 Linden Rose Lane Sugar Land, TX 77478	181407
D.	362-18-1156	Sambih's Petroleum Inc. d/b/a Sambih's Food Mart	801 SSE Loop 323 Tyler, TX 75702	174357



DOCKET NO. 362-18-0962

IN THE MATTER	§	BEFORE THE STATE OFFICE
OF THE REVOCATION OF	§	
FADI & ADEL ENTERPRISES LLC	§	
D/B/A SOUTHMOST STOP	§	OF
LOTTERY LICENSE NO. 174854	§	ADMINISTRATIVE HEARINGS

ORDER REMANDING CASE TO COMMISSION

This matter was set for hearing on December 7, 2017, before Administrative Law Judge (ALJ) Catherine Egan at the State Office of Administrative Hearings (SOAH) in Austin, Texas. Assistant General Counsel Stephen White represented the staff (Staff) of the Texas Lottery Commission (Commission).¹ Fadi & Adel Enterprises LLC, Agent d/b/a Southmost Stop, Lottery License No. 174854 (Retailer) did not appear and was not represented at the hearing. Staff filed a motion to dismiss without prejudice and to remand to the Commission on a default basis (the motion).

Staff attached exhibits to the motion that were offered and admitted into evidence to establish jurisdiction and proper notice of the hearing. Commission Retailer Services Specialist Fred Pitre testified that the information in the exhibits remained true and correct. These exhibits proved that Staff provided Retailer timely and adequate notice of the hearing in accordance with 1 Texas Administrative Code § 155.501(b)(2). The Commission served the notice of hearing via certified mail at Retailer's last known address as it appears in the Commission's records, as authorized by 16 Texas Administrative Code § 401.205(4).

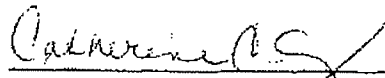
The notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing would be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the factual matters asserted. It also included 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.

¹ Also in attendance at the hearing of the merits was Staff's party representative Fred Pitre, a Retailer Service Specialist with the Commission's Lottery Operations Division.

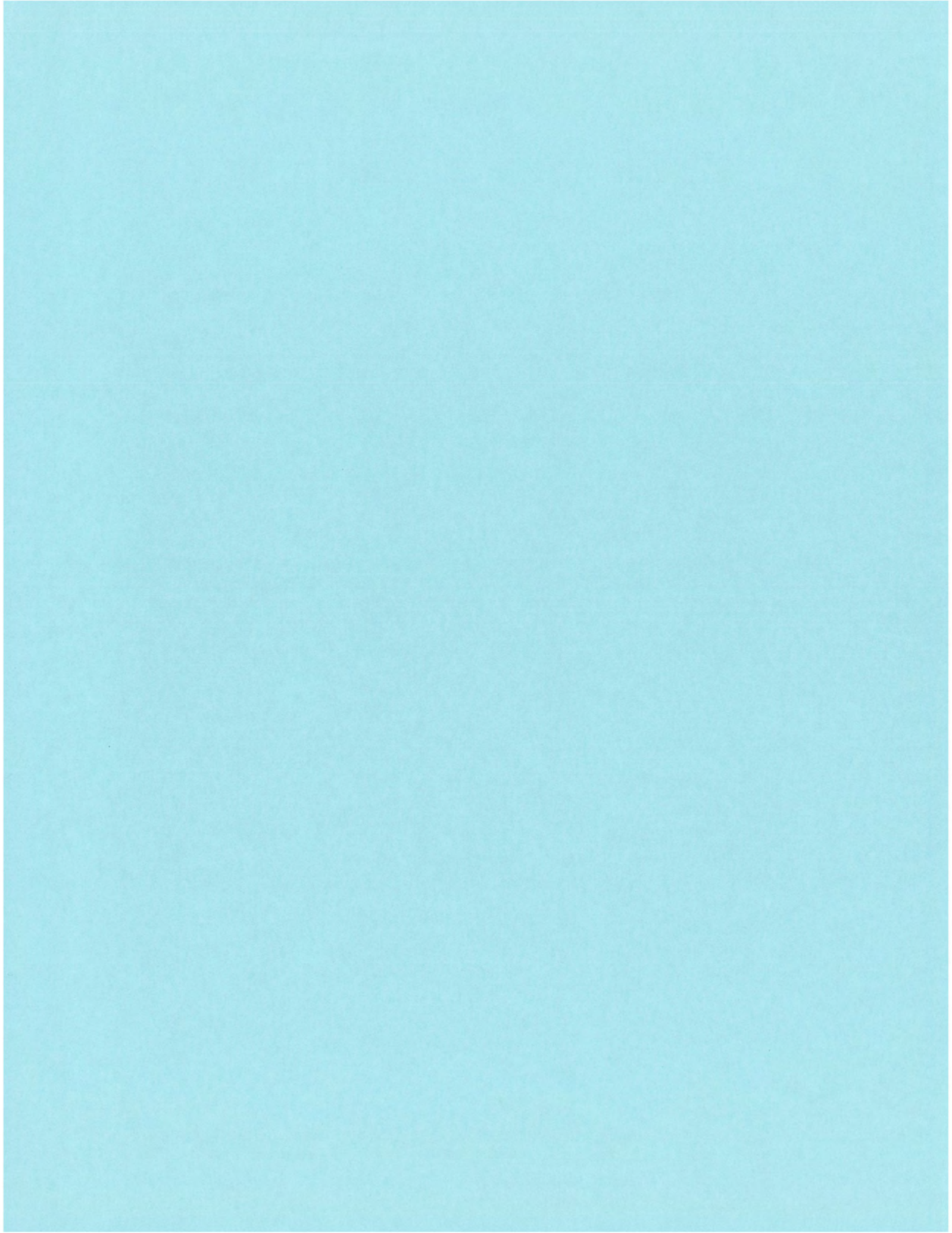
Due to the Retailer's failure to appear at the hearing, this matter may be dismissed from SOAH's docket and returned to the Commission for informal disposition on a default basis in accordance with Texas Government Code §§ 2001.056, .058(d-1) and 1 Texas Administrative Code § 155.501(d). The ALJ concludes that the motion has merit and should be granted.

It is, therefore, **ORDERED** that this case is **CONDITIONALLY DISMISSED AND REMANDED** to the Commission pursuant to 1 Texas Administrative Code § 155.501(d)(1). **This order of dismissal will become final, without further action by the ALJ, unless the Retailer files a motion to set aside the default not later than 15 days from the date of this order.** Such a motion must show good cause for reopening the hearing, or show that the interests of justice require setting aside the default dismissal.

SIGNED December 19, 2017.



CATHERINE C. EGAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS



DOCKET NO. 362-18-0963

IN THE MATTER	§	BEFORE THE STATE OFFICE
OF THE REVOCATION OF	§	
MANNAT INVESTMENT LLC	§	OF
D/B/A JAG #1	§	
LOTTERY LICENSE NO. 179083	§	ADMINISTRATIVE HEARINGS

ORDER REMANDING CASE TO COMMISSION

This matter was set for hearing on December 7, 2017, before Administrative Law Judge (ALJ) Catherine Egan at the State Office of Administrative Hearings (SOAH) in Austin, Texas. Assistant General Counsel Stephen White represented the staff (Staff) of the Texas Lottery Commission (Commission).¹ Mannat Investment LLC, Agent d/b/a Jag's #1, Lottery License No. 179083 (Retailer) did not appear and was not represented at the hearing. Staff filed a motion to dismiss without prejudice and to remand to the Commission on a default basis.

Staff attached exhibits to the motion that were offered and admitted into evidence to establish jurisdiction and proper notice of the hearing. Commission Retailer Service Specialist Fred Pitre testified that the information in the exhibits remained true and correct. These exhibits proved that Staff provided Respondent timely and adequate notice of the hearing in accordance with 1 Texas Administrative Code § 155.501(b)(2). The Commission served the notice of hearing via certified mail at the retailer's last known address as it appears in the Commission's records, as authorized by 16 Texas Administrative Code § 401.205(4).

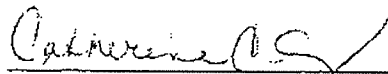
The notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing would be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the factual matters asserted. It also included 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.

¹ Also in attendance at the hearing of the merits was the Commission's party representative Fred Pitre, a Retailer Service Specialist with the Commission's Lottery Operations Division.

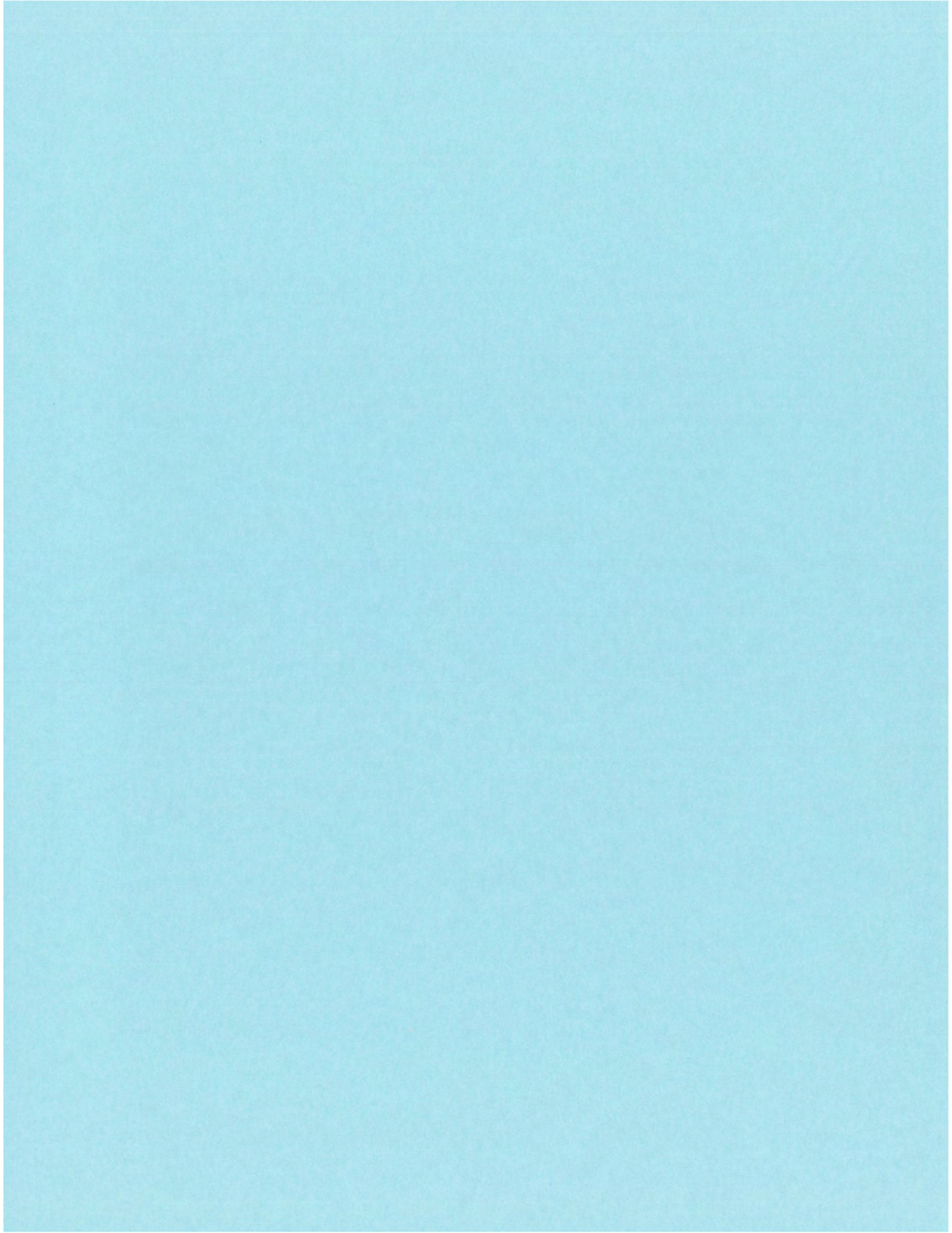
Due to the Retailer's failure to appear at the hearing, this matter may be dismissed from SOAH's docket and returned to the Commission for informal disposition on a default basis in accordance with Texas Government Code §§ 2001.056, .058(d-1) and 1 Texas Administrative Code § 155.501(d). The ALJ concludes that the motion has merit and should be granted.

It is, therefore, **ORDERED** that this case is **CONDITIONALLY DISMISSED AND REMANDED** to the Commission pursuant to 1 Texas Administrative Code § 155.501(d)(1). **This order of dismissal will become final, without further action by the ALJ, unless the Retailer files a motion to set aside the default not later than 15 days from the date of this order.** Such a motion must show good cause for reopening the hearing, or show that the interests of justice require setting aside the default dismissal.

SIGNED December 19, 2017.



CATHERINE C. EGAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS



DOCKET NO. 362-18-0965

IN THE MATTER	§	BEFORE THE STATE OFFICE
OF THE REVOCATION OF	§	
WESTOAKS PLAZA LLC	§	OF
D/B/A ON POINT	§	
LOTTERY LICENSE NO. 181407	§	ADMINISTRATIVE HEARINGS

ORDER REMANDING CASE TO COMMISSION

This matter was set for hearing on December 7, 2017, before Administrative Law Judge (ALJ) Catherine Egan at the State Office of Administrative Hearings (SOAH) in Austin, Texas. Assistant General Counsel Stephen White represented the staff (Staff) of the Texas Lottery Commission (Commission).¹ Westoaks Plaza LLC d/b/a On Point, Lottery License No. 181407 (Retailer) did not appear and was not represented at the hearing. Staff filed a motion to dismiss without prejudice and to remand to the Commission on a default basis (the motion).

Staff attached exhibits to the motion that were offered and admitted into evidence to establish jurisdiction and proper notice of the hearing. Commission Retailer Services Specialist Fred Pitre testified that the information in the exhibits remained true and correct. These exhibits proved that Staff provided Respondent timely and adequate notice of the hearing in accordance with 1 Texas Administrative Code § 155.501(b)(2). The Commission served the notice of hearing via certified mail at Retailer's last known address as it appears in the Commission's records, as authorized by 16 Texas Administrative Code § 401.205(4).

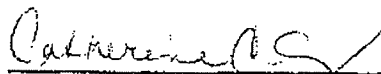
The notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing would be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the factual matters asserted. It also included 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.

¹ Also in attendance at the hearing of the merits was Staff's party representative Fred Pitre, a Retailer Service Specialist with the Commission's Lottery Operations Division.

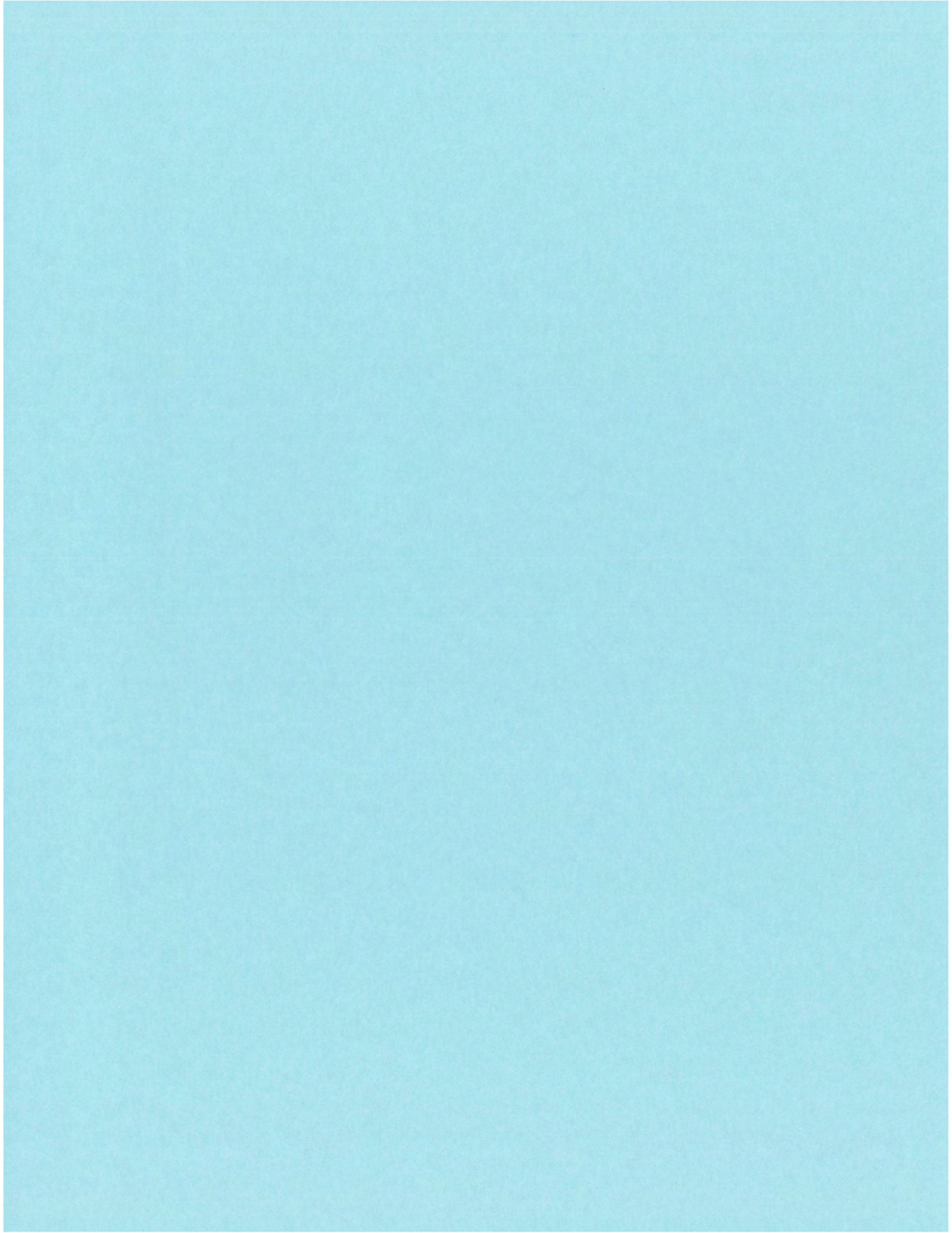
Due to the Retailer's failure to appear at the hearing, this matter may be dismissed from SOAH's docket and returned to the Commission for informal disposition on a default basis in accordance with Texas Government Code §§ 2001.056, .058(d-1) and 1 Texas Administrative Code § 155.501(d). The ALJ concludes that the motion has merit and should be granted.

It is, therefore, **ORDERED** that this case is **CONDITIONALLY DISMISSED AND REMANDED** to the Commission pursuant to 1 Texas Administrative Code § 155.501(d)(1). **This order of dismissal will become final, without further action by the ALJ, unless the Retailer files a motion to set aside the default not later than 15 days from the date of this order.** Such a motion must show good cause for reopening the hearing, or show that the interests of justice require setting aside the default dismissal.

SIGNED December 19, 2017.



CATHERINE C. EGAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS



DOCKET NO.: SEE ATTACHMENT A

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

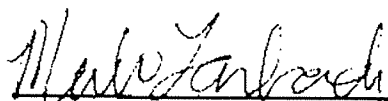
ORDER REMANDING CASE(S) TO COMMISSION

On December 21, 2017, 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 case(s) 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 Administrative Law Judge 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(s) are dismissed from SOAH's docket and remanded to the Commission for informal disposition under Texas Government Code § 2001.056.

Signed January 11, 2018.



MITTRA FARHADI
 ADMINISTRATIVE LAW JUDGE
 STATE OFFICE OF ADMINISTRATIVE HEARINGS

TEXAS LOTTERY COMMISSION
REVOCATION HEARINGS
STATE OFFICE OF ADMINISTRATIVE HEARINGS
ATTACHMENT A
HEARING HELD: December 21, 2017

SOAH DOCKET NO.	LOTTERY TICKET SALES AGENT NAME	SALES AGENT ADDRESS	LOTTERY NO.	LICENSE
362-18-1156	Sambih's Petroleum Inc, Agent DBA Sambih's Food Mart	801 SSE Loop 323 Tyler, Texas 75702	174357	

Date: FEBRUARY 8, 2018

DOCKET NO. 362-17-5926

TEXAS LOTTERY COMMISSION	§	BEFORE THE TEXAS
PETITIONER	§	
	§	
V.	§	
	§	
KIM LAN TRAN	§	
D/B/A TULSON CORNER MART	§	
RESPONDENT	§	LOTTERY COMMISSION

ORDER OF THE COMMISSION

TO: Kim Lan Tran
d/ba/ Tulson Corner Mart
3235 Holman St.
Houston, TX 77004

During an open meeting in Austin, Texas, the Texas Lottery Commission (Commission) heard the above styled case in which Kim Lan Tran d/b/a Tulson Corner Mart (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 and 155.501(b). The 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.

Date: FEBRUARY 8, 2018

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 conditionally 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, provided the Respondent did not file a motion to set aside the default no later than 15 days from the date of the Conditional Order of Default Dismissal and Remand issued by the ALJ.

5. The Respondent did not file a motion to set aside the default within the 15 days from the date of the Conditional Order issued by the ALJ.

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, (TEX. GOV'T CODE ANN. Chapter 466); and/or the Rules for the Administration of State Lottery Act, (Title 16 TEX. ADMIN. CODE, Chapter 401) 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.

Date: FEBRUARY 8, 2018

III. Order

NOW, THEREFORE, IT IS ORDERED that, after review and due consideration of the administrative record of the above styled case, this matter 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. Texas Lottery Ticket Sales Agent license of Kim Lan Tran d/b/a Tulson Corner Mart is hereby revoked.

Passed and approved at the regular meeting of the Texas Lottery Commission in Austin, Texas, on the 8TH day of FEBRUARY, 2018.

Entered this 8TH day of FEBRUARY, 2018.

J. WINSTON KRAUSE, CHAIRMAN

CARMEN ARRIETA-CANDELARIA,
COMMISSIONER

DOUG LOWE, COMMISSIONER

ROBERT RIVERA, COMMISSIONER

SOAH DOCKET NO. 362-17-5926


TEXAS LOTTERY COMMISSION	§	BEFORE THE STATE OFFICE
	§	
v.	§	
	§	
KIM LAN TRAN, D/B/A	§	OF
TULSON CORNER MART,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

ORDER NO. 3
CONDITIONAL ORDER OF DEFAULT DISMISSAL AND REMAND

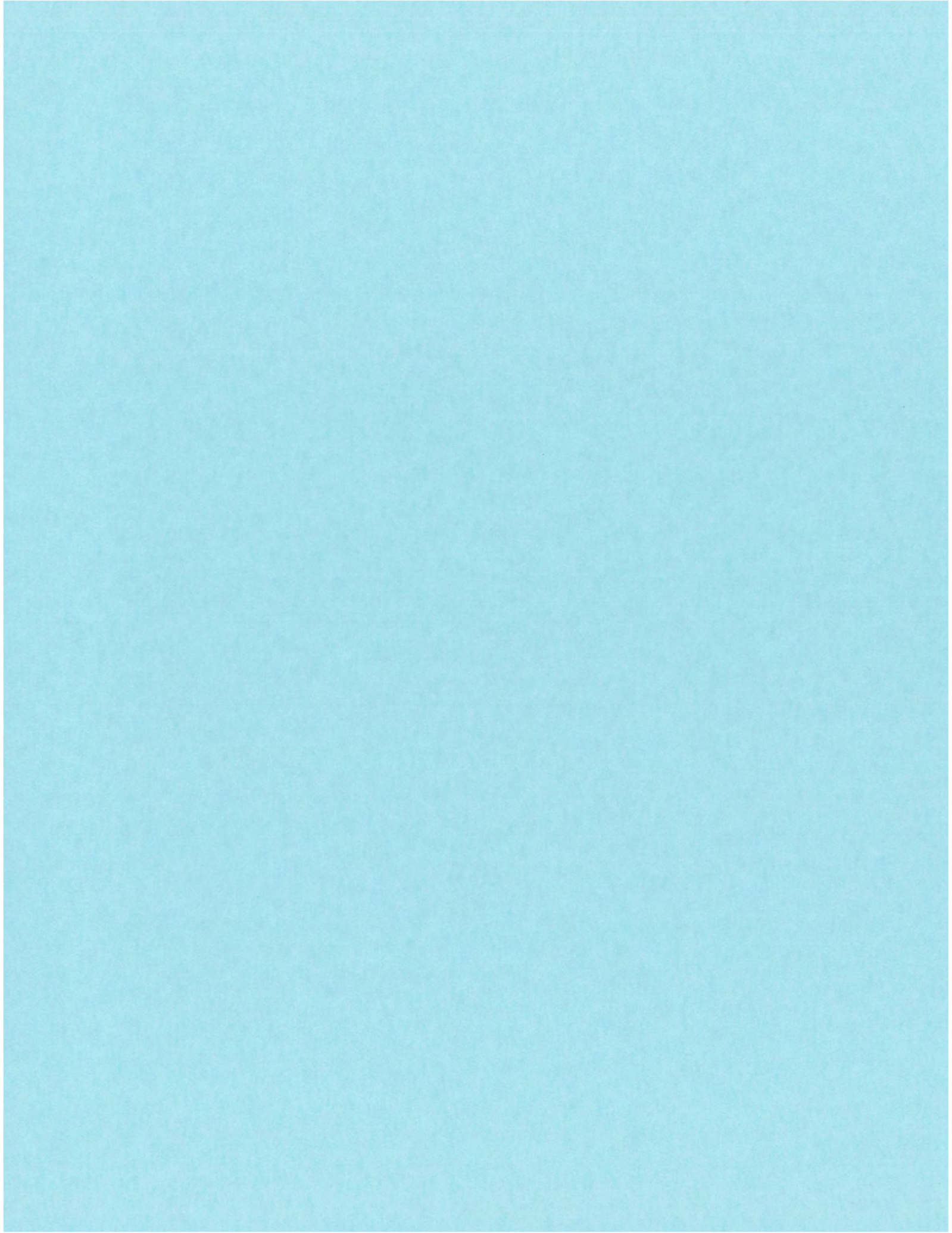
This matter was set for hearing on November 28, 2017, before Administrative Law Judge (ALJ) Pratibha J. Shenoy. Assistant General Counsel Stephen White appeared on behalf of the staff (Staff) of the Texas Lottery Commission (Commission). Kim Lan Tran d/b/a Tulson Corner Mart (Respondent) did not appear and was not represented at the hearing. Upon receiving Staff's Exhibit A showing proof of adequate notice to Respondent, the ALJ granted Staff's oral motion for default,¹ a copy of which motion was filed with the State Office of Administrative Hearings (SOAH) on November 29, 2017.

Due to Respondent's failure to appear, this matter may be dismissed from the SOAH docket and returned to the Commission for informal disposition on a default basis in accordance with Texas Government Code § 2001.056. **IT IS, THEREFORE, ORDERED** that this case is **CONDITIONALLY DISMISSED AND REMANDED** pursuant to 1 Texas Administrative Code § 155.501(d)(1). **This order of dismissal will become final, without further action by the ALJ, unless Respondent files a motion to set aside the default not later than 15 days from the date of this order.** Such a motion must show good cause for reopening the hearing, or show that the interests of justice require setting aside the default dismissal.

SIGNED December 1, 2017.


PRATIBHA J. SHENOY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

¹ 1 Tex. Admin. Code § 155.501(d)(1). The ALJ only reviewed the adequacy of the notice and not the sufficiency of Staff's factual allegations.



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 7030 5677 6157

September 29, 2017

Kim Lan Tran
D/B/A Tulson Corner Mart
3235 Holman St.
Houston, TX 77004

**RE: NOTICE OF FINAL HEARING ON REVOCATION OF LOTTERY LICENSE;
DOCKET NO. 362-17-5926
TEXAS LOTTERY TICKET SALES AGENT LICENSE NO. 177897**

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 24, 2017
LOCATION OF HEARING:	State Office of Administrative Hearings William P. Clements Building 300 West 15th St. 4th Floor Austin, Texas 78701

P.O. Box 16630 • Austin, Texas 78761-6630

Phone (512) 344-5000 • FAX (512) 478-3682 • Bingo FAX (512) 344-5142

txlottery.org • txbingo.org

I.
Factual Matters Asserted

Kim Lan Tran is the owner of Tulson Corner Mart. On July 28, 2010, in the County Criminal Court at Law No. 6, Harris County, Texas, Kim Lan Tran was found guilty of theft in the amount of \$50.00 and less than \$500.00, a crime of moral turpitude, and sentenced to two (2) days confinement in the Harris County Jail and a \$100 fine. Ten years have not elapsed since the termination of the sentence, parole, mandatory supervision, or probation served for the sentence. Due to this conviction, Tulson Corner Mart is not eligible to hold a retailer Sales Agent's license, pursuant to TEX. GOV'T CODE ANN. § 466.155(a).

On or about June 30, 2016, Kim Lan Tran, D/B/A Tulson Corner Mart submitted an application to renew its Lottery Ticket Sales Agent's License in which Kim Lan Tran D/B/A Tulson Corner Mart represented that none of the owners/officers/partners/directors have been convicted of a felony, criminal fraud, gambling or a gambling-related offense, or misdemeanor involving moral turpitude whose sentence, parole, mandatory supervision or probation ended less than ten (10) years ago. 16 TEX. ADMIN. CODE § 401.152(b) requires a Lottery Ticket Sales Agent to disclose all criminal convictions for those individuals of whom an investigation is authorized under the Government Code, § 466.201, and which are requested in the application. Kim Lan Tran, D/B/A Tulson Corner Mart failed to disclose to the Texas Lottery Commission Kim Lan Tran's July 28, 2010 conviction in violation of TEX. GOV'T CODE ANN. §§ 466.152(a) and 16 TEX. ADMIN. CODE § 401.152(b).

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 states in pertinent part:

(a) 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: (1) is an individual who: (A) has been convicted of a felony,

criminal fraud, gambling or a gambling-related offense, or a misdemeanor involving moral turpitude, if less than 10 years has elapsed since the termination of the sentence, parole, mandatory supervision, or probation served for the offense....(2) is not an individual, and an individual described in Subdivision (1): (A) is an officer or director of the applicant or sales agent; (B) holds more than 10 percent of the stock in the applicant or sales agent ... (5) has violated this chapter or a rule adopted under this chapter.

TEX. GOV'T CODE ANN. § 466.152(a) states:

An applicant for a license under this subchapter must apply to the division under rules adopted by the commission, provide information necessary to determine the applicant's eligibility for a license under Section 466.155, and provide other information considered necessary by the commission.

16 TEX. ADMIN. CODE § 401.152(b) states:

The executive director or his/her designee shall develop all forms and related documents including, but not limited to, an application form, release form to obtain a credit report, and/or any other background information relating to the applicant required to determine the applicant's eligibility for a license and whether the granting of a license to the applicant will best serve the public convenience. An applicant must disclose all criminal convictions for those individuals of whom an investigation is authorized under the Government Code, § 466.201, and which are requested in the application.

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.

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.

FAILURE TO APPEAR AT THE HEARING MAY RESULT IN THE ALLEGATIONS AGAINST YOU SET OUT IN THIS 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.

Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH.

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

Sincerely,

A handwritten signature in black ink, appearing to read 'S B White', written over a horizontal line.

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 of the Texas Administrative Code, Chapter 401.205, I do hereby certify that on this the 29 day of September, 2017, 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 7030 5677 6157, 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 Kim Lan Tran, D/B/A Tulson Corner Mart, 3235 Holman St., Houston, TX 77004.



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. 18-0053

Date: FEBRUARY 8, 2018

DOCKET NO. 362-17-5424.B

TEXAS LOTTERY COMMISSION	§	BEFORE THE TEXAS
PETITIONER	§	
	§	
V.	§	
	§	
AMVETS POST 52, INC.	§	
RESPONDENT	§	LOTTERY COMMISSION

ORDER OF THE COMMISSION

TO: Mr. Charles Hutchings
AMVETS Post 52, Inc.
928 S. Buckner Blvd.
Dallas, TX 75217-4505

During open meeting in 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 (ALJ) who made and filed a Proposal for Decision (PFD) containing the ALJ's Findings of Fact and Conclusions of Law. The PFD 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 PFD and exceptions and replies filed, if any, adopts the ALJ's Findings of Fact and Conclusions of Law 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 AMVETS Post 52, Inc.'s license to conduct bingo is hereby revoked.

Commission Order No. 18-0053

Date: FEBRUARY 8, 2018

Passed and approved at the regular meeting of the Texas Lottery Commission in Austin, Texas, on the 8TH day of FEBRUARY, 2018.

Entered this 8TH day of FEBRUARY, 2018.

J. WINSTON KRAUSE, CHAIRMAN

CARMEN ARRIETA-CANDELARIA,
COMMISSIONER

DOUG LOWE, COMMISSIONER

ROBERT RIVERA, COMMISSIONER

SOAH DOCKET NO. 362-17-5424.B

TEXAS LOTTERY COMMISSION,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
v.	§	OF
	§	
AMVETS POST 52, INC.,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

In this case, the staff (Staff) of the Charitable Bingo Operations Division of the Texas Lottery Commission (Commission) proposes to revoke Amvets Post 52, Inc.'s (Club or Respondent) license to conduct charitable bingo operations. Staff proposes to revoke the license because the Club failed to have positive net proceeds during its previous license year, in violation of the Bingo Enabling Act (the Act)¹ and a Commission rule. The Administrative Law Judge (ALJ) concludes Staff proved the Commission was entitled to revoke the Club's license and recommends that the Commission revoke the license.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The Commission has jurisdiction over this matter pursuant to the Texas Occupations Code chapter 2001. On August 24, 2017, Staff sent a notice of hearing by certified mail to the Club at the address shown on the Commission's records. 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 was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the factual matters asserted. The notice and jurisdiction were not challenged and are addressed more fully in the findings of fact and conclusions of law.

On September 25, 2017, in Austin, Texas, ALJ Steven D. Arnold convened the hearing as scheduled. Stephen White, Assistant General Counsel, represented Staff. Attorney

¹ Tex. Occ. Code ch. 2001.

Stephen Fenoglio represented Respondent. The record was closed on October 23, 2017, with the delivery of the transcript.

II. APPLICABLE LAW

When an “authorized organization,” such as a fraternal organization, wishes to conduct charitable bingo operations in Texas, it must first obtain a license from the Commission.² Licenses are generally effective for one year.³ The Commission may revoke a license if the licensee has violated any provision of the Act or any Commission rules adopted pursuant to the Act.⁴

Among many other requirements, the bingo operations of a licensed authorized organization must result in “net proceeds [as opposed to net losses] over the organization’s license period” (the Net Proceeds Requirement).⁵ The net proceeds of a license holder with a one-year license must be calculated based on the license holder’s quarterly reports for the four calendar quarters immediately preceding the license expiration date.⁶

A licensed authorized organization may apply to the Commission for a waiver of various requirements, including a waiver of the Net Proceeds Requirement.⁷ The Commission “may” grant such a waiver if the applicant shows “good cause . . . that compliance with [the requirement for which a waiver is sought] is detrimental to the organization’s existing or planned charitable purposes.”⁸ “Good cause” is proven by providing to the Commission:

- (1) credible evidence of circumstances beyond the control of the organization, including force majeure; or

² Tex. Occ. Code § 2001.101(a).

³ Tex. Occ. Code § 2001.105(c).

⁴ Tex. Occ. Code § 2001.353(a).

⁵ Tex. Occ. Code § 2001.451(g)(1).

⁶ 16 Tex. Admin. Code § 402.452(b)(2).

⁷ Tex. Occ. Code § 2001.451(k); 16 Tex. Admin. Code § 402.452(e).

⁸ Tex. Occ. Code § 2001.451(k).

- (2) a credible business plan for the organization's conduct of bingo or the organization's existing or planned charitable purposes.⁹

The Commission has adopted a rule specifying detailed and extensive requirements for a waiver application.¹⁰ An application for a waiver must include the following:

- (A) the reason for the request;
- (B) an explanation of how compliance with the requirement is detrimental to the organization's existing or planned charitable purposes;
- (C) the intended purpose of future charitable distributions;
- (D) the specific calendar quarter or license year for which the waiver is being requested, as applicable; and
- (E) either of the following:
 - (i) a credible business plan; or
 - (ii) if the request is due to force majeure as defined in § 402.453 of this subchapter, documentation from outside sources supporting force majeure. Examples of acceptable documentation include newspaper articles, copies of local ordinance changes, police or fire department reports, notification of road construction, or photographs.¹¹

"Force majeure" is defined as "[s]ome unforeseen event beyond the control of the licensed authorized organization or unit that results in non-compliance with specific sections of the Act or Rules."¹²

III. EVIDENCE PRESENTED

Respondent holds an annually-renewed license to conduct charitable bingo in Dallas, Texas. It engages in community projects and advocates for veterans' rights.

⁹ Tex. Occ. Code § 2001.451(k).

¹⁰ 16 Tex. Admin. Code § 402.450(b).

¹¹ 16 Tex. Admin. Code § 402.450(b)(2).

¹² 16 Tex. Admin. Code § 402.453(a)(1).

Respondent is required to submit quarterly accounting reports to the Commission of its operations of a bingo hall. According to the quarterly reports for the four calendar quarters immediately preceding the license expiration date, the third calendar quarter of 2015 through the second calendar quarter of 2016, (Reporting Period) the Club's net revenues were as follows:¹³

Period	Amount
2015 Q3	(\$12,619)
2015 Q4	(\$13,395)
2016 Q1	\$3,039
2016 Q2	\$9,812
Reporting Period Total	(\$13,163)

Based on the Club's quarterly reports for the Reporting Period, the Club did not have net proceeds, but rather had net losses, and failed the Net Proceeds Requirement.

Desira Glenn, who is the Licensing and Accounting Manager of the Commission, testified on behalf of Staff. She stated that the purpose of the Net Proceeds Requirement was to ensure that charities did not lose money conducting bingo. She testified that charities can request a waiver for failing to meet the Net Proceeds Requirement.

In August 10, 2016, Staff notified the Club that it was proposing to revoke the Club's license because it did not meet the Net Proceeds Requirement.¹⁴ In the letter, Staff stated that an application for a waiver from the Net Proceeds Requirement could be submitted by no later than August 31, 2016. The Club applied for a waiver from the Net Proceeds Requirement on a timely basis.¹⁵ The waiver request explained the reason for the requested waiver of the Net Proceeds Requirement as follows:

AMVETS Post 52 Bingo hall had a fire that started at the electronic computers and spread throughout the bingo hall. We were shut down for several months.¹⁶

¹³ Staff Ex. 13; Tr. at 18-19.

¹⁴ Staff Ex. 6.

¹⁵ Staff Ex. 7.

¹⁶ Staff Ex. 7.

Under the section titled “Required Supplemental Information Attachment,” a box was checked by the following statement: “If the waiver request is due to force majeure or circumstances beyond the control of the organization, submit: Documentation from outside sources supporting force majeure or evidence of circumstances beyond the control of the organization” Examples of acceptable documents were listed, which included newspaper articles and copies of local ordinance changes. The following was handwritten into the document following the statement: “Fire report ordered 8/29/16. Will forward at once.”¹⁷

The Club provided various documents to the Commission to support its claim of force majeure.¹⁸ The documents provided, rather than bolstering the Club’s claim, argued against it. For example, the Club initially represented that the fire took place on September 15, 2015.¹⁹ The fire marshal’s report, however, indicated that it took place on September 30, 2015.²⁰ Ms. Glenn explained the significance of this discrepancy as being that September 30 is the end of the third calendar quarter, one of the four in the Reporting Period. If the fire occurred on the last day of the quarter, it could not have affected the profitability during that quarter, thus rendering the net loss during that quarter unexplained.²¹ Ms. Glenn explained the Commission’s understanding of the fire’s impact on the fourth quarter of the Reporting Period as well. She noted that, based on the Club’s authorized play days (Friday, Saturday, and Sunday), there were 38 play days during the fourth quarter of the Reporting Period. Assuming the worst, the Club missed only three play days as a result of the fire and the Club’s reports showed that attendance actually increased during that quarter.²² In other words, Ms. Glenn opined that the Club’s evidence did not prove that force majeure was the cause of the Club’s failure to meet the Net Proceeds Requirement.

Ms. Glenn testified that she had not been to the Club’s location, so she could not evaluate the effects of the fire.²³ Stephanie Colwell, bookkeeper for the Club, testified that the fire had

¹⁷ Staff Ex. 7.

¹⁸ *See*, Staff Ex. 8.

¹⁹ Staff Ex. 6.

²⁰ Staff Ex. 8.

²¹ Tr. at 23.

²² Tr. at 24-25, 33.

²³ Tr. at 40-41.

lasting effects on the Club's facility. According to Ms. Colwell, there was a strong smoke smell that lingered in the facility and the Club's customers complained about it.²⁴ She stated that the Club took many steps, all unsuccessful, to remove the smoke smell from the facility.²⁵ Ms. Colwell testified that the Club cut expenses to compensate for the smaller number of customers.²⁶

The Club was given the opportunity to provide additional information to support its claim of force majeure. It provided additional information but that information consisted of business plan modifications that did not bear on whether the fire caused the failure.²⁷ The Commission denied the Club's waiver request by letter dated November 8, 2016.²⁸ Ms. Glenn testified that the grounds for a waiver stated in the application, along with the additional information provided, did not meet the definition of force majeure.

IV. ANALYSIS

There is no dispute that, based on the Club's quarterly reports for the four calendar quarters of the Reporting Period, the Club failed to have net proceeds over the Reporting Period, thereby violating the Net Proceeds Requirement set forth in the Act and the Commission's rules.²⁹ For this reason, the Commission is entitled to revoke the Club's license.³⁰

The only question is whether the Club proved it was entitled to a waiver of the Net Proceeds Requirement. The statute provides that the Commission "may" grant a waiver if good cause is shown. The use of the word "may" indicates that the Commission may also choose *not* to grant a waiver even if good cause is shown. Stated differently, the statute gives the

²⁴ Tr. at 50.

²⁵ Tr. at 51.

²⁶ Tr. at 52-54.

²⁷ Staff Ex. 8.

²⁸ Staff Ex. 9.

²⁹ Tex. Occ. Code § 2001.451(g)(1); 16 Tex. Admin. Code § 402.452(a).

³⁰ Tex. Occ. Code § 2001.353(a)(1).

Commission a substantial amount of discretion in its decisions on waiver applications.³¹ The issue to be addressed in this case is whether the Club has shown good cause “that compliance with [the Net Proceeds Requirement] is detrimental to the organization's existing or planned charitable purposes.”³²

The waiver statute provides that good cause may be proved by one of two methods. First, a waiver applicant can offer “credible evidence of circumstances beyond the control of the organization, including force majeure” (a Force Majeure Waiver).³³ The Club’s waiver application stated that it was seeking a Force Majeure Waiver because of a fire that occurred on September 15, 2015 (later corrected to September 30, 2015).

The evidence did not support the Club’s allegation that the fire caused it to violate the Net Proceeds Requirement. The fire occurred on the last day of the third calendar quarter of 2015; therefore, it could not have affected the performance during that quarter. Therefore, the Club started the Reporting Period with a \$12,619 loss in its first quarter. The impacts of the fire were in the fourth quarter of 2015, the second quarter of the Reporting Period. There is insufficient evidence to prove that, absent the fire, there would have been sufficient receipts in the fourth quarter of 2015 to raise the net proceeds for the Reporting Period to a positive number. Therefore the evidence did not support the Club’s force majeure request.

An applicant can also seek a waiver by providing “a credible business plan for the organization’s conduct of bingo or the organization’s existing or planned charitable purposes” (a Credible Business Plan Waiver).³⁴ It was undisputed that the Club did not submit a business plan, or request a Credible Business Plan Waiver. However, at hearing the Club attempted to present evidence and argument that appeared to resemble a Credible Business Plan Waiver rather than a Force Majeure Waiver. Since the Club did not present a credible business plan as part of its application, it is not entitled to rely on that argument as the basis for a waiver.

³¹ Tex. Gov’t. Code § 311.016(1).

³² Tex. Occ. Code § 2001.451(k).

³³ Tex. Occ. Code § 2001.451(k)(1).

³⁴ Tex. Occ. Code § 2001.451(k)(2).

Based on the evidence presented and the applicable legal authorities, the ALJ concludes that: (1) the Club failed to meet the Net Proceeds Requirement; (2) the waiver application did not establish good cause for excusing compliance with the Net Proceeds Requirement; and (3) the Club's license may be revoked.

V. FINDINGS OF FACT

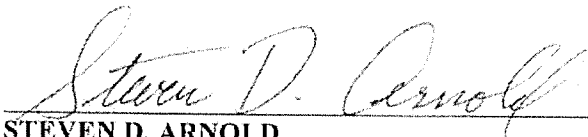
1. Amvets Post 52, Inc. (Club) holds an annually-renewed license to conduct charitable bingo in Dallas, Texas.
2. The license held by the Club is issued by the Charitable Bingo Operations Division of the Texas Lottery Commission (Commission).
3. The Club's license became effective on September 1, 2015, and was to expire on August 31, 2016.
4. The Club uses its revenue from its bingo operations for charitable purposes, including community affairs and lobbying for veterans' rights.
5. On August 10, 2016, the staff (Staff) of the Commission notified the Club that it was proposing to revoke its license because the Club did not have net proceeds during the period from September 1, 2015, through August 31, 2016 (Reporting Period), as required by state law (Net Proceeds Requirement).
6. The Club appealed the proposed denial and requested a hearing.
7. On August 31, 2016, the Club applied for a waiver from the Net Proceeds Requirement.
8. The waiver application contended that a fire that occurred on September 30, 2015, constituted force majeure demonstrating that compliance with the Net Proceeds Requirement should be waived.
9. The Club failed to prove that the fire caused the Club to fail to comply with the Net Proceeds Requirement.
10. A Notice of Hearing was sent to the Club on August 24, 2017. The notice contained 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 factual matters asserted.
11. The hearing was held before Administrative Law Judge Steven D. Arnold on September 25, 2017. Assistant Attorney General Stephen White represented Staff;

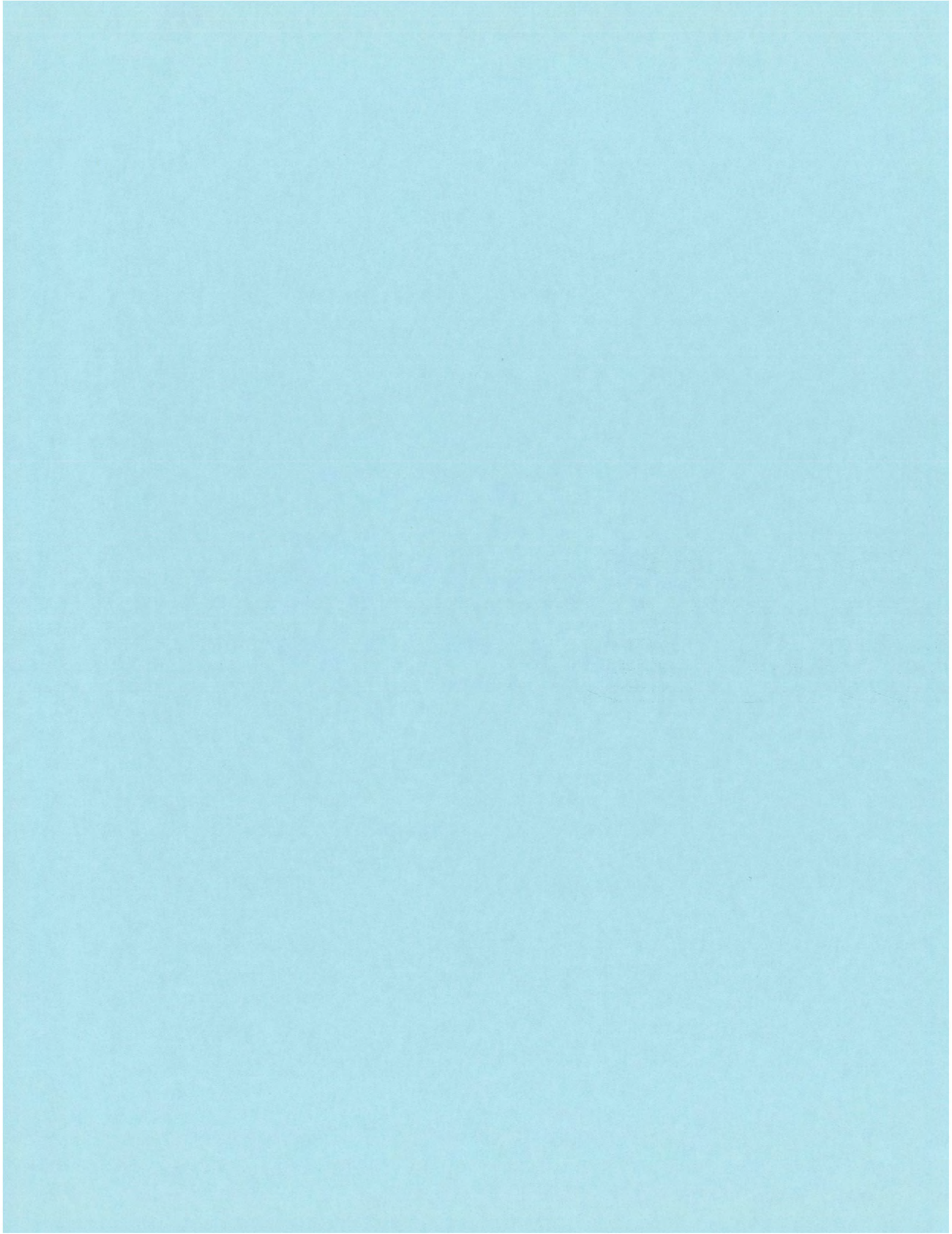
attorney Stephen Fenoglio represented the Club. The hearing ended the same day. The record was closed on October 23, 2017, with the delivery of the transcript

VI. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter. Tex Occ. Code ch. 2001.
2. The State Office of Administrative Hearings has jurisdiction over all matters relating to the conduct of a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003.
3. Staff has the burden of proving that the Commission was authorized to revoke the Club's license. 1 Tex. Admin. Code § 155.427.
4. The Club has the burden of proving that it was entitled to a waiver of statutory requirements. 1 Tex. Admin. Code § 155.427.
5. Adequate and timely notice of the hearing was provided. Tex. Gov't Code §§ 2001.051-.052.
6. The Commission may revoke a license if the licensee has violated any provision of the Bingo Enabling Act or any Commission rules adopted pursuant to the Act. Tex. Occ. Code § 2001.353(a).
7. By failing to have positive net proceeds in the Reporting Period, the Club violated Texas Occupations Code § 2001.451(g)(1) and 16 Texas Administrative Code § 402.452(a).
8. The Club failed to prove that it was entitled to a waiver of the Net Proceeds Requirement because it failed to prove good cause that compliance with the requirement is detrimental to its existing or planned charitable purposes. Tex. Occ. Code § 2001.451(k); 16 Tex. Admin. Code § 402.452(e).
9. The Club's license should be revoked.

SIGNED December 8, 2017.


STEVEN D. ARNOLD
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS



SOAH DOCKET NO. 362-17-5424.B

TEXAS LOTTERY COMMISSION	§	BEFORE THE STATE OFFICE
	§	
v.	§	
	§	OF
AMVETS POST 52, INC.	§	ADMINISTRATIVE HEARINGS

**RESPONDENT'S EXCEPTIONS
TO PROPOSAL FOR DECISION**

TO THE HONORABLE STATE OFFICE OF ADMINISTRATIVE HEARINGS:

COMES NOW, AmVets Post 52, Inc. ("Respondent"), and files this its Exceptions to the Honorable Administrative Law Judge's (the "ALJ") Proposal for Decision ("PFD"), specifically proposed Conclusions of Law Nos. 8 and 9, pursuant to 1 TEX. ADMIN. CODE §155.507(c), and as grounds therefor would show as follows.

Respondent submits the ALJ is wrong in concluding that Respondent failed to show it was entitled to a waiver of Net Proceeds (Conclusion of Law No. 8) and that Respondent's bingo license should be revoked (Conclusion of Law No. 9). The evidence conclusively establishes that Respondent did show that the fire adversely impacted their bingo games and revenues and that, following the fire, Respondent made significant changes to improve its bottom line, resulting in positive net proceeds for the next year.

Attached are true and correct copies of Respondent's admitted Exhibit Nos. 1-3. Exhibit No. 1 shows that Respondent made significant savings by cutting expenses; the reduced expenses amount to \$5,778.50/month, or \$69,462 per year! Given that Respondent had negative net proceeds of only \$13,163 (Notice of Hearing, PFD at p. 4, and Respondent's Exhibit No. 2), Respondent demonstrated its changes did result in positive net proceeds. One should not judge a business by just 1 year. And as shown by Respondent's Exhibit No. 3, Respondent had positive net proceeds for the following year (3rd quarter of 2016 to second quarter of 2017) in the amount

of \$10,913! This is true even though Respondent's net bingo receipts (gross sales less prizes) continued to decline.

The fire occurred on September 30, 2015, which directly and adversely impacted bingo operations. No representative of the Bingo Division could tell the ALJ how the fire impacted the bingo hall or how bad the smoke stench was in the hall. Ms. Colwell, who was present at the hall during this timeframe, testified concerning the problems faced by the bingo hall following this fire with the fire stench readily and continuously present for weeks following the fire and that numerous customers complained about the fire stench and that Respondent lost customers as a result of the fire. A comparison of the 2015 and 2016 4th quarters is revealing. During the 4th quarter of 2015, Respondent had negative net proceeds of \$13,395; during the 4th quarter of 2016, Respondent had negative net proceeds of only \$3,886. In other words, Respondent cut its losses by almost \$10,000 in this quarter.

Respondent submits the correct result is that Respondent's bingo license should not be revoked; Respondent's bingo license should not be compromised in any way. Respondent and its employees took active steps to reverse the downward trend, and those actions resulted in POSITIVE net proceeds.

WHEREFORE, PREMISES CONSIDERED, Respondent AmVets Post 52, Inc. requests that the Administrative Law Judge reverse its decision to revoke Respondent's bingo license, issue a revised Proposal for Decision, and for such other and further relief to which Respondent is justly entitled.

Respectfully submitted,

STEPHEN FENOGLIO
713 W. 14th Street
Austin, Texas 78701-1707
Telephone: 512.347.9944
Facsimile: 512.482.8095
E-mail: jsfenoglio@fenogliolaw.com

By: /s/ Stephen Fenoglio
STEPHEN FENOGLIO
State Bar No. 06904600

Attorney for Respondent
AmVets Post 52, Inc.

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing Respondent's Exceptions to Proposal for Decision has been served on this the 5th day of January 2018 in the manner described to the person(s) listed below:

Stephen White
Texas Lottery Commission
P. O. Box 16630
Austin, Texas 78761-6630

VIA FACSIMILE
512.344.5189

/s/ Stephen Fenoglio
STEPHEN FENOGLIO

AmVets Post 52

Sequence of Events:

09/30/15 Fire at bingo hall, 3115 Dawes Drive, Dallas, Texas (Fire Investigation Report attached)

10/23/15 1st bingo session after fire. There were multiple problems with the cardminders; some of the cardminders would work only occasionally. Smoke smell still overwhelming customers. Customers reportedly complained of smoke odor.

<u>Savings</u>	<u>Amount</u>	<u>Date Savings Initiated</u>
Rent:	@ \$3,300/month	10/1/16
Security:	\$960/month	10/1/16
Bookkeeping:	\$412.50/month	10/1/16
Ushers:	@ \$300/month	10/1/16
Cardminder:	\$806/month	12/5/16
<hr/>		
Total Savings	\$5,778.50/month	

362-17-5424.B
 September 27, 2017
 AMVETS Post 52
 Exhibit

FIRE INVESTIGATION REPORT

DALLAS FIRE-RESCUE DEPARTMENT
Fire Investigation and Explosive Ordinance Disposal Division1551 Baylor Street #500
Dallas, Texas 75226
Phone Number (214) 670-4312
Fax Number (214) 670-4650Council District: 1
Census Tract: 06402
Zip Code: 75211

Date: 09/30/15 Time of Alarm: 19:41 District/Shift: 6/B Mapco: 53-P

Incident Number: 210421 Investigator (s): Clark / Pittman

Address: 3115 Dawes Dr.

Apartment / Suite Number: Exposure: Same Building:

Business Name: Amvet Post Bingo

Property Owner: WHV Partners LP Rep:

Occupants: Amvet Post Bingo Rep: Amvet Post #52 Members

Type of Incident: Description of Incident:

Structure	<input checked="" type="checkbox"/>	One Story-Masonry-Commercial					
Non-Structure	<input type="checkbox"/>						
Criminal Attempt	<input type="checkbox"/>	Terroristic Threat		<input type="checkbox"/>	False Alarm		<input type="checkbox"/>
Injury	<input type="checkbox"/>	Number of injuries		Death	<input type="checkbox"/>	Number of deaths	
Multiple Alarm	2-11	3-11	4-11	5-11	6-11	7-11	Out Taps
Vehicle	<input type="checkbox"/>	Year	Make	Model	State/License Number	VIN	
Cause	Accidental						

Fire Loss Information

	Building / Vehicle	Contents
Loss Estimate	0	5000
Estimated Value		60000
Insurance Coverage		
Insurance Company		
Policy Number / Date		
Adjuster's Loss Estimate		
Company Adjuster		
Public Adjuster		
Insurance Agent		

Assigned ☒ FHR Entered ☐ NFIRS Entered ☒ Completed ☒ Sup. Review RB 10/12/15

06/26/2017 MON 16:49 FAX

020/029

FIRE INVESTIGATION REPORT

INCIDENT # 21042

Evidence: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Photos: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Supplements: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Previous Fires: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Drug Involved: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Homeless: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Sprinklers: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Type: Wet <input type="checkbox"/> Dry <input type="checkbox"/> Foam <input type="checkbox"/> Halogen <input type="checkbox"/> CO2 <input type="checkbox"/>	Operational: Yes <input type="checkbox"/> No <input type="checkbox"/>
	Activated: Yes <input type="checkbox"/> No <input type="checkbox"/>	# Heads: _____ Operational: _____
Fire Alarm System: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Unk. <input type="checkbox"/>	Type: _____	Number of working smoke alarms: _____
How many: _____ (including non-working)		
Operational: Yes <input type="checkbox"/> No <input type="checkbox"/> Unk. <input type="checkbox"/>	Location: _____	
Number of occupants at home at time of fire: _____	Age of occupants: _____	
Did the smoke detector warn occupants? Yes <input type="checkbox"/> No <input type="checkbox"/> Unk. <input type="checkbox"/> N/A <input type="checkbox"/>	Did the smoke detector aid in escape? Yes <input type="checkbox"/> No <input type="checkbox"/> Unk. <input type="checkbox"/> N/A <input type="checkbox"/>	
Exit Obstructed: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Unk. <input type="checkbox"/> N/A <input type="checkbox"/>	If Yes, How? _____	
Harder Bar: Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Installed Correctly: Yes <input type="checkbox"/> No <input type="checkbox"/>	

Narrative

This accident fire began when an unrecified electrical short in non-fixed wiring of a desktop computer caused the computer's wiring insulation to melt and catch fire. The computer was located with two other CPUs in a long, shallow, rectangular metal box along with an internal cable fire arrest device. However, the device, from the CPU's location to the cable's end, was not able to stop the fire. The fire did not spread to other contents of the box, however. There was no fire alarm, and no first responding fire fighters reported smoke and wires inside the box, which was closed at the time of the fire. No one was inside the box at the time of the fire, and the fire was not visible. The box was located in a retail commercial building. At the time of the fire, the temperature was approximately 75 degrees, 46% humidity, and wind at 7 mph and clear sky.

CONDUCTOR QUARTERLY REPORT FOR
ARMVETS POST 52 FOR 3rd and 4th Qtrs 2015 and 1st and 2nd Qtrs 2016

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P
1			Regular	Regular	Total	Total	Net	Total	Total	Net	Total	Total	Net	Total	Total	Total
2			Paper	Electronic	Regular	Prizes	Regular	EvPT	Prizes	Event PT	Instant	Prizes	Instant	Regular	Prizes	Bingo
3			Hard	Card	Bingo	Awarded	Bingo	Receipts	Awarded	Games	PT	Awarded	Games	Bingo	Awarded	Game
4				Sales	Receipts	Regular		Receipts	Event PT	Games	Receipts	Instant	Games	Event PT	Prizes	Net
5	Year	Occasions														Receipts
6																
7	3rd Qtr 2015	40	21,044	83,613	104,657	69,334	35,323	26,965	19,236	7,729	0	0	0	131,622	88,570	43,052
8																
9	4th Qtr 2015	35	25,881	59,845	85,726	66,388	19,338	42,145	30,126	12,019	0	0	0	127,871	96,514	31,357
10																
11	1st Qtr 2016	46	33,270	84,736	118,006	87,073	30,933	76,613	55,274	21,339	0	0	0	194,619	142,347	52,272
12																
13	2nd Qtr 2016	52	36,708	88,809	125,517	88,563	36,954	77,440	55,373	22,067	0	0	0	202,957	143,936	59,021
14																
15	Totals	173	116,903	317,003	433,906	311,358	122,548	223,163	160,009	63,154	0	0	0	657,069	471,367	165,702

362-17-5424.B

September 27, 2017

ARMVETS Post 52

Exhibit

CONDUCTOR QUARTERLY REPORT FOR
AMVETS POST 52 FOR 3rd and 4th Qtrs 2015 and 1st and 2nd Qtrs 2016

	A	Q	R	S	T	U	V	W	X	Y	Z	AA	AB	AC	AD	AE
1																
2			Total	Cost of	Cost of	Total	Cost of	Total	Cost of							Total
3			Rent	Goods	Goods	Cost of	Goods	Cost of	Goods							Expenses
4		Total	Payments	Purchased	Purchased	Goods	Purchased	Goods	Cost of	Advertising						
5	Year	Proceeds	Made	Paper	Electronic	Goods	PT Event	Purchased	Costs	Promotions	Premises	Professional	Employee	License	Other	Total
6											Expenses	Services	Expenses	Fees	Expenses	Expenses
7	3rd Qtr 2015	43,052	8,700	615	17,851	18,466	1,585	1,585	4,832	6,201	2,668	3,812	3,960	209	42,690	51,390
8																
9	4th Qtr 2015	31,357	8,100	531	8,808	9,339	1,761	1,761	5,035	8,548	2,432	3,656	0	141	35,556	43,656
10																
11	1st Qtr 2016	52,272	12,000	463	12,241	12,704	1,549	1,549	5,269	8,118	3,026	8,388	235	235	39,524	51,524
12																
13	2nd Qtr 2016	59,021	13,375	292	11,504	11,796	2,537	2,537	875	7,394	2,745	10,134	200	233	35,914	49,289
14																
15	Totals	185,702	42,175	1,901	50,404	52,505	7,432	7,432	16,011	30,261	10,771	25,990	4,395	618	153,684	195,859

**CONDUCTOR QUARTERLY REPORT FOR
AMVETS POST 52 FOR 3rd and 4th Qtrs 2015 and 1st and 2nd Qtrs 2016**

	A	AF	AG	AH
1		Total		
2		Price		Charitable
3		Fee		Distributions
4		Paid	Net	This
5	Year	(Prior Qtr)	Proceeds	Quarter
6				
7	3rd Qtr 2015	8,709	-12,619	2,000
8				
9	4th Qtr 2015	5,922	-13,395	0
10				
11	1st Qtr 2016	4,826	3,039	5,033
12				
13	2nd Qtr 2016	7,117	9,812	600
14				
15	Totals	26,574	-13,163	7,633

CONDUCTOR QUARTERLY REPORT FOR
AMNETS POST 52 FOR 3rd and 4th Qtrs 2016 and 1st and 2nd Qtrs 2017

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P
1		Regular	Regular	Total	Total	Net	Total	Total	Net	Total	Total	Net	Total	Total	Total
2		Paper	Electronic	Regular	Prizes	Receipts	Prizes	Event PT	Receipts	Instant	Prizes	Instant	Regular	Prizes	Bingo
3		Hard	Card	Bingo	Regular	Regular	Total	Event PT	Event PT	PT	Awarded	PT	Bingo	Total	Game
4		Card	Sales	Receipts	Bingo	Bingo	Receipts	Games	Games	Games	Instant	Games	Event PT	Awarded	Net
5	Year	Occasions													Receipts
6															
7	3rd Qtr 2016	44	33,053	96,226	82,822	46,457	83,376	78,609	4,967	0	0	0	251,855	161,431	51,224
8															
9	4th Qtr 2016	37	27,954	62,385	71,080	19,259	53,975	38,581	15,394	0	0	0	144,321	109,661	34,660
10															
11	1st Qtr 2017	36	28,909	58,815	69,896	17,828	53,640	38,171	15,469	0	0	0	141,354	108,067	33,287
12															
13	2nd Qtr 2017	39	37,501	78,315	115,816	14,913	62,580	44,702	17,858	0	0	0	178,376	145,805	32,571
14															
15	Totals	156	127,417	285,741	423,158	98,457	253,751	200,063	53,688	0	0	0	676,509	524,764	151,145

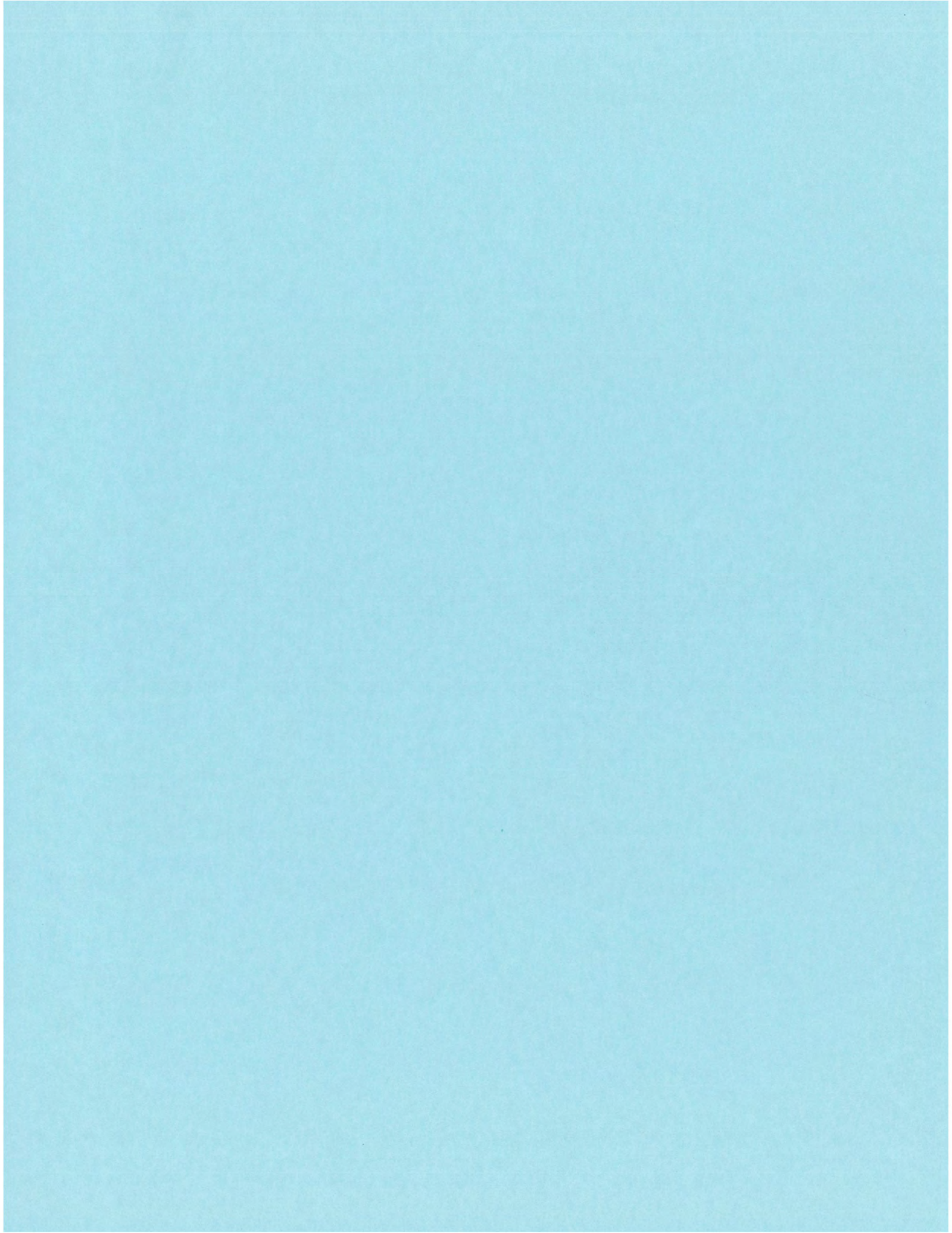
362-17-5424.B
September 27, 2017
AMNETS Post 52
Exhibit

CONDUCTOR QUARTERLY REPORT FOR
ANMVETS POST 52 FOR 3rd and 4th Qtrs 2016 and 1st and 2nd Qtrs 2017

	A	Q	R	S	T	U	V	W	X	Y	Z	AA	AB	AC	AD	AE
1																
2			Total	Cost of	Cost of	Total	Cost of	Total								Total
3			Rent	Goods	Goods	Cost of	Goods	Cost of	Advertising							Expenses
4		Total	Payments	Purchased	Purchased	Electronic Purchased	Purchased	Purchased	Promotions	Premises	Professional	Employee	License	Other	Total	and
5	Year	Proceeds	Made	Paper	Electronic	Electronic	Electronic	Electronic	Costs	Expenses	Services	Expenses	Fees	Expenses	Expenses	Rent
6																Payments
7	3rd Qtr 2016	51,424	11,100	2,875	11,582	14,457	5,674	5,674	475	8,036	2,645	9,165	100	198	40,901	52,001
8																
9	4th Qtr 2016	34,653	3,900	0	9,574	9,574	4,689	4,689	437	7,295	1,809	4,400	3,300	105	32,050	33,950
10																
11	1st Qtr 2017	33,257	2,300	576	7,752	8,328	972	972	569	4,731	4,914	1,428	0	252	22,583	24,883
12																
13	2nd Qtr 2017	32,771	0	423	10,205	10,628	2,793	2,793	2,473	7,505	530	4,058	0	393	28,480	28,480
14																
15	Totals	152,145	17,300	3,874	39,113	42,987	14,128	14,128	3,954	27,567	9,898	19,071	3,400	968	124,014	141,314

**CONDUCTOR QUARTERLY REPORT FOR
AMVEIS POST 52 FOR 3rd and 4th Qtrs 2016 and 1st and 2nd Qtrs 2017**

	A	AF	AG	AH
1		Total		
2		Prize		Charitable
3		Fee		Distributions
4		Paid	Net	This
5	Year	(Prev Qtr)	Proceeds	Quarter
6				
7	3rd Qtr 2016	7,197	297	400
8				
9	4th Qtr 2016	8,072	-3,886	600
10				
11	1st Qtr 2017	5,423	8,324	2,708
12				
13	2nd Qtr 2017	5,403	6,168	450
14				
15	Totals	26,155	10,913	4,159



SOAH DOCKET NO. 362-17-5424.B

TEXAS LOTTERY COMMISSION Petitioner	§ § § § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
v. AMVETS POST 52, INC. Respondents		

**TEXAS LOTTERY COMMISSION'S REPLY TO RESPONDENT'S EXCEPTIONS TO
PROPOSAL FOR DECISION**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE STEVEN D. ARNOLD:

COMES NOW the Texas Lottery Commission (Commission), by and through its attorney of record, and files this *Reply to Respondent's Exceptions to Proposal for Decision* in the above-styled matter.

I.

AMVETS Post 52, Inc. (Respondent), in its exceptions to the Proposal for Decision (PFD), requested that the Administrative Law Judge (ALJ) "reverse its decision to revoke Respondent's bingo license, issue a revised Proposal for Decision, and for such other and further relief to which Respondent is justly entitled." Respondent's basis for this request is that: (1) "The evidence conclusively establishes that Respondent did show that the fire adversely impacted their bingo games and revenue"; and (2) "Respondent made significant changes to improve its bottom line resulting in positive net proceeds for the next year."¹ Respondent's exceptions are without merit and should be denied. The ALJ's analysis is well reasoned and his proposed Findings of Fact and Conclusions of Law are correct.

¹ *Respondent's Exceptions to Proposal for Decision* at 1.

II.

The fire that occurred in the bingo hall in September 2015 was not the reason for an entire year of negative net proceeds. Respondent stated in its application for a waiver of the positive net proceeds requirement that the fire occurred on September 15, 2015, and was the reason for its negative net proceeds for the third quarter of 2015 (June – September 2015)². In fact, the fire did not occur until September 30, 2015, per the Fire Investigation Report completed by the Dallas Fire-Rescue Department.³ Respondent was not scheduled or licensed to conduct bingo on September 30, 2015.⁴ The fire could not have caused negative net proceeds for the third quarter of 2015 because not a single bingo occasion was missed during that time period. Further, Commission witness Desira Glenn’s (Licensing and Accounting Manager of the Charitable Bingo Operations Division) analysis of the number of bingo occasions scheduled and played during the fourth quarter of 2015 showed, at most, the fire resulted in only three missed bingo occasions for the entire year in question (third quarter of 2015 through the second quarter of 2016).⁵ Additionally, the Fire Investigation Report shows the fire was limited to four computers and a table.⁶ The real reason for Respondent’s negative net proceeds, discussed below, is the payment of unreasonable and unnecessary expenses.

III.

Respondent’s assertion it “has made significant savings by cutting expenses”⁷ is irrelevant, as the basis of its waiver of the positive net proceeds requirement was not based upon “a credible business plan for the organization’s conduct of bingo or the organization’s existing or planned

² Staff Exhibit No. 7.

³ Staff Exhibit No. 9.

⁴ Transcript (Tr.) at 23.

⁵ Tr. at 23-25, 33.

⁶ Exhibit 9.

⁷ *Respondent’s Exceptions to Proposal for Decision* at 1.

charitable purposes,” per TEX. OCC. CODE ANN. § 2001.451(k)(2), but “circumstances beyond the control of the organization, including force majeure,” per TEX. OCC. CODE ANN. § 2001.451(k)(1). No business plan has ever been provided to the Commission for review and consideration, let alone a credible business plan that adequately addresses Respondent’s failure to generate positive net proceeds.

IV. Conclusion

Respondent’s exceptions are without merit. The fire that occurred in September 2015 was not the cause of Respondent’s negative proceeds. In fact, the negative proceeds were the result of Respondent’s bad business practices and excessive expenses. No business plan of any kind has been submitted to the Commission for review and consideration, let alone a credible business plan that adequately addresses Respondent’s failure to generate positive net proceeds. The Staff asks the ALJ not to make any changes to the PFD.

Respectfully submitted,



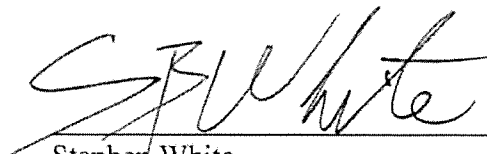
Stephen White
Assistant General Counsel
Texas Lottery Commission
P.O. Box 16630
Austin, Texas 78761-6630
Telephone: (512) 344-5465
Facsimile: (512) 344-5189

CERTIFICATE OF SERVICE

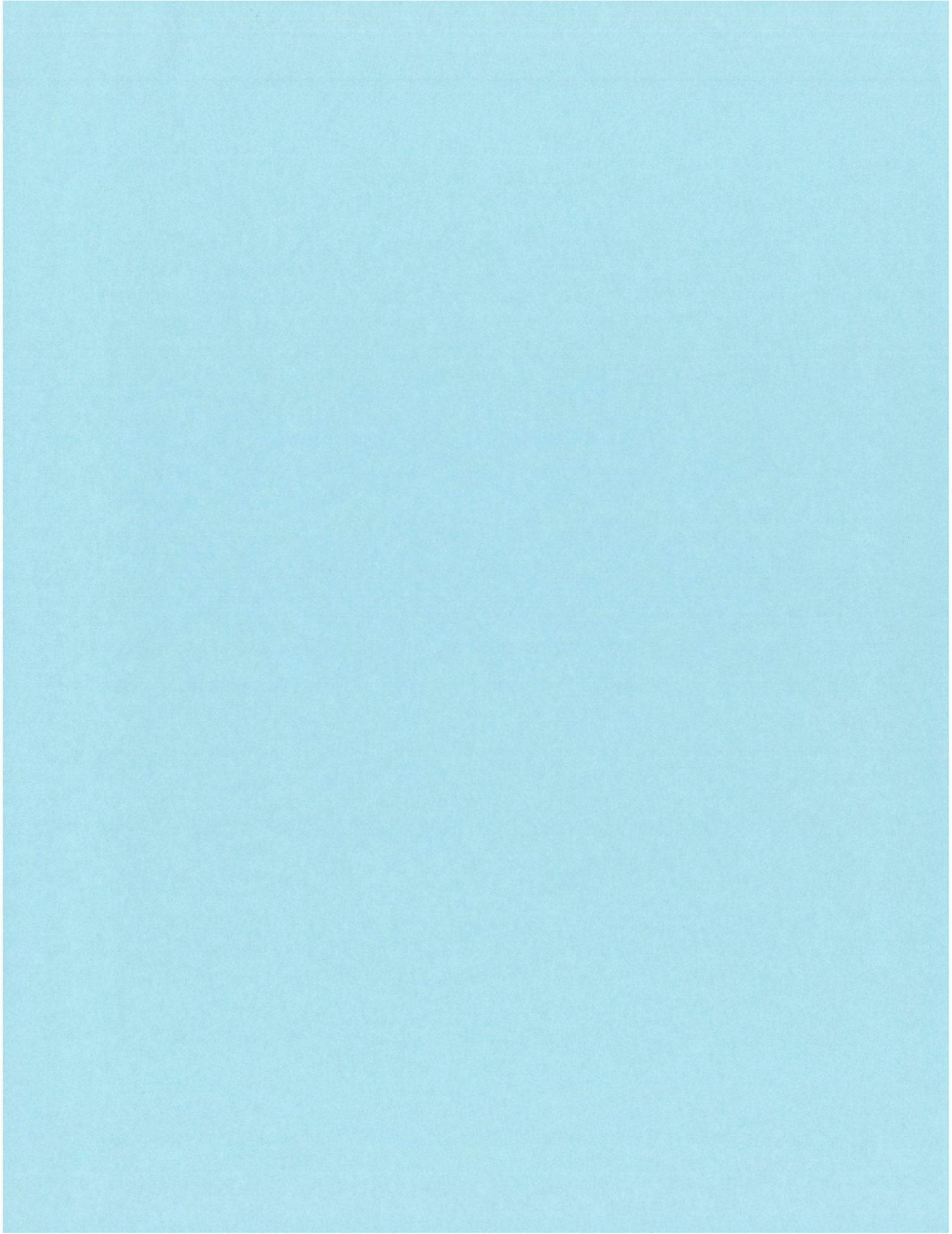
I certify that on January 19, 2018, a true and correct copy of the *Texas Lottery Commission's Reply to Respondent's Exceptions to Proposal for Decision* has been served on the following individual at the location and manner indicated below.

Via Facsimile: 482-8095

Stephen Fenoglio
713 W. 14th St.
Austin, TX 78701-17079



Stephen White
Assistant General Counsel



State Office of Administrative Hearings



Lesli G. Ginn
Chief Administrative Law Judge

January 25, 2018

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

VIA FACSIMILE NO. 512-478-3682

**RE: Docket No. 362-17-5424.B; Texas Lottery Commission v. AMVETS
Post 52, Inc.**

Dear Mr. Grief:

On December 8, 2017, I submitted to you my Proposal for Decision (PFD) in the above-referenced case and sent copies to the parties. Amvets Post 52, Inc. (Club) filed exceptions to the PFD, and the Charitable Bingo Operations Division of the Texas Lottery Commission filed replies to those exceptions.

I have reviewed the exceptions and replies, and find that the exceptions present no arguments not already addressed in the PFD and no new evidence for consideration, and I recommend no changes to the PFD. Accordingly, the PFD is now ready for your consideration

Sincerely,

Steven D. Arnold
Administrative Law Judge

SDA/eh

cc: Stephen White, Assistant General Counsel, Texas Lottery Commission, 611 E. 6th, Austin Texas 78701 - **VIA FACSIMILE NO. 512-344-5189**
Stephen Fenoglio, Attorney and Counselor at Law, 713 W. 14th Street, Austin, Texas 78701-1707 - **VIA FACSIMILIE NO. 512-482-8095**

Commission Order No. 18-0054

Date: FEBRUARY 8, 2018

DOCKET NO. 362-18-0243.B

TEXAS LOTTERY COMMISSION	§	BEFORE THE TEXAS
PETITIONER	§	
	§	
V.	§	
	§	
PHARR CRIME STOPPERS, INC.	§	
RESPONDENT	§	LOTTERY COMMISSION

ORDER OF THE COMMISSION

TO: Ms. Ana Villanueva
Pharr Crime Stoppers, Inc.
P.O. Box 344
Pharr, TX 78577-1606

During open meeting in 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 (ALJ) who made and filed a Proposal for Decision (PFD) containing the ALJ's Findings of Fact and Conclusions of Law. The PFD 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 PFD and exceptions and replies filed, if any, adopts the ALJ's Findings of Fact and Conclusions of Law 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 Pharr Crime Stoppers, Inc.'s renewal license application to conduct bingo is hereby denied.

Commission Order No. 18-0054

Date: FEBRUARY 8, 2018

Passed and approved at the regular meeting of the Texas Lottery Commission in Austin, Texas, on the 8TH day of FEBRUARY, 2018.

Entered this 8TH day of FEBRUARY, 2018.

J. WINSTON KRAUSE, CHAIRMAN

CARMEN ARRIETA-CANDELARIA,
COMMISSIONER

DOUG LOWE, COMMISSIONER

ROBERT RIVERA, COMMISSIONER

SOAH DOCKET NO. 362-18-0243.B

TEXAS LOTTERY COMMISSION,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
v.	§	
	§	OF
	§	
PHARR CRIME STOPPERS, INC.,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff (Staff) of the Texas Lottery Commission (Commission) seeks to deny the application of Pharr Crime Stoppers, Inc. (Respondent) to renew its license to conduct charitable bingo because Respondent failed to satisfy all requirements for renewal. The Administrative Judge Law Judge (ALJ) concludes that Respondent failed to comply with all applicable requirements and, accordingly, Respondent’s application should be denied.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

There is no dispute about notice or jurisdiction, which are addressed in the findings of fact and conclusions of law. The hearing was held on October 31, 2017, before ALJ Hunter Burkhalter in Austin, Texas. Staff was represented by Assistant General Counsel Kristen Guthrie. Stanley Francis and Jorge Rios appeared, *pro se*, on behalf of Respondent. The record closed that day.

II. APPLICABLE LAW

Pursuant to the Bingo Enabling Act (Act),¹ the Commission has been delegated “broad authority to . . . exercise strict control and close supervision over all bingo conducted” in Texas.²

¹ Tex. Occ. Code ch. 2001.

² Tex. Occ. Code § 2001.051(b).

When an authorized organization³ wishes to conduct bingo operations in Texas, it must first apply for and obtain a license from the Commission.⁴ Licenses are generally effective for one year, requiring the holder to annually apply for renewal.⁵ The Commission may deny a license renewal application if the applicant has violated any provision of the Act or any Commission rules adopted pursuant to the Act.⁶

The Commission is required to conduct criminal background checks on persons who are involved in the conducting of bingo operations. The Commission maintains a registry of all individuals who have favorably passed the Commission's background check and are therefore approved to conduct bingo operations.⁷ An individual's name may remain on the registry for up to three years, after which time the individual must go through a new background check in order to be reinstated on the registry.⁸ Except in a narrow exception that is not applicable here, a licensed authorized organization may not allow a person who is not listed in the registry to act as the operator or a worker conducting bingo operations.⁹ A licensed authorized organization must submit to the Commission the names of all of its operators and bingo workers before they can serve in that capacity, and it is the responsibility of the organization to review the registry to confirm that any operator or bingo worker it is utilizing is on the registry.¹⁰

A licensed authorized organization that is applying to renew its license is obligated to submit any supplemental information requested by the Commission, and the Commission is explicitly authorized to deny the application if the organization fails to do so.¹¹ If an application is found to be incomplete, the Commission is obligated to so notify the applicant, who then has

³ Authorized organizations include, among other things, fraternal organizations that are engaged in charitable work and meet specified criteria. Tex. Occ. Code §§ 2001.002(11), .101.

⁴ Tex. Occ. Code § 2001.101(a).

⁵ Tex. Occ. Code § 2001.105(c).

⁶ Tex. Occ. Code § 2001.353(a).

⁷ Tex. Occ. Code § 2001.313(a), (b).

⁸ Tex. Occ. Code § 2001.313(b-1).

⁹ Tex. Occ. Code § 2001.313(d), (h).

¹⁰ 16 Tex. Admin. Code § 402.402(f), (g).

¹¹ Tex. Occ. Code § 2001.302; 16 Tex. Admin. Code § 402.400(a)(2), (c)(5).

21 calendar days after the notification to provide the missing information. Failure to supplement within the 21 days can result in denial of the application.¹²

III. EVIDENCE PRESENTED

Staff offered nine exhibits at hearing, which were all admitted, and presented the testimony of Desira Glenn, Manager of the Commission's Charitable Bingo Operations Division. Mr. Francis and Mr. Rios testified on Respondent's behalf.

The following facts are not in dispute. On May 8, 2017, Respondent submitted its renewal application. The application was completed using a Commission-generated form. The form included a list of the individuals Respondent had previously identified as directors, operators, or workers at its bingo hall. The form explicitly notified Respondent of the status of each of the individuals on the Commission's registry. The names of the following individuals listed by Respondent as its operators or bingo workers had expired off the Commission's registry by the time Respondent submitted its renewal application:¹³

Director and/or Operator Name	Status of Listing on the Commission's Registry
Mary Arellano	Expired 8/22/2016
Omar Avendano	Expired 9/12/2014
Stanley Francis	Expired 8/27/2016
Jorge Rios	Expired 8/27/2016
Norma Rivera	Expired 8/27/2016
Yadira Torres	Expired 2/29/2016
Moisis Vazaldua	Expired 11/20/2015

¹² 16 Tex. Admin. Code § 402.400(e).

¹³ Staff Ex. 7.

By letter dated June 22, 2017, Staff notified Respondent that its application was incomplete because, among other things,¹⁴ the names listed above were no longer on the Commission's registry. Staff instructed Respondent to supplement its application by either deleting the names or completing and submitting the required forms and paying the required \$25 fee per person to have each of the individuals reinstated on the registry. The letter further instructed that Respondent had until July 13, 2017 (*i.e.*, 21 days from the date of the letter) to provide this supplemental information.¹⁵ Because Respondent did not supplement its application by the deadline, Staff notified Respondent on August 18, 2017, that it was proposing to deny the application.¹⁶

By email dated August 22, 2017, Respondent requested a hearing to contest the proposed denial. In the email, Respondent explained, "[w]e are aware of the deficiencies in the renewal application submitted and our intention is to correct these deficiencies prior to the hearing."¹⁷ On or about August 25, 2017, Respondent sent to the Commission, "for bingo renew," what purported to be a check for \$175.¹⁸ Apparently, the check was intended to pay the \$25 per person fee for reinstating the individuals on the registry (\$25 x 7 individuals = \$175). However, no explanation was provided with the check, and Respondent did not also provide any of the required forms for reinstatement. Staff returned the check to Respondent on August 29, 2017.¹⁹

¹⁴ Staff also asserted that Respondent had failed to pay for a required bond. Based on the First Amended Complaint, however, Staff is no longer pursuing that allegation.

¹⁵ Staff Ex. 4.

¹⁶ Staff Ex. 1

¹⁷ Staff Ex. 6.

¹⁸ Staff Ex. 5. Confusingly, the check was written for "\$175.00" and "one thirty four and xx."

¹⁹ Staff Ex. 5.

On October 16, 2017, Respondent sent to Staff the forms to have the seven individuals reinstated on the Commission's registry and submitted another check for \$175.²⁰ On October 18, 2017, Staff returned the check and notified Respondent that the time for supplementing its application had passed.²¹

At the hearing, Respondent admitted that it had failed to provide all of the necessary information for its application by the deadline. Mr. Rios and Mr. Francis explained that they are volunteers who have full-time jobs and they did not devote the proper time to making sure they complied with all of the requirements. They testified that they were confused by the requirements of the application and had difficulty meeting all of them. They conceded that they never asked Staff for an extension of the deadline to provide the supplemental information asked for by Staff. Essentially, they asked for forgiveness and asked that their license be renewed in spite of the deficiencies in the application so that the organization could continue doing its charitable work.

IV. ANALYSIS

There is no dispute that Respondent submitted a deficient application and failed to provide the supplemental information requested by Staff within 21 days. Accordingly, Respondent has not complied with the Act and Commission rules, and the Commission is authorized to deny Respondent's renewal application.

V. FINDINGS OF FACT

1. Pharr Crime Stoppers, Inc. (Respondent) is an authorized organization licensed by the Charitable Bingo Operations Division of the Texas Lottery Commission (Commission) to conduct charitable bingo operations in Texas.
2. On May 8, 2017, Respondent applied to the Commission to renew its bingo license.

²⁰ Staff Exs. 8, 9.

²¹ Staff Ex. 9.

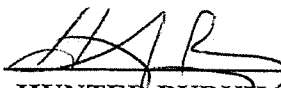
3. On the application, Respondent identified as its operators or bingo workers at least seven individuals whose names were not, at the time, listed on the registry maintained by the Commission of persons approved to conduct bingo operations.
4. On June 22, 2017, the staff (Staff) of the Commission notified Respondent that the application was incomplete because the names of the seven individuals were not on the registry. Staff instructed Respondent to supplement its application by either deleting the names or completing and submitting, by no later than July 13, 2017, the required forms and payments to have each of the seven individuals added to the Commission's registry.
5. Respondent failed to timely provide the supplemental information requested by Staff.
6. On August 18, 2017, Staff notified Respondent that it was proposing to deny Respondent's renewal application.
7. Respondent timely appealed the proposed denial and requested a hearing.
8. An Amended Notice of Hearing was sent to Respondent on October 19, 2017. The notice contained 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 factual matters asserted.
9. The hearing was held before Administrative Law Judge Hunter Burkhalter on October 31, 2017. Staff was represented by Assistant General Counsel Kristen Guthrie. Stanley Francis and Jorge Rios appeared, *pro se*, on behalf of Respondent. The record closed the same day.

VI. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter. Tex Occ. Code ch. 2001.
2. SOAH has jurisdiction over all matters relating to the conduct of a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003.
3. Staff has the burden of establishing that Respondent failed to comply with the Commission's rules. 1 Tex. Admin. Code § 155.427.
4. Adequate and timely notice of the hearing was provided. Tex. Gov't Code §§ 2001.051-.052.

5. The Commission may deny a license renewal application if the applicant has violated any provision of the Bingo Enabling Act (Act) or any Commission rules adopted pursuant to the Act. Tex. Occ. Code § 2001.353(a).
6. The Commission is required to conduct criminal background checks on persons who are involved in the conducting of bingo operations, and maintains a registry of all individuals who have favorably passed the Commission's background check and are therefore approved to conduct bingo operations. Tex. Occ. Code § 2001.313(a), (b).
7. An individual's name may remain on the registry for up to three years, after which time the individual must go through a new background check in order to be reinstated on the registry. Tex. Occ. Code § 2001.313(b-1).
8. A licensed authorized organization, such as Respondent, generally may not allow a person who is not listed in the registry to act as the operator or a worker conducting bingo operations. Tex. Occ. Code § 2001.313(d), (h).
9. A licensed authorized organization, such as Respondent, must submit to the Commission the names of all of its operators and bingo workers before they can serve in that capacity, and it is the responsibility of the organization to review the registry to confirm that any operator or bingo worker it is utilizing is on the registry. 16 Tex. Admin. Code § 402.402(f), (g).
10. A licensed authorized organization, such as Respondent, that is applying to renew its license is obligated to timely submit any supplemental information requested by the Commission, and the Commission may deny the application if the organization fails to do so. Tex. Occ. Code § 2001.302.
11. If an application is found to be incomplete, the Commission is obligated to so notify the applicant, who then has 21 calendar days after the notification to provide the missing information. Failure to supplement within the 21 days can result in denial of the application. 16 Tex. Admin. Code § 402.400(e).
12. The Commission should deny Respondent's application.

SIGNED December 14, 2017.



**HUNTER BURKHALTER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

Date: FEBRUARY 8, 2018

DOCKET NO. 362-18-0728.B

TEXAS LOTTERY COMMISSION	§	BEFORE THE TEXAS
PETITIONER	§	
	§	
V.	§	
	§	
DALLAS COUNTY REACT, INC.	§	
RESPONDENT	§	LOTTERY COMMISSION

ORDER OF THE COMMISSION

TO: Mr. Charles Thompson
Dallas County REACT, Inc.
P.O. Box 600215
Dallas, TX 75360-0215

During an open meeting in Austin, Texas, the Texas Lottery Commission (Commission) heard the above styled case in which Dallas County REACT, Inc. (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 and 155.501(b). The 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. 18-0055

Date: FEBRUARY 8, 2018

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 conditionally 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, provided the Respondent did not file a motion to set aside the default no later than 15 days from the date of the Conditional Order of Default Dismissal and Remand issued by the ALJ.

5. The Respondent did not file a motion to set aside the default within the 15 days from the date of the Conditional Order issued by the ALJ.

II. Conclusions of Law

1. The Commission has jurisdiction over this matter pursuant to TEX. OCC. CODE ANN., Chapter 2001; and 16 TEX. ADMIN. CODE, Chapter 402.

2. The Respondent violated the Bingo Enabling Act, (Chapter 2001, TEX. OCC. CODE ANN.); and/or the Charitable Bingo Administrative Rules, (Title 16 TEX. ADMIN. CODE, Chapter 402) 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.

Date: FEBRUARY 8, 2018

III. Order

NOW, THEREFORE, IT IS ORDERED that, after review and due consideration of the administrative record of the above styled case, this matter 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. Renewal license application of Dallas County REACT, Inc. to conduct bingo is hereby denied.

Passed and approved at the regular meeting of the Texas Lottery Commission in Austin, Texas, on the 8TH day of FEBRUARY, 2018.

Entered this 8TH day of FEBRUARY, 2018.

J. WINSTON KRAUSE, CHAIRMAN

CARMEN ARRIETA-CANDELARIA,
COMMISSIONER

DOUG LOWE, COMMISSIONER

ROBERT RIVERA, COMMISSIONER

SOAH DOCKET NO. 362-18-0728.B

TEXAS LOTTERY COMMISSION,
Petitioner

v.

DALLAS COUNTY REACT, INC.,
Respondent

§
§
§
§
§
§
§

BEFORE THE STATE OFFICE

OF


ADMINISTRATIVE HEARINGS

ORDER NO. 1
CONDITIONAL ORDER OF
DEFAULT DISMISSAL AND REMAND

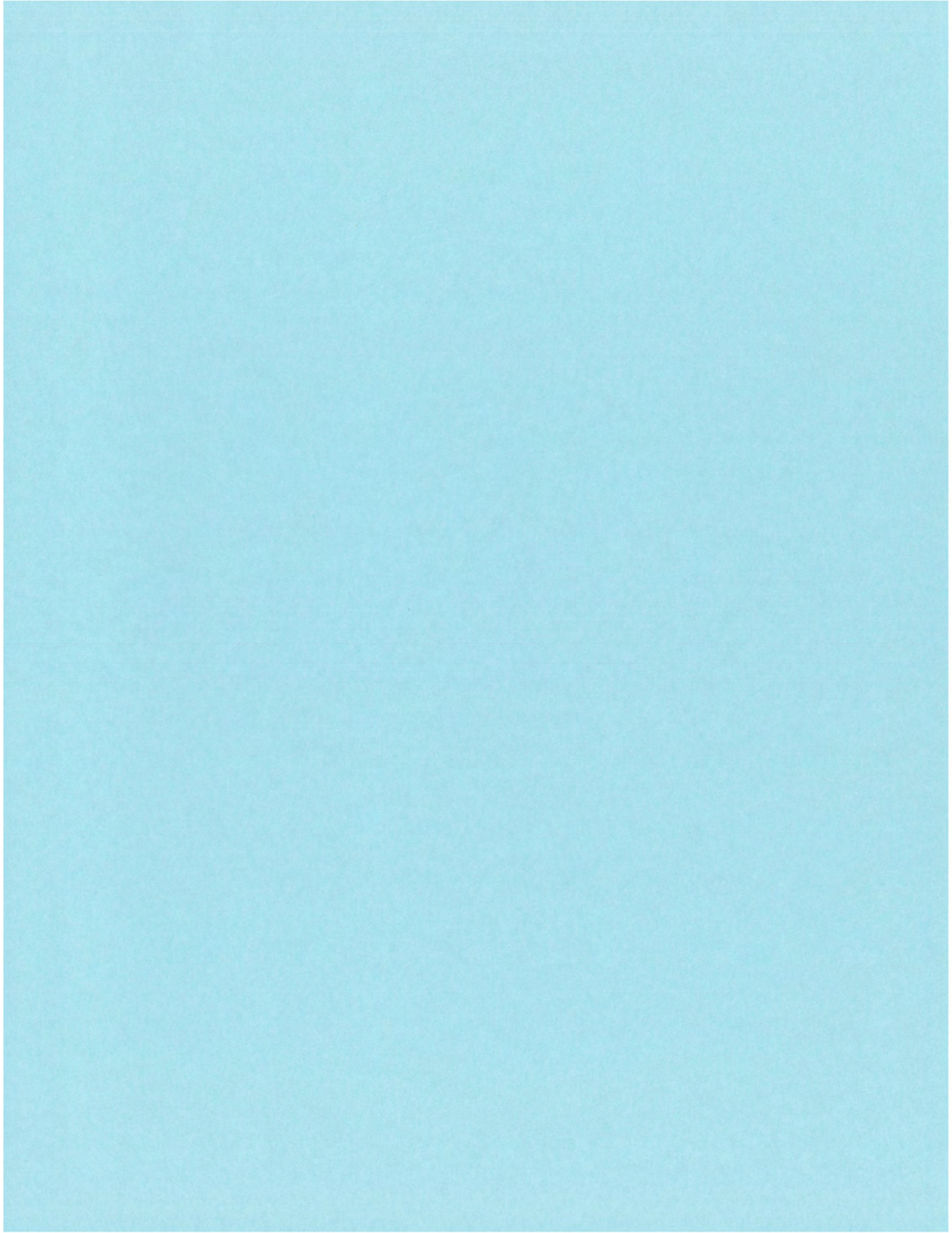
This matter was set for hearing on January 9, 2018, before Administrative Law Judge (ALJ) Sarah Starnes. Assistant General Counsel Kristen Guthrie appeared on behalf of the staff (Staff) of the Texas Lottery Commission (Commission). Dallas County REACT, Inc. (Respondent) did not appear and was not represented at the hearing. Upon receiving Staff's Exhibits 1, 2, and 3 showing proof of adequate notice to Respondent, the ALJ granted Staff's oral motion for default.¹

Due to Respondent's failure to appear, this matter may be dismissed from the docket of the State Office of Administrative Hearings and returned to the Commission for informal disposition on a default basis in accordance with Texas Government Code § 2001.056, in which case the factual allegations listed in the notice of hearing could be deemed admitted and the relief sought in the notice of hearing might be granted. **IT IS, THEREFORE, ORDERED** that this case is **CONDITIONALLY DISMISSED AND REMANDED** pursuant to 1 Texas Administrative Code § 155.501(d)(1). **This order of dismissal will become final, without further action by the ALJ, unless Respondent files a motion to set aside the default not later than 15 days from the date of this order.** Such a motion must show good cause for reopening the hearing, or show that the interests of justice require setting aside the default dismissal.

SIGNED January 9, 2018.


SARAH STARNES
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

¹ 1 Tex. Admin. Code § 155.501(d)(1). The ALJ only reviewed the adequacy of the notice and not the sufficiency of Staff's factual allegations.





Texas Lottery Commission

Commissioners:

J. Winston Krause, Chairman • Carmen Arrieta-Candelaria

Peggy A. Heeg • Doug Lowe • Robert Rivera



Alfonso D. Royal III
Director

FIRST CLASS UNITED STATES MAIL

and

CERTIFIED MAIL NO. 91 7199 9991 7030 8545 1605

November 9, 2017

Mr. Charles Thompson
Dallas County REACT, Inc.
P.O. Box 600215
Dallas, TX 75360-0215

RE: **NOTICE OF HEARING CONCERNING RENEWAL APPLICATION DENIAL
SOAH DOCKET NO. 362-18-0728.B
DALLAS COUNTY REACT, INC., CONDUCTOR APPLICANT
TAXPAYER NUMBER – 12370283710**

Dear Mr. Thompson:

Be advised that a public hearing will be held to consider the Texas Lottery Commission's denial of Dallas County REACT, Inc.'s renewal application to be licensed to conduct charitable bingo based on the violations of the Bingo Enabling Act, TEX. OCC. CODE ANN. Chapter 2001, and/or the Charitable Bingo Administrative Rules, Title 16 TEX. ADMIN. CODE, Chapter 402, as outlined below.

The hearing has been set as follows:

TIME OF HEARING:	9:00 a.m.
DATE OF HEARING:	January 9, 2018
LOCATION OF HEARING:	State Office of Administrative Hearings William P. Clements Building 300 West 15th Street, 4th Floor Austin, Texas 78701

I.
Factual Matters Asserted

Dallas County REACT, Inc. failed to timely submit supplemental information requested by the Commission, in violation of TEX. OCC. CODE ANN § 2001.302(a) and (b). Specifically, Dallas County REACT, Inc. failed to timely provide upon Division's request by letter dated July 20, 2017, at least three (3) different types of acceptable documents (cancelled checks, newspaper clippings, brochures, receipts, etc.) as proof that the organization has been continuously engaged in furthering its charitable purpose for the period beginning on July 1, 2016.

The deadline to submit required supplemental information was August 10, 2017. Dallas County REACT, Inc. submitted supplemental information on October 19, 2017.

II.
Applicable Statutes and Rules

TEX. OCC. CODE ANN. § 2001.351 states:

The commission may deny an application for a license or renewal of a license issued under this chapter for a cause that would permit or require the suspension or revocation of a license issued under this chapter.

TEX. OCC. CODE ANN. § 2001.353(a)(1) and (2) states in part:

After a hearing, the commission may suspend, revoke, or refuse to renew a license issued under this chapter for: (1) failure to comply with this chapter or a commission rule; or (2) a reason that would allow or require the commission to refuse to issue or renew a license of the same class.

TEX. OCC. CODE ANN. § 2001.302(a) and (b) states:

- (a) In addition to any required application form, a license applicant or license holder shall submit any supplement information requested by the commission.
- (b) The commission may deny a license application or revoke a license based on a failure to submit requested supplemental information when required.

16 TEX. ADMIN. CODE § 402.400(a)(2) states:

Any person who wants to engage in a bingo related activity shall apply to the Commission for a license. The application must be on a form prescribed by the Commission and all required information must be legible, correct and complete. An application is incomplete if the following information is not provided: ... (2) All supplemental information requested during the pre-licensing investigation period...

16 TEX. ADMIN. CODE § 402.400(e) states in pertinent part:

If an application is incomplete, the Commission will notify the applicant. The applicant must provide the requested information within 21 calendar days of such notification. Failure to provide the requested information within the 21 calendar day time line may result in the denial of the license application.

TEX. OCC. CODE ANN. § 2001.352(b) states:

The burden of proof is on the applicant to establish by a preponderance of the evidence its eligibility for a license.

TEX. OCC. CODE ANN. § 2001.601 states:

The commission may impose an administrative penalty against a person who violates this chapter or a rule or order adopted by the commission under this chapter.

TEX. OCC. CODE ANN. § 2001.602 states in part:

The amount of the administrative penalty may not exceed \$1,000 for each violation. Each day a violation continues or occurs may be considered a separate violation for purposes of imposing a penalty.

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.

The hearing will be conducted in accordance with the Bingo Enabling Act, the Texas Government Code, Chapter 2001; the Texas Rules of Evidence; Title 16 of the Texas Administrative Code, Chapter 402; and the Rules of Procedure of the State Office of Administrative Hearings, Title 1, Texas Administrative Code, Chapter 155. You are entitled to be represented by a lawyer, but it is your responsibility to obtain and pay for such representation.

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.

TITLE 16 TEXAS ADMINISTRATIVE CODE § 401.207 REQUIRES THAT YOU FILE A WRITTEN ANSWER TO THE ALLEGATIONS IN THIS NOTICE OF HEARING WITH THE STATE OFFICE OF ADMINISTRATIVE HEARINGS (BY FAX AT 512-322-2061) AND PROVIDE A COPY TO THE UNDERSIGNED (BY FAX AT 512-344-5189 OR EMAIL AT LEGAL.INPUT@LOTTERY.STATE.TX.US) AT LEAST TEN (10) CALENDAR DAYS BEFORE THE DATE OF THE HEARING. FAILURE TO FILE A WRITTEN ANSWER BY THIS DATE AND/OR TO APPEAR AT THE HEARING MAY

RESULT IN THE ALLEGATIONS BEING ADMITTED AS TRUE AND RELIEF REQUESTED BEING GRANTED BY DEFAULT.

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.**

Parties that are not represented by an attorney may obtain information regarding contested case hearings on the public website of the State Office of Administrative Hearings at www.soah.texas.gov, or in printed format upon request to SOAH.

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

Respectfully,



KRISTEN GUTHRIE
Assistant General Counsel
Texas Lottery Commission

CERTIFICATE OF SERVICE

Pursuant to the Texas Rules of Civil Procedures, Rule 21a, I do hereby certify that on this the 9 day of November, 2017, a true and correct copy of the foregoing **NOTICE OF HEARING CONCERNING RENEWAL APPLICATION DENIAL**, SOAH Docket No. 362-18-0728.B, has been served by First Class United States Mail and Certified Mail No. 91 7199 9991 7030 8545 1605, 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 Mr. Charles Thompson, Dallas County REACT, Inc. P.O. Box 600215, Dallas, TX 75360-0215.



KRISTEN GUTHRIE
Assistant General Counsel
Texas Lottery Commission
P.O. Box 16630
Austin, Texas 78761-6630
(512) 344-5475
(512) 344-5189 Fax

cc: State Office of Administrative Hearings
Charitable Bingo Operations Division

Mr. Kenneth Feagins
6905 Relatar Ln.
Dallas, TX 75214

TEXAS LOTTERY COMMISSION

**ORDER NUNC PRO TUNC
CORRECTING ADOPTION OF AMENDMENTS TO 16 TAC §401.160
IN ORDER NO. 18-0021, DATED DECEMBER 7, 2017**

It is the Order of the Texas Lottery Commission (Commission) that the amendments to 16 TAC §401.160 (Standard Penalty Chart) adopted by the Commission on December 7, 2017, in Order No. 18-0021 are hereby corrected to replace Figure 16 TAC §401.160(g)(10) on pages 12-18 of the Order with a corrected figure. As a result of a clerical error, Order No. 18-0021 inadvertently contained the prior version of the referenced figure, without the amendments as proposed and published for public comment in the October 20, 2017, issue of the Texas Register (42 TexReg 5759). There were no public comments submitted regarding the proposed amendments to 16 TAC §401.160.

This Order Nunc Pro Tunc corrects the clerical error, and the corrected 16 TAC §401.160 contained herein takes the place of the text of 16 TAC §401.160 set forth in Order No. 18-0021. No other sections or provisions of Order No. 18-0021 are affected by this Order Nunc Pro Tunc.

The amendments to 16 TAC §401.160 were adopted under Texas Government Code §466.015, which authorizes the Commission to adopt rules governing the operation of the lottery; and §467.102, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

The adoption of amendments to 16 TAC §401.160 was intended to implement Texas Government Code, Chapter 466.

§401.160. Standard Penalty Chart.

(a) The commission, through the director of the Lottery Operations Division, may offer settlements to persons charged with violating the provisions of the State Lottery Act or rules of the commission. Settlement of those cases, unless otherwise provided for elsewhere in this rule, shall be in compliance with the following standard penalty chart. A settlement will be in the form of an Agreement and Consent Order of the commission.

(b) A repeat violation by a licensee justifies the penalty for a second or third violation if it occurs within 12 months of the first violation. Violations need not be the same or similar in nature to previous violations to be considered repeat violations.

(c) A penalty for an alleged repeat violation shall not be assessed unless the alleged violation occurs after the licensee has been notified, in writing, of the first alleged violation. Notwithstanding the preceding sentence, if an alleged violation is discovered during an undercover operation, then no notice of any prior alleged violations may be necessary to assess a penalty for a repeat violation. The requirement that written notice be given to a licensee shall not be interpreted to require that a notice of hearing for the violation be delivered to the licensee.

(d) The list of violations in the standard penalty chart is not an exclusive list of violations of the commission or rules of the commission. The commission is authorized to assess penalties for any violation of any of the foregoing statutes or rules for which a penalty is not provided on the chart. Any penalty assessed for a violation not provided for on the standard penalty chart shall be approved by the director of the Lottery Operations Division or his/her designee prior to its assessment.

(e) Any person responsible for assessing a penalty for a violation may deviate from the standard penalty chart if mitigating circumstances are involved and consideration will be given to all the factors listed in subsection (g) of this section. If a recommendation deviating from the standard penalty chart is made, it must be made in writing and be filed with the case report. Final approval shall be made by the director of the Lottery Operations Division or his/her designee.

(f) The standard penalty chart does not bind an administrative law or the commission as to penalties for any violation determined to have occurred by the facts presented in an administrative hearing and the record of that proceeding shall be the determining factor as to the sufficiency of the penalty assessed.

(g) Based upon consideration of the following factors, the commission may impose penalties other than the penalties recommended in §401.158 of this title (relating to Suspension or Revocation of License) and/or this section:

- (1) Severity of the offense;
- (2) Danger to the public;
- (3) Number of repetition of offenses;
- (4) Number of complaints previously found justified against the licensee;
- (5) Length of time the licensee has held a license;
- (6) Actual damage, physical or otherwise, caused by the violations;
- (7) Deterrent effect of the penalty imposed;
- (8) Attempts by licensee to correct or stop violations or refusal by licensee to correct or stop violations;
- (9) Penalties imposed for related offenses; or

(10) Any other mitigating or aggravating circumstances.

Figure: 16 TAC §401.160(g)(10)

TEXAS LOTTERY COMMISSION RETAILER REGULATORY VIOLATIONS AND RELATED PENALTIES			
DESCRIPTION OF VIOLATION	1 ST OCCURRENCE	2 ND OCCURRENCE	3 RD OCCURRENCE
Licensee engages in telecommunication or printed advertising that the director determines to have been false, deceptive or misleading.	Notification in writing to the licensee of the detected violation, including a warning that future violations will result in more severe administrative penalties including Suspension and/or revocation of the license. (Warning Letter)	10-90 day Suspension	30-90 day Suspension to Revocation
Licensee conditions redemption of a lottery prize upon the purchase of any other item or service.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
Licensee imposes a restriction upon the redemption of a lottery prize not specifically authorized by the director.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
Licensee fails to follow instructions and procedures for the conduct of any particular lottery game, lottery special event or promotion.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
Licensee and/or its employee(s) exhibit discourteous treatment including, but not limited to, abusive language toward customers, commission employees or commission vendors.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
Licensee fails to establish or maintain reasonable security precautions with regard to the handling of lottery tickets and other materials.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
Licensee endangers the security and/or integrity of the lottery games operated by the commission.	Warning Letter - Revocation	10-90 day Suspension to Revocation	30-90 day Suspension to Revocations
Licensee violates any directive or instruction issued by the	Warning Letter	10-90 day Suspension	30-90 day Suspension

director of Lottery Operations.			to Revocation
Licensee violates any express term or condition of its license not specifically set forth in this subchapter.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
Licensee incurs four (4) notices of nonsufficient fund transfers or non-transfer of funds within a 12-month period.	Revocations	n/a	n/a
Licensee sells a scratch ticket from a game that has closed after the date designated for the end of the game.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
Licensee fails to pay a valid prize in the amount specified on the validation slip generated on the licensee's terminal or to pay the authorized amount.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
Licensee fails to pay a valid prize the licensee is required to pay.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
Licensee refuses or fails to sell lottery tickets during all normal business hours of the lottery retailer.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
Licensee refuses to and/or fails to properly cancel a Pick 3 or Daily 4 ticket.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
Licensee fails to return an exchange ticket to a prize claimant claiming a prize on a multi-draw ticket if an exchange ticket is produced by the licensee's terminal.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
Licensee fails to keep accurate and complete records of all tickets from confirmed, active, and settled packs that have not been sold.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
Licensee fails or refuses to meet minimum sales criteria.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
Licensee fails to meet any requirement under §401.368, Lottery Ticket Vending Machines rule, if the licensee has been supplied with a self-service lottery ticket vending machine by the commission.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation

Licensee fails to take readily achievable measures within the allowed time period to comply with the barrier removal requirements regarding the ADA.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
Licensee fails to prominently post license.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
Licensee knowingly sells a ticket or pays a lottery prize to another person who is (A) an officer or an employee of the commission; (B) an officer, member, or employee of a lottery operator; (C) an officer, member, or employee of a contractor or subcontractor that is excluded by the terms of its contract from playing lottery games; (D) the spouse, child, brother, sister, or parent of a person described by (A), (B), or (C) above who resides within the same household as that person.	Warning Letter	10-90 day Suspension	30-90 day Suspension to Revocation
Licensee intentionally or knowingly sells a ticket at a price the licensee knows is greater than the price set by the executive director.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
Licensee sells tickets issued to a licensed location at another location that is not licensed.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
Licensee intentionally or knowingly sells a ticket by extending credit or lends money to enable a person to buy a ticket.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
Licensee intentionally or knowingly sells a ticket to a person that the licensee knows is younger than 18 years.	10-90 day Suspension to Revocation	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation
Licensee intentionally or knowingly sells a ticket and accepts anything for payment not specifically allowed under the State Lottery Act.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
Licensee sells tickets over the	10-90 day Suspension	30-90 day Suspension	Revocation

telephone or, via mail order sales, establishes or promotes a group purchase or pooling arrangement under which tickets are purchased on behalf of the group or pool and any prize is divided among the members of the group or pool, and the licensee intentionally or knowingly: (A) uses any part of the funds solicited or accepted for a purpose other than purchasing tickets on behalf of the group or pool; or (B) retains a share of any prize awarded as compensation for establishing or promoting the group purchase or pooling arrangement.	to Revocation	to Revocation	
Licensee intentionally or knowingly alters or forges a ticket.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
Licensee intentionally or knowingly influences or attempts to influence the selection of the winner of a lottery game.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
Licensee intentionally or knowingly claims a lottery prize or a share of a lottery prize by means of fraud, deceit, or misrepresentation; or aids or agrees to aid another person or persons to claim a lottery prize or a share of a lottery prize by means of fraud, deceit, or misrepresentation.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
Licensee intentionally or knowingly tampers with, damages, defaces, or renders inoperable any vending machine, electronic computer terminal, or other mechanical device used in a lottery game, or fails to exercise due care in the treatment of commission property.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
Licensee (A) induces another person to assign or transfer a right to claim a prize, (B) initiates or accepts an offer to	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation

sell the right to claim a prize, (C) initiates or accepts an offer of compensation from another person to claim a lottery prize, or (D) purchases a lottery ticket from a person who is not a licensed lottery retailer.			
Licensee intentionally or knowingly makes a statement or entry that the person knows to be false or misleading on a required report.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
Licensee fails to maintain or make an entry the licensee knows is required to be maintained or made for a required report.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
Licensee knowingly refuses to permit the director of the Lottery Operations Division, the executive director, commission, or the state auditor to examine the agent's books, records, papers or other objects, or refuses to answer any question authorized under the State Lottery Act.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
Licensee intentionally or knowingly makes a material and false or incorrect, or deceptive statement, written or oral, to a person conducting an investigation under the State Lottery Act or a commission rule.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
Licensee commits an offense of conspiracy as defined in the State Lottery Act.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation
Licensee sells or offers for sale any interest in a lottery of another state or state government or an Indian tribe or tribal government, including an interest in an actual lottery ticket, receipt, contingent promise to pay, order to purchase, or other record of the interest.	10-90 day Suspension to Revocation	30-90 day Suspension to Revocation	Revocation

Commission Order No.: 18-0043

Date: February 8, 2018

This agency certifies that the rule amendments, as adopted, were reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

J. WINSTON KRAUSE, CHAIRMAN

CARMEN ARRIETA-CANDELARIA, COMMISSIONER

DOUG LOWE, COMMISSIONER

ROBERT RIVERA, COMMISSIONER