



INTEROFFICE MEMO

Gary Grief, Executive Director Michael P. Farrell, Charitable Bingo Operations Director

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

From: Bob Biard, General Counsel *RBB*

Date: August 9, 2018

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

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

Date: AUGUST 9, 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: AUGUST 9, 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 conditionally 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, provided the Respondent in each case did not file a motion to set aside the default within 15 days from the date of the ALJ's Order Remanding Case to Commission.

5. In each case, Respondent did not file a motion to set aside the default within 15 days from the date of the ALJ's Order.

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.

Date: AUGUST 9, 2018

III. Order

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

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

2. The 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 9TH day of AUGUST, 2018.

Entered this 9TH day of AUGUST, 2018.

J. WINSTON KRAUSE, CHAIRMAN

CARMEN ARRIETA-CANDELARIA,
COMMISSIONER

DOUG LOWE, COMMISSIONER

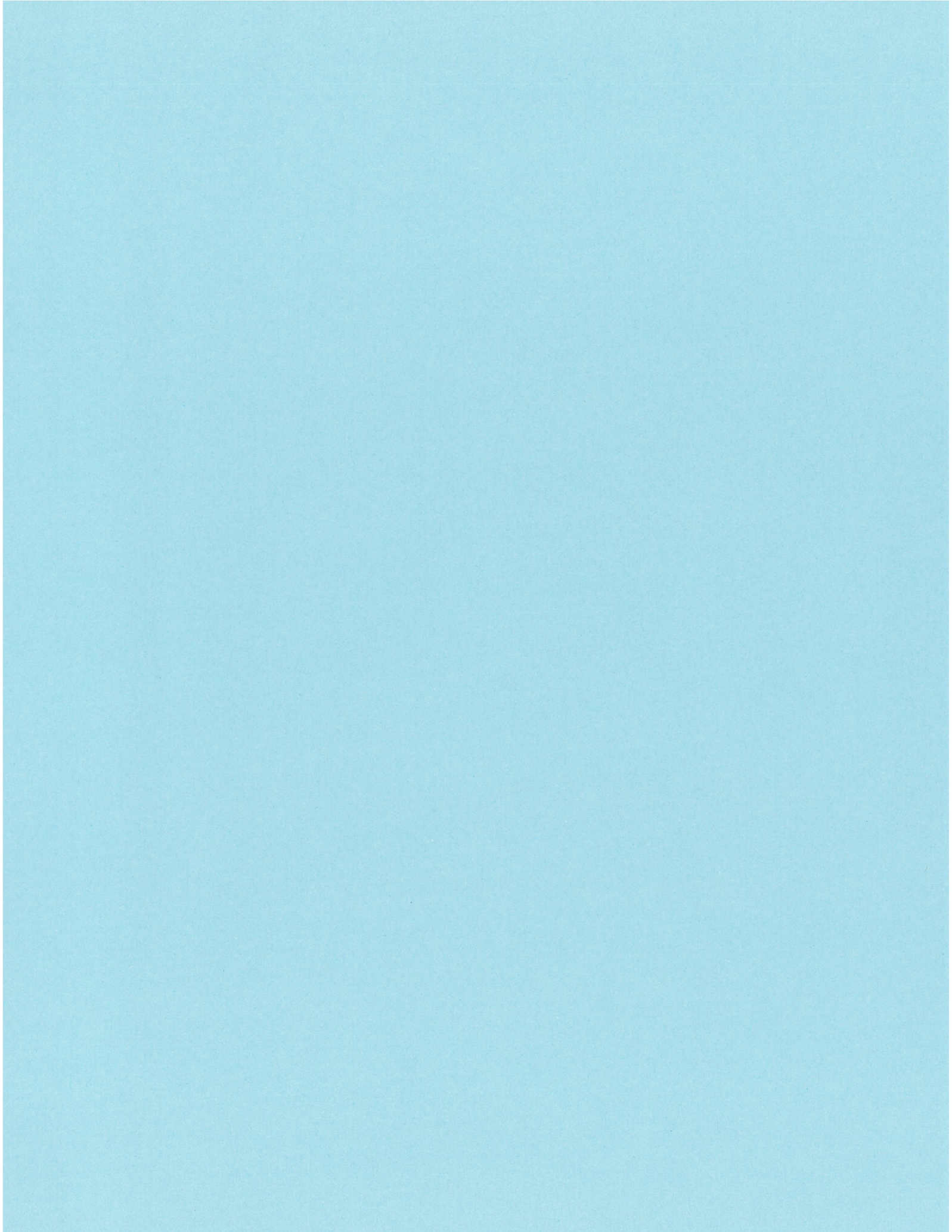
ROBERT RIVERA, COMMISSIONER

Commission Order No. 18-0083

Date: AUGUST 9, 2018

ATTACHMENT A

TAB NO.	SOAH DOCKET NO.	TICKET SALES AGENT NAME	TICKET SALES AGENT ADDRESS	LOTTERY LICENSE NO.
A.	362-18-3760	C & AI LLC d/b/a EZ Stop	501 W. Goliad Ave. Crockett, TX 75835	184273



DOCKET NO.: 362-18-3760

IN THE MATTER	§	BEFORE THE STATE OFFICE
	§	
OF THE REVOCATION OF	§	OF
THE LOTTERY RETAILER	§	
LICENSE OF C & AL, LLC (EZ STOP)	§	ADMINISTRATIVE HEARINGS

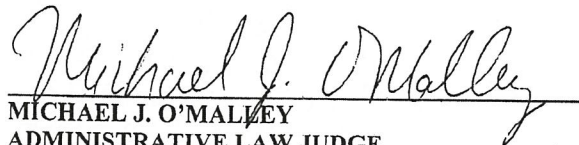
**CONDITIONAL ORDER DISMISSING CASE FROM SOAH
AND REMANDING CASE TO COMMISSION**

On June 28, 2018, a hearing was convened before the State Office of Administrative Hearings (SOAH) on the revocation of the lottery sales agent license held by C and AL, LLC d/b/a EZ Stop (referred to hereinafter as the retailer). Notice of the hearing was provided to the 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 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; 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. The retailer did not appear. Based on the retailer's failure to appear, Staff filed a motion to dismiss the case from SOAH's docket and to remand the case to the Commission for informal disposition in accordance with Texas Government Code § 2001.058(d-1) and 1 Texas Administrative Code § 155.501(d). The Administrative Law Judge concludes that the motion has merit and should be granted.

Accordingly, the motion to dismiss and remand is conditionally granted, and the case is conditionally dismissed from SOAH's docket and remanded to the Commission for informal disposition under Texas Government Code § 2001.056. The retailer may have the dismissal and remand set aside by filing an adequate motion with SOAH no later than 15 days after the issuance of this order, pursuant to 1 Texas Administrative Code § 155.501(e).

SIGNED June 29, 2018.


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

CASE SUMMARY

PARTY NAME: Texas Lottery Commission

DOCKET NO./CASE NAME: Docket Nos. 362-17-5016.B, 5279.B, 5280.B, 5281.B, and 5282.B – BJN Enterprises, LLC (Respondent Lessor); San Antonio Northwest Lions Club; Southern Federation of Syrian Lebanese American Clubs, Inc.; LULAC Council 4416; and SASSL (Respondent Unit)

ISSUE(S): Did Respondent Lessor charge Respondent Unit for rent that was not paid in a lump sum and in excess of what is allowed under the Bingo Enabling Act (BEA)? [Yes]

Did Respondent Unit pay expenses that were not reasonable or necessary under the BEA? [Yes]

KEY FACTS: The Bingo Division conducted a compliance audit of the Respondent Unit for the second quarter of 2016 (audit period). The audit revealed that in addition to rent payments, for the audit period, Respondent Unit paid a total of \$8,811 (\$2,937 x 3) to Respondent Lessor for expenses labeled as taxes, electricity, and insurance (TEI). Although BEA allows charitable organizations to pay a lessor for their pro rata share of property taxes, certain utilities, and property insurance in addition to their rent payments, portions of \$2,937 monthly charge paid by Respondent Unit were either not properly supported TEI charges, or were expenses improperly characterized as TEI, and, therefore, disallowed. Since the TEI charges were not properly supported or improperly characterized as TEI, and Respondent Unit was already charged \$600 rent per occasion for the conduct of bingo, the TEI charges were considered part of the rent charged to Respondent Unit and, as such, were not paid in a lump sum, as required by TEX. OCC. CODE § 2001.406(a). Consequently, Respondent Lessor charged rent to Respondent Unit in the amount of \$645.18 per bingo occasion, in excess of the \$600 maximum rent allowed by the Act.

The SOAH Judge found Respondent Lessor improperly charged, and Respondent Unit paid, certain expenses not in a lump sum that are explicitly required by the Act to be paid in a lump sum. The SOAH Judge also found insufficient documentation was provided to justify certain expenses as reasonable and necessary. The SOAH Judge determined Respondent Lessor continues the practice of invoicing Respondent Unit for expenses separately from lump sum rent payments listed in BEA §2001.458(a).

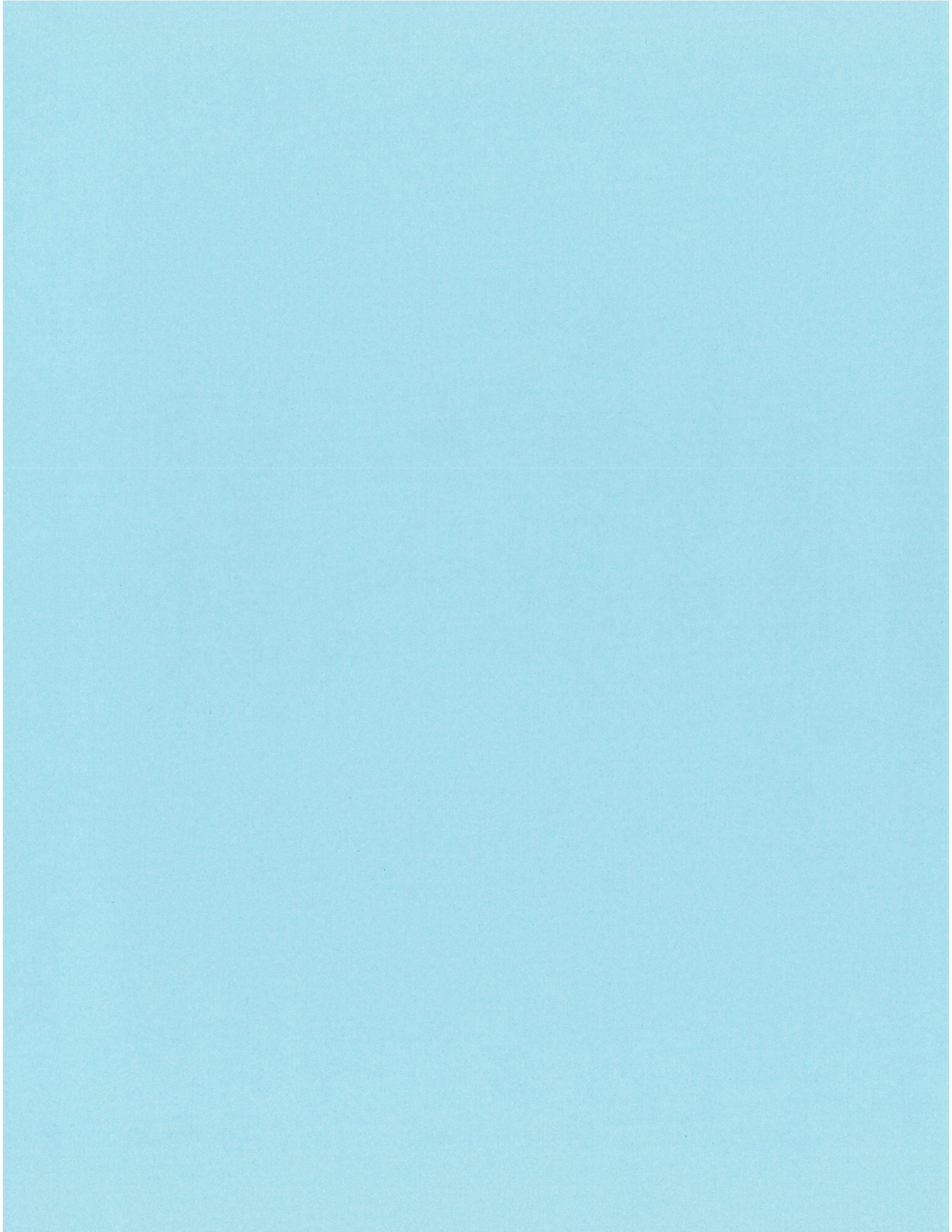
The SOAH Judge recommended Respondent Lessor take corrective action to reimburse Respondent Unit for the following expenses: the snack bar space, the insurance charges and all other charges that were part of the \$2,937 monthly payment that were not part of the utilities or taxes paid on parcels 0091 and 0100.

LEGAL PRINCIPLES INVOLVED:

BEA § 2001.406(a) and (b) states, in pertinent part: (a) The rent charged by a licensed commercial lessor to a licensed authorized organization to conduct bingo may not exceed \$600 for each bingo occasion. (b) Rent for premises used for the conduct of bingo must be paid in a lump sum and the lump sum must include all expenses authorized by Section 2001.458. A licensed authorized organization or unit may pay as a separate expense, unit's pro rata share of: property taxes, utility expenses, property and casualty insurance.

BEA § 2001.458(a) states, in pertinent part: An item of expense may not be paid except an expense that is reasonable or necessary to conduct bingo, including an expense for: advertising; security; repairs; bingo supplies and equipment; prizes; bookkeeping, legal, or accounting services; health insurance.

ACTION REQUESTED: Approve the Proposal for Decision and order Respondent Lessor to take corrective action to reimburse Respondent Unit.



Date: AUGUST 9, 2018

DOCKET NOS. 362-17-5016.B; 362-17-5279.B;
362-17-5280.B; 362-17-5281.B; 362-17-5282.B

TEXAS LOTTERY COMMISSION	§	BEFORE THE TEXAS
Petitioner	§	
	§	
v.	§	
	§	
BJN ENTERPRISES LLC; SAN ANTONIO	§	
NORTHWEST LIONS CLUB; SOUTHERN	§	
FEDERATION OF SYRIAN LEBANESE	§	
AMERICAN CLUBS, INC.; LULAC	§	
COUNCIL 4416; SASSL	§	
Respondents	§	LOTTERY COMMISSION

ORDER OF THE COMMISSION

TO: Mr. Robert F. Johnson III
Attorney for Respondents
Foley Gardere
3000 One American Center
600 Congress Avenue
Austin, TX 78701
via email at rjohnson@foley.com

During an open meeting in Austin, Texas, the Texas Lottery Commission (Commission) finds that, after proper and timely notice was given, the above-styled cases were 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 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.

Date: AUGUST 9, 2018

(1) NOW, THEREFORE, IT IS ORDERED by the Commission that BJN Enterprises, LLC (hereinafter Respondent Lessor) shall:

- (a) Reimburse San Antonio Northwest Lions Club; Southern Federation of Syrian Lebanese American Clubs, Inc.; LULAC Council 4416; and SASSL (hereinafter Respondent Conductors), for all expenses, other than reasonable and necessary property taxes, water, electric, gas utility expenses, including, but not limited to, management fees, salaries and related, cleaning and related, supplies, contract services, administrative and general services, security and maintenance and repairs charged during the audit period in the amount of \$2,372.25, such reimbursement to be paid within sixty (60) days from the date this Order is signed;
- (b) Reimburse Respondent Conductors 1.6% of all property taxes, water, electric and gas utility expenses paid since April 1, 2016, in the amount of \$744, such reimbursement to be paid within sixty (60) days from the date this Order is signed;
- (c) Reimburse Respondent Conductors for insufficiently documented insurance charges during the audit period in the amount of \$102, such reimbursement to be paid within sixty (60) days from the date this Order is signed; and
- (d) Reimburse Respondent Conductors for all expenses, either improperly charged or insufficiently documented outside the audit period, such reimbursement to be paid within sixty (60) days from the date this Order is signed.

Date: AUGUST 9, 2018

(2) IT IS FURTHER ORDERED by the Commission that, henceforth, Respondent Lessor shall not charge, and Respondent Conductors shall not pay the lessor for, anything other than for the Respondent Conductors' pro rata share of rent, water, electric, gas utility expenses, taxes and insurance. Rent includes all other expenses charged by the Lessor, except for properly documented water, electric and gas utility expenses, taxes and insurance.

(3) IT IS FURTHER ORDERED by the Commission that, henceforth, Respondent Lessor shall include in rent all expenses other than reasonable and necessary property taxes, insurance, water, electric, gas utility expenses. Rent shall include management fees, salaries and related, cleaning and related, supplies, contract services, administrative and general services, security and maintenance and repairs for premises in rent. All expenses included as rent must be reasonable and necessary expenses.

Commission Order No. 18-0089

Date: AUGUST 9, 2018

Passed and approved at the regular meeting of the Texas Lottery Commission in Austin, Texas, on the 9TH day of AUGUST, 2018.

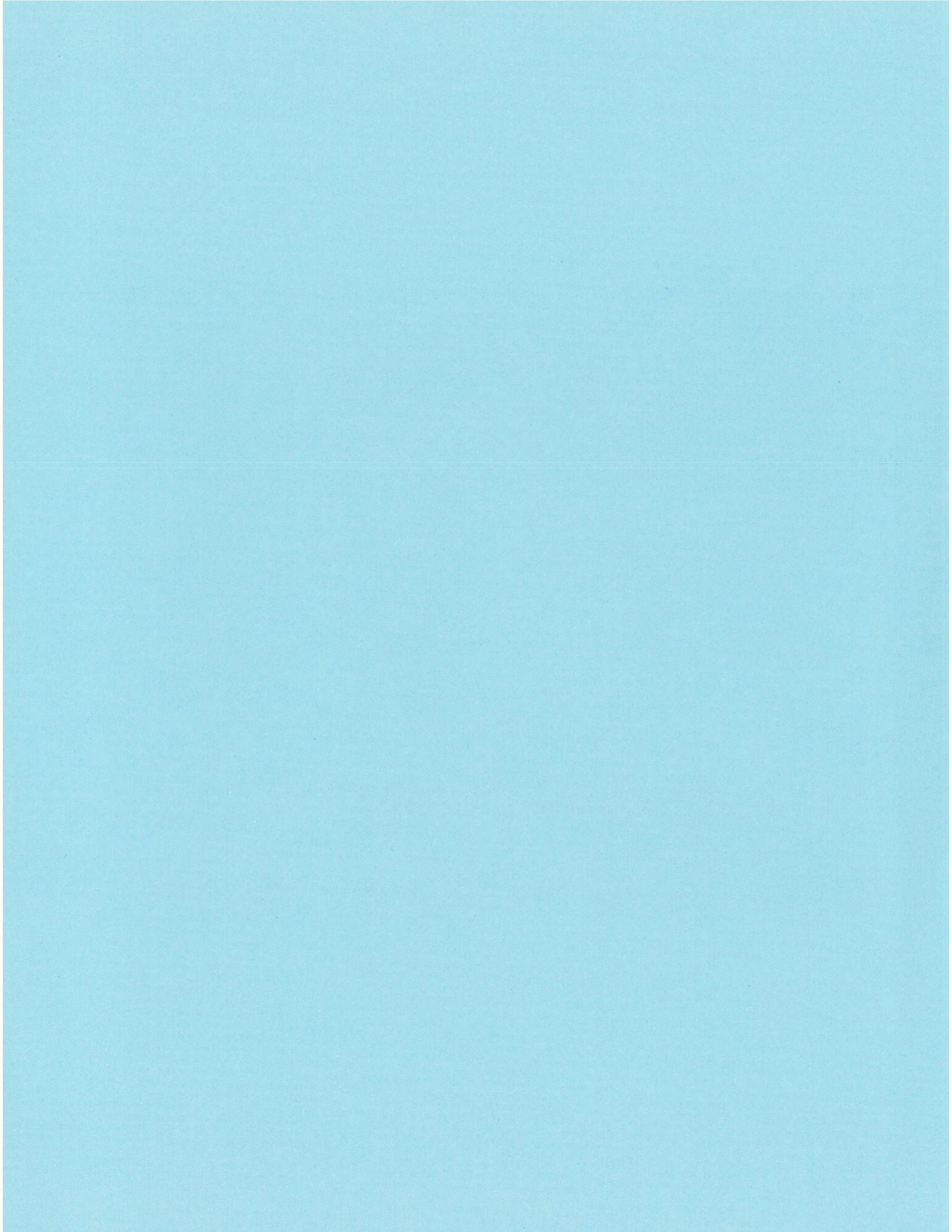
Entered this 9TH day of AUGUST, 2018.

J. WINSTON KRAUSE, CHAIRMAN

CARMEN ARRIETA-CANDELARIA,
COMMISSIONER

DOUG LOWE, COMMISSIONER

ROBERT RIVERA, COMMISSIONER



State Office of Administrative Hearings



Lesli G. Ginn
Chief Administrative Law Judge

March 1, 2018

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

VIA INTERAGENCY

RE: Docket No. 362-17-5016.B, 362-17-5279.B, 362-17-5280.B, 362-17-5281.B, 362-17-5282.B; Texas Lottery Commission v. BJN Enterprises, LLC, San Antonio Northwest Lions Club, Southern Federation of Syrian Lebanese American Clubs, INC., LULAC Council 4416, SASSL

Dear Mr. Grief:

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

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

Sincerely,

Meitran Farhadi
Administrative Law Judge

MF/eh

cc: Kristen Guthrie, Assistant General Counsel, Texas Lottery Commission, 611 E. 6th, Austin Texas 78701 - **VIA INTERAGENCY**
Robert Johnson, III, Gardere Wynne Sewell, LLP, 600 Congress Avenue, Suite 3000, Austin, Texas 78701 - **VIA REGULAR MAIL**

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² Tex. Occ. Code ch. 2001.

Administrative Law Judge (ALJ) concludes Respondents committed three of the four alleged violations, and recommends that the Commission impose corrective action.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

There is no dispute about notice or jurisdiction and those issues are addressed in the findings of fact and conclusions of law. The hearing was held on November 6, 2017, before ALJ Meitra Farhadi at the State Office of Administrative Hearings (SOAH) in Austin, Texas. Staff was represented by Assistant General Counsel Kristen Guthrie. Respondent Conductors and Lessor were all represented by attorney Robert Johnson. The record closed on January 5, 2018, after the filing of post-hearing briefs and responses.

II. ALLEGED VIOLATIONS AND EVIDENCE PRESENTED

Staff presented the testimony of Joy Bishop, Lead Audit Coordinator for the Commission, and had exhibits D-K, L-M (2nd quarter 2016 only), 9-14, and 15-16 (2nd quarter 2016 only) admitted into evidence. In addition, the ALJ took official notice of Staff Exhibits A-C and 1-8. Respondents offered the testimony of Jamil Tawil and Eddie Heinemeier, and had exhibits 1-4 and 6-10 admitted into evidence. Respondents also tendered Exhibits Nos. 5, and 11-13 for demonstrative purposes.

A. Agreed Facts

The parties submitted the following undisputed facts as part of their closing briefs:³

- Lessor leases bingo premises to the Conductors;
- Respondents and the Commission agree on the amounts submitted by Respondents for utilities for the Conductors' pro rata share;

³ Staff's Closing Brief at 2-3, Respondents' Closing Brief at 3-4, and Staff's Reply Brief at 4.

- Lessor invoiced, and the Conductors paid, bills for what was labeled “taxes, insurance, and utilities”⁴ for \$2,937 per month for the months of April, May, and June 2016 (Audit Period);
- The snack bar percentage of 1.6 percent should not have been included in the Conductors’ pro rata share of the building;
- Current year bills were not considered in the audit. Using prior year expense reconciliation to base payments is accepted practice;
- Lessor charged the Conductors for two tax bills issued by Bexar County, Parcels 0091 and 0100. The square footage leased by the Conductors is physically located on Parcel 0091, but does not extend to Parcel 0100;
- The bingo hall is located in a single building with a common parking lot, and both the building and the parking lot lie in both tax parcels 0091 and 0100.
- Lessor continues the practice of invoicing the Conductors expenses separate from lump sum rent payments for items charged by the building owner and listed in Texas Occupations Code § 2001.458(a).

B. Alleged Violations

In the Amended Notice of Hearing for the Lessor, Staff alleged that:

1. For the Audit Period, Lessor charged rent for premises used for the conduct of bingo that was not paid in lump sum that included all expenses authorized by the Act, in violation of Act § 2001.406(b);
2. For the Audit Period, Lessor charged rent to the Unit that exceeded \$600 for each bingo occasion conducted on the premises, in violation of Act § 2001.406(a); and
3. Lessor failed to adequately respond to the Commission’s Request for Supplemental Information dated June 26, 2017, in violation of Act § 2001.302.

⁴ Also referred to as “taxes, electricity, and insurance” (TEI).

In the Notices of Hearing sent to the Conductors, Staff alleged that the Unit and its members—the Conductors—incurred or paid items of expense in connection with the conduct of a game of bingo that were not reasonable or necessarily expended for authorized expenses, in violation of Act §§ 2001.453(1), .458, and .459.

C. Staff's Witness

Ms. Bishop reviews audit reports, works with the auditors as they perform audits, and generally oversees the audit process. She explained that, pursuant to the Act, the Commission regulates the relationship between the Conductors and the Lessor, but that the relationship between the Lessor and the landlord is not regulated beyond a prohibition against the Lessor entering into an agreement that would be illegal under the Act or Commission rules.⁵

1. Audit

A compliance audit of the Unit was performed for the Audit Period. The purpose of the audit, Ms. Bishop explained, was to independently examine the financial records of the Unit to determine compliance with the Act and Commission rules.⁶ The audit revealed that the Lessor charged, and the Unit paid, \$2,937 per month for what was labeled as TEI, in addition to the \$600 rent per bingo occasion.⁷

Ms. Bishop testified that the Act allows charitable organizations to pay a lessor for their pro rata share of property taxes, certain utilities, and property and casualty insurance on the premises in addition to their rent payments.⁸ She stated that during the audit, the Unit did not provide any documentation regarding the \$2,937 monthly TEI payments made to the Lessor; so

⁵ Tr. at 37, 103.

⁶ Tr. at 112.

⁷ Staff Exs. G, N.

⁸ Tr. at 31, 118.

those payments were disallowed.⁹ For any expense, she explained, whether it is an expense paid to a lessor, or any other expense that a charity may incur, the licensed organization is required to have documentation that directly relates the amount that was paid with an accounting of how that amount is necessary for the conduct of bingo.¹⁰ For purposes of this audit, she testified, the Commission has not made a determination as to whether any of the charges would have been allowable had they been paid directly to the commercial landlord.¹¹

Ms. Bishop stated that in an effort to work with the Conductors to come into compliance, she spoke with the Lessor's bookkeeper and with the Lessor to explain that supporting documentation was needed; the Bingo Division Director also met with the Lessor; and there was an informal hearing over the matter.¹² Some documentation was received, but when information stopped coming in, on June 26, 2017, the Commission sent a Request for Supplemental Information letter to the Lessor, identifying the documents received to date, requesting documentation that directly tied allowable expenses to the bingo location, and providing a deadline of July 10, 2017 to respond.¹³ Specifically, she explained that: (1) the 2015 property tax notices included a tax notice for a separate piece of property that the bingo hall is not located on; (2) the insurance policy documentation received did not show the policy premium amount, coverage amount, or location covered; (3) the certificate of liability insurance received did not include a correlation to the loan payment documents, did not show coverage of or connection to the bingo hall property, and did not show the policy premium amount; (4) the water bills submitted for two businesses located in the same shopping center indicated that one of the businesses was a fitness center with considerable amounts of water consumed; and (5) the electricity bills received were for four different addresses, none of which is the address of the bingo hall.¹⁴

⁹ Staff Ex. N.

¹⁰ Tr. at 61, 229-30.

¹¹ Tr. at 229-30.

¹² Tr. at 30-31.

¹³ Staff Ex. E.

¹⁴ Tr. 33-35.

Ms. Bishop testified that the only information the Commission received in response to the June 26, 2017 request for supplemental information was a letter indicating that there was no swimming pool at the fitness center and that there are no separate electric meters.¹⁵ Subsequent to the July 10, 2017 deadline, she noted that the Commission did receive a few additional utility bills and insurance documents; however, she stated that there was not enough supporting documentation to consider the \$2,937 monthly payment an allowable expense.¹⁶ Even if the Commission allowed all of the TEI that Respondents claimed, Ms. Bishop testified that it would not add up to \$2,937 per month.¹⁷ Ms. Bishop agreed that Lessor's employee, Sylvia,¹⁸ was very helpful and tried to provide the information requested by the Commission; however, at a certain point, she did not have any more information available to her to provide the Commission.¹⁹

2. Insurance

Examining the insurance documentation the Commission received, Ms. Bishop explained that the Commission's concern was not that the insurance was not reasonable or necessary, but that the information was not enough to be able to tie the bills to the actual location, or even to any policy—all the documentation showed was that someone had made payments to "Premium Assignment Corporation."²⁰ She stated that the certificate of insurance identified the named insured as "World Class Capital Group, LLC," and listed multiple locations that appeared to be owned by the same company.²¹ Ms. Bishop testified that she does not know who owns the shopping center where the bingo hall is located, but agreed that the insurance policy appeared to be the commercial landlord's policy and not Lessor's policy.²²

¹⁵ Tr. at 33-35.

¹⁶ Tr. at 36.

¹⁷ Tr. at 109.

¹⁸ No last name was provided.

¹⁹ Tr. at 43, 72-73.

²⁰ Tr. at 43-44, 95; Staff Exs. J, 13.

²¹ Tr. at 43, 69.

²² Tr. at 71.

3. Taxes

With regard to the property taxes, Ms. Bishop explained that under the Act, a pro rata share of property taxes is a permissible expense in addition to the \$600 per occasion rent.²³ She noted that, although the bingo hall is located in a strip shopping center, the Bexar County Appraisal District has two separate tax parcels, tax parcels 0091 and 0100, which encompass the area where the bingo hall is located. The bingo hall itself is located on tax parcel 0091.²⁴ Because the bingo hall was only located on tax parcel 0091, and not on 0100, Ms. Bishop stated that property taxes on tax parcel 0100 would not qualify as an allowable expense under the Act.²⁵ Even though the shopping center is physically located on both tax parcels, she explained, the Act only allows the Unit to pay taxes on the portion of the building that the bingo hall is physically located.²⁶ When determining the share of taxes that should be allowed, however, Ms. Bishop testified that she did not calculate what the appropriate pro rata share should be. She stated that the Commission used the pro rata share identified by the Lessor, but that she does not know what it was a pro rata share of.²⁷

4. Other Expenses

Looking at the lease agreement between the Lessor and Conductors, Ms. Bishop pointed out that it delineated some expenses which should have been included in the lump sum rent per the Act. For example, the agreement states that the Conductors are responsible for janitorial and cleaning of the premises, all utilities or fees associated with the premises, and liability and property insurance.²⁸ Similarly, the 2016 estimated operating expenses provided to the Commission indicate that in addition to TEI, the Unit was charged a pro rata share of the

²³ Tr. at 75.

²⁴ Tr. at 56, 77; Staff Ex. J.

²⁵ Tr. at 56.

²⁶ Tr. at 87.

²⁷ Tr. at 82-83.

²⁸ Tr. at 59-60; Staff Ex. K.

following annual expenses: management fee of \$62,789.17; supplies of \$300.00; repairs and maintenance of \$22,185.00; contract services of \$89,370.50; and administrative and general services of \$10,680.00.²⁹ She explained that security, janitorial services, and repairs to the premises are all reasonable and necessary expenses that the Act allows, but that these expenses are not allowed to be paid to a lessor in addition to rent.³⁰ Discussing the types of expenses that conductors are authorized to pay under the Act, Ms. Bishop testified that the Act identifies expenses that are allowable in section 2001.458; however, those expenses must be included in the lump sum rent that is limited to \$600 per bingo occasion.³¹ She stressed that, the only expenses allowed to be paid by conductors to a lessor—outside of rent—are property taxes, water, electric, and gas utilities, and property and casualty insurance.³² From a policy perspective, she explained the rationale for the regulations is to limit the Conductors' expenses to allow them to raise more money for their charitable purposes.³³

Having reviewed all of the invoices provided by Lessor, the Commission decided to allow the utility expenses, with the understanding that going forward the Commission needs to see documentation showing which utilities provide actual service to the bingo hall.³⁴ However, due to the fact that information to support the insurance was never received, the Commission determined an amount that would have been considered allowable based on the property taxes and utilities, which totaled \$1,615.60 monthly.³⁵ For 2016, Ms. Bishop totaled the amount of rent paid to the Lessor as \$475,200.³⁶ For the Audit Period, the rent payments totaled \$153,000.³⁷ The additional payments made to the Lessor totaled \$8,811 for the Audit Period, \$4,770 of which the Commission determined could be considered reasonable and necessary,

²⁹ Tr. at 109-10; Staff Ex. H.

³⁰ Tr. at 99.

³¹ Tr. at 38.

³² Tr. at 39, 43; Tex. Occ. Code § 2001.406(b).

³³ Tr. at 40.

³⁴ Tr. at 57.

³⁵ Tr. at 48-49; Staff Ex. J.

³⁶ Tr. at 50.

³⁷ Staff Ex. L.

leaving \$4,041 as not reasonable or necessary or properly supported.³⁸ Ms. Bishop testified that the Commission's goal was for the Respondents to fix their accounting practices, but if they refused, and continued to pay amounts that are not allowable under the Act and Commission rules, the only recourse is to seek revocation of their licenses.³⁹

D. Respondents' Witnesses

1. Jamal Tawil

Jamal Tawil testified that he and ABH Property Management, LLC (ABH) are co-owners of Lessor.⁴⁰ Regarding the bills Lessor sent the Unit, Mr. Tawil agreed that although the invoices state that they are for TEI, they actually included costs for more than just TEI.⁴¹ He explained that costs for repairs, security, trash pickup—the common area and maintenance (CAM) charges—were costs that the Lessor passed through to the Unit. Mr. Tawil testified that 100 percent of the \$2,937 monthly payments that Lessor received from the Unit was passed on to the commercial landlord and, therefore, he did not consider the \$2,937 to be payments to the Lessor.⁴²

Mr. Tawil explained that the Lessor pays approximately \$8,000 monthly, or \$30,000 quarterly, in rent to Transwestern.⁴³ He agreed that for the second quarter in 2016, the Unit made \$153,000 in rent payments to Lessor; however, Mr. Tawil explained that the \$153,000 included the pass through expenses labeled as TEI.⁴⁴ Mr. Tawil also testified that Lessor would

³⁸ Tr. at 54. ($\$2,937 \times 3 = \$8,811 - \$4,770 = \$4,041$)

³⁹ Tr. at 50, 230.

⁴⁰ Tr. at 214.

⁴¹ Tr. at 222; Staff Ex. N.

⁴² Tr. at 215-16, 227.

⁴³ Transwestern is the commercial landlord's property management company. Tr. at 168, 225.

⁴⁴ Tr. at 226-27; Staff Ex. J.

have no problem refunding the Unit for the pro rata expenses they paid for the snack bar square footage.⁴⁵

2. Eddie Heinemeier

Eddie Heinemeier, the Designated Agent for the Unit, testified that he represents approximately 130 conductors and 23 bingo units. He charges a monthly fee to handle the books and assist with licensing. As the Designated Agent for the Unit, Mr. Heinemeier testified that he is familiar with the daily operations of the Unit as well as the quarterly reports the Unit files with the Commission. He explained that he was involved with working with different parties to obtain the information requested by the Commission in response to the audit. Specifically, the Unit requested and relied on documentation from the property management company to support the payment of the Unit's pro rata share of property taxes.⁴⁶ The documentation received by the Unit to support its pro rata share of property taxes consisted of a letter dated August 15, 2017, from Transwestern to ABH stating that the Westpark Plaza Property, located at 6703-6759 NW Loop 410, San Antonio, Texas 78238, is comprised of four buildings and two tax parcels.⁴⁷ The letter further states that the larger of the two tax parcels contains the entire property minus suite 6727 and a large sign. Mr. Heinemeier stated that based on his knowledge from visiting the site, the shopping center is all one building.

Turning to the tax appraisal district maps reviewed by the Commission, Mr. Heinemeier testified that it is his understanding that the pro rata share of expenses are apportioned based on the bingo hall's square footage as a percentage of the overall square footage of the entire shopping center, and that that percentage is applied to the tax bills for both parcels—for the entire building. Therefore, if the pro rata share was only allowed for the tax parcel that the bingo hall is located on, the pro rata percentage would have to be recalculated because the total square

⁴⁵ Tr. at 215.

⁴⁶ Tr. at 123-24.

⁴⁷ Resp. Ex. 1.

footage would decrease.⁴⁸ Mr. Heinemeier stated that the Unit leases space from Lessor, who, through its partnership relationship with ABH, leases the space from the commercial landlord—Westpark Plaza San Antonio, LP.⁴⁹ Reviewing the lease between ABH and the commercial landlord, he stated the lease reflects that the square footage of the bingo hall is 11,828 square feet out of 135,423 gross rentable square feet in the entire building, which would equate to 8.74 percent.⁵⁰ It is these figures that Mr. Heinemeier explained were used to calculate the Unit's pro rata share of TEI. If the total square footage were reduced to just the building square footage of the tax parcel that the bingo hall is located on—from 135,423 to 107,811 square feet—the pro rata percentage attributable to the Unit would increase to 10.9711 percent.⁵¹

Mr. Heinemeier explained that in larger cities it is fairly common for bingo units to have this type of pass-through TEI in their commercial leases.⁵² Mr. Heinemeier also testified that in his opinion, paying for repairs to the premises, security, and janitorial services, are permissible expenses from a bingo account. He explained that he now understands, however, that CAM charges should be paid directly by the bingo unit to the landlord—not through a lessor. Mr. Heinemeier stated that it was the Unit's intention to only pay for expenses that were permitted under the Act, and that it is the Unit's intention going forward to follow whatever the ruling is in this case.⁵³

Mr. Heinemeier also testified regarding documents the Unit obtained from ABH to respond to the Commission's request for information regarding property insurance.⁵⁴ He stated that it can be difficult for bingo units to obtain documentation from the commercial landlords to support the charges to the bingo units; and that the documents marked as invoices from Swingle,

⁴⁸ Tr. at 129-30.

⁴⁹ Tr. at 199.

⁵⁰ Tr. 130-37. *But see*, Staff Ex. J, 2016 operating expense reconciliation indicating that the pro rata share of the building for the bingo hall is 8.7277 percent.

⁵¹ Tr. at 146.

⁵² Tr. at 151-52.

⁵³ Tr. at 166-67.

⁵⁴ Resp. Exs. 8-9.

Collins & Associates (Insurance Agent) concerning 6707 NW Loop 410, San Antonio, Texas, 78238 (Location) and dated June 3, 2015, and June 2, 2016, respectively, were documents the Unit relied upon as supporting documentation for insurance charges previously paid.⁵⁵ Mr. Heinemeier testified that the Location referenced on the invoices from the Insurance Agent is that of the shopping center where the bingo hall is located.⁵⁶ The Unit also received a letter from Transwestern to ABH itemizing the CAM charges for 2015 and 2016.⁵⁷ Although the letter is dated November 2, 2017, just four days before the hearing, Mr. Heinemeier stated that the Unit had been requesting the information prior to the audit. He explained that the Unit does not have any contract with the commercial landlord that would provide a contractual right to demand the information.⁵⁸

Mr. Heinemeier testified that the Unit paid \$2,937 to Lessor for what was identified as “TEI” for each month of April, May, and June 2016, and that at the time the Unit paid the bills, it was not given any supporting documentation.⁵⁹ He explained that the bills are actually estimates for the year based on 2015, and that has been the practice in the bingo community for approximately 20 years—to bill based on estimates from the previous year and then reconcile at the end of the year.⁶⁰ Mr. Heinemeier admitted that he was unaware that the amounts labeled as TEI and paid by the Unit to the Lessor included pass-through costs other than just TEI.⁶¹ Specifically, he explained that he now knows that payments for CAM charges were included in the \$2,937 amount labeled as TEI charges.⁶² Mr. Heinemeier also testified, however, that the Commission has allowed CAM charges to be passed through the lessor to the landlord for the past 20 years.⁶³

⁵⁵ Tr. at 147.

⁵⁶ Tr. at 147.

⁵⁷ Resp. Ex. 10.

⁵⁸ Tr. at 156.

⁵⁹ Tr. at 170-72; Staff Ex. N.

⁶⁰ Tr. at 172.

⁶¹ Tr. at 173.

⁶² Tr. at 194-96.

⁶³ Tr. at 206-07.

III. DISCUSSION

A. Alleged Violations and Analysis

1. Lessor Charged the Conductors for Rent that was Not Paid in Lump Sum.

Section 2001.406(b) of the Act states:

Rent for premises used for the conduct of bingo must be paid in a lump sum. Except as otherwise provided by this section, the lump sum must include all expenses authorized by Section 2001.458 that are paid by the licensed authorized organization to the lessor in connection with the use of the premises. A licensed authorized organization or unit may pay as a separate expense, based on the percentage of the total area of the lessor's facility that the organization or unit uses as the bingo premises for the conduct of bingo, the organization's or unit's pro rata share of:

- (1) property taxes on the facility that are paid by the lessor, excluding any penalties and interest on the taxes;
- (2) water, electric, and gas utility expenses for the facility that are paid by the lessor, excluding any late fees or other penalties; and
- (3) property and casualty insurance premiums for the facility that are paid by the lessor, excluding any late fees or other penalties.

Staff contends that the Lessor charged, and the Unit paid, \$2,937 per month in addition to the \$600 maximum rent per bingo occasion. Because portions of the \$2,937 monthly charge were either not properly supported TEI, or were expenses improperly characterized as TEI, Staff construed those charges as part of the rent and, therefore, not paid in lump sum as required by the Act.⁶⁴

The evidence is clear that regardless of the amount of allowable TEI, Lessor charged, and the Unit paid, separately for expenses that should have been included in the lump sum rent.

⁶⁴ Staff Ex. B; Staff's Closing Brief at 5.

Looking at the 2016 operating expense reconciliation, the Unit was charged for a variety of non-TEI expenses, one of which was for “repairs and maintenance.” Pursuant to sections 2001.406(b), and .458(a)(3) of the Act, expenses for repairs to the premises must be included in the rent and paid in lump sum. Additionally, both Mr. Tawil and Mr. Heinemeier agreed that the \$2.937 monthly charge included expenses for more than just TEI.

Respondents contend that Lessor cannot violate section 2001.406(b) of the Act because this subsection of the Act deals with how conductors pay for expenses—not how a lessor charges for rent and expenses. The ALJ disagrees; while subsection (a) deals with the maximum amount a lessor can charge for rent, subsection (b) is necessarily intertwined as it sets forth the requirement for how the rent is to be paid and what expenses are allowed to be included in the rent or paid as a separate expense to the lessor.

With regard to the Conductors, Respondents argue that the Notices of Hearing sent to the Conductors do not charge them with having violated this subsection, therefore, they were not given notice of this alleged violation.⁶⁵ Respondents did not raise any objections throughout the course of the hearing with regard to lack of notice on behalf of Conductors.⁶⁶ Additionally, the Conductors share the same legal counsel as Lessor and were copied on the Lessor’s Amended Notice of Hearing.⁶⁷ The ALJ finds that the failure to cite to section 2001.406(b) of the Act in the Notices of Hearing sent to the Conductors did not unfairly surprise or prejudice them, and that Conductors waived any objection to lack of notice when they allowed the issue to be heard by consent. Therefore, the ALJ finds that the Lessor charged, and the Unit paid, for rent that was not paid in lump sum in violation of Act § 2001.406(b).

⁶⁵ Respondents’ Joint Closing Reply.

⁶⁶ See Tr. at 105-07 discussing Conductors’ failure to pay all authorized expenses as part of the lump sum rent payment.

⁶⁷ Staff Ex. B.

2. Lessor Charged Rent to the Conductors in Excess of What is Allowed under the Act.

Section 2001.406(a) of the Act states:

The rent charged by a licensed commercial lessor to a licensed authorized organization to conduct bingo may not exceed \$600 for each bingo occasion conducted on the lessor's premises unless the organization subleases the premises to one or more other licensed authorized organizations to conduct bingo, in which event the rent charged by the licensed commercial lessor may not exceed \$600 for each day.

Reviewing the Unit's Bingo Quarterly Report for the second quarter of 2016, Staff contends in the Amended Notice of Hearing that the Unit paid \$645.18 in rent per occasion, which is over the maximum allowable amount of \$600 per occasion.⁶⁸ Staff arrived at this figure by multiplying the maximum rent allowed per occasion (\$600) by the number of bingo occasions reported for the Audit Period (195), resulting in maximum allowable rent for the Audit Period of \$117,000. Staff then added the charges labeled as TEI that were paid to Lessor for the Audit Period ($\$2,937 \times 3 = \$8,811$) to the rent figure because Staff contends that the charges labeled as TEI were not properly supported, arriving at a total amount paid to Lessor for rent during the Audit Period of \$125,811. Dividing \$125,811 by the 195 bingo occasions equals a rent charge of \$645.18 per bingo occasion.⁶⁹

Under the Act, lessors are permitted to charge for TEI in addition to the maximum allowable rent of \$600; therefore, the issue is whether the charges labeled by Lessor as "TEI" were in fact allowable TEI charges. Respondents point out that Staff has now accepted the portion of the "TEI" charges related to utilities, leaving the issues of taxes, insurance, and other charges.

⁶⁸ Staff Ex. B.

⁶⁹ Staff Ex. L ($\$600 \times 195 = \$117,000 + \$8,811 = \$125,811 \div 195 = \$645.18$).

With regard to the tax parcels, the Act allows a unit to pay a pro rata share of property taxes on the facility, based on the percentage of the total area of the facility that the unit uses as the bingo premises. In this case, the facility is the entire strip shopping center. Therefore, the Unit is allowed to pay a pro rata share of property taxes that cover the entire facility—both tax parcel 0091 and tax parcel 0100.⁷⁰

Turning to the insurance charges, Respondents failed to demonstrate that the insurance amounts charged to the Unit were tied to any specific policy or to the actual location encompassing the bingo hall. While the Unit expressed the difficulty it encountered in trying to gather documents to support the insurance charges, the Unit is only allowed to pay for a pro rata share of property and casualty insurance for the facility that it uses as the bingo premises.⁷¹

Regardless, the evidence establishes that even if all of the charges for taxes, insurance, and utilities were determined to be permissible expenses, Lessor admitted to charging the Unit for expenses that were not part of TEI. By doing so, Lessor charged in excess of the maximum rent allowed under the Act.⁷²

3. The Conductors Paid Expenses that Were Not Reasonable or Necessarily Expended for Authorized Expenses.

Sec. 2001.453. AUTHORIZED USES OF BINGO ACCOUNT. A licensed authorized organization may withdraw funds from its bingo account only for:

- (1) the payment of necessary or reasonable bona fide expenses, including compensation of personnel, as permitted under Section 2001.458 incurred and paid in connection with the conduct of bingo

Sec. 2001.458. ITEMS OF EXPENSE. (a) An item of expense may not be incurred or paid in connection with the conduct of bingo except an expense that is reasonable or necessary to conduct bingo, including an expense for:

⁷⁰ Tex. Occ. Code § 2001.406(b)(1).

⁷¹ Tex. Occ. Code § 2001.406(b)(3).

⁷² Tex. Occ. Code § 2001.406.

- (1) advertising, including the cost of printing bingo gift certificates;
- (2) security;
- (3) repairs to premises and equipment;
- (4) bingo supplies and equipment;
- (5) prizes;
- (6) stated rental or mortgage and insurance expenses;
- (7) bookkeeping, legal, or accounting services related to bingo;
- (8) bingo chairpersons, operators, managers, salespersons, callers, cashiers, ushers, janitorial services, and utility supplies and services;
- (9) health insurance or health insurance benefits for bingo chairpersons, operators, managers, salespersons, callers, cashiers, and ushers, as provided by Subsection (b);
- (10) attending a bingo seminar or convention required under Section 2001.107; and
- (11) debit card transaction fees and electronic funds transfer fees.

Sec. 2001.459. EXPENSES PAID FROM BINGO ACCOUNT. (a) The following items of expense incurred or paid in connection with the conduct of bingo must be paid from an organization's bingo account:

- (1) advertising, including the cost of printing bingo gift certificates;
- (2) security during a bingo occasion;
- (3) the purchase or repair of bingo supplies and equipment;
- (4) prizes, other than authorized cash prizes;
- (5) stated rental expenses;
- (6) bookkeeping, legal, or accounting services;
- (7) fees for callers, cashiers, and ushers; and
- (8) janitorial services.

Staff contends that for the second quarter of 2016, the Unit paid a total of \$8,811 (\$2,937 x 3) to Lessor for what was identified by invoice as TEI. However, Staff argues the Unit failed to provide the Commission with sufficient supporting documentation to substantiate these payments.⁷³

Respondents argue that the non-TEI charges were charges passed through Lessor from the commercial landlord, and covered expenses that are considered reasonable and necessary under the Act. The real dispute, Respondents contend, is not whether the expenses were reasonable and necessary bona fide expenses, but whether the items should have been paid

⁷³ Staff Exs. 1-5.

directly to the commercial landlord instead of passed through the Lessor. To this end, Respondents argue that the payments made to Lessor for the \$2,937 monthly charge were not retained by Lessor, but passed through to the commercial landlord; that this was common practice among bingo halls; and that the Conductors are willing to pay their expenses directly to the commercial landlord instead of the Lessor if that is what is required of them. Respondents point to the November 2, 2017 letter from Transwestern, identifying the major maintenance items for 2015 and 2016, as evidence that the charges Mr. Tawil testified Lessor passed through to the Unit are allowable expenses under the Act. The letter identifies repairs for water leaks, roof repairs, lighting repairs, security, parking and paving, and porter service and trash removal.⁷⁴

Staff stressed, in response, that whether or not expenses are passed through from the Unit to the commercial landlord, does not address the issue of whether the expenses themselves are reasonable and necessary. Without documentation to justify the bingo expenses, the Commission considers the charges paid by the Unit as unreasonable and unnecessary. The ALJ agrees; regardless to whom the expenses are paid, they must be reasonable and necessary. In addition, the Unit must pay section 2001.458(a) expenses as part of the lump sum rent payment to the Lessor. Section 2001.459 expenses are required to be paid from a bingo account, but the Act does not specify that the payments must be paid directly or if they may be passed through another entity.

Reviewing the 2016 estimated operating expenses from the commercial landlord, the bingo hall's square footage is 11,828, the bingo hall's pro rata share of the building is 8.7688 percent, and the Unit's pro rata share of TEI is \$2,096.17 per month.⁷⁵ Consequently, even if the TEI as claimed were allowed in its entirety, the Unit would have still paid approximately \$900 more per month for charges that were not substantiated. Therefore, the ALJ finds that the Conductors incurred or paid items of expenses in connection with the conduct of a game of bingo

⁷⁴ Resp. Ex. 10.

⁷⁵ Staff Ex. H; Tr at 185-86.

that were not reasonable or necessarily expended for authorized expenses, in violation of Act §§ 2001.453(1), .458, and .459.

4. Lessor Failed to Respond to the Commission's Request for Supplemental Information in Violation of the Act.

Section 2001.302 of the Act provides:

- (a) In addition to any required application form, a licensed applicant or license holder shall submit any supplemental 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.

Specifically, Staff contends that because the insurance-related documents Lessor provided to the Commission did not show which parties the insurance covered, or which portions of the policy related to the bingo hall, Lessor failed to adequately respond to the Commission's request for supplemental information. Moreover, Staff asserts that the additional responsive documents Lessor provided at the hearing are evidence of Lessor's failure to comply with the Commission's request.

Lessor argues, however, that Lessor did not ignore the Commission's request and, in fact, that additional documentation was provided to the Commission before the request was made, after the request was made, and was still being sought by the Lessor and provided to the Commission right up until the hearing. The remedy for failure to support expenses with documentation, Lessor asserts, is to disallow those expenses—not to charge a licensee with failure to provide documentation, when the licensee simply does not have any additional documentation to provide.

The ALJ finds that in this case the preponderant evidence demonstrated that Lessor made every attempt to provide the supplemental documentation sought by the Commission, but simply was unable to obtain the documents needed by the Commission. There was no evidence that

Lessor withheld responsive documents, or did not diligently attempt to gather them. Therefore, the ALJ does not find that Lessor violated section 2001.302 of the Act.

B. Recommended Corrective Action

The Commission is authorized to impose an administrative penalty against a person who violates the Act or a Commission rule.⁷⁶ The amount of an administrative penalty may not exceed \$1,000 for each violation for each day.⁷⁷ The Commission may also impose the following remedies along with or in lieu of an administrative penalty:

- a redeposit of funds to the bingo account;
- a removal of funds from the bingo account;
- a disbursement of net proceeds; or
- suspension, revocation, or denial of a license or registration issued under the Act.⁷⁸

In determining the amount of the penalty, or the degree to which a remedy is applied, the Commission shall consider the following factors, as applicable:

- (1) the seriousness of the violation, which includes the nature, circumstances, extent, and gravity of the prohibited acts;
- (2) history of previous violations which includes:
 - (A) the number of previous violations; and
 - (B) the number of repeated violations;
- (3) the action(s) necessary to deter future violations;
- (4) efforts to correct the violation after awareness of the violation through personal knowledge or notification by the commission;
- (5) any other matter that justice may require, including:
 - (A) whether the violation was intentional, inadvertent, simple negligence, gross negligence, or the unavoidable result of a related violation;
 - (B) cooperation with the Commission during its examination, audit, or investigation of the person;
 - (C) length of time the licensee has held a license;

⁷⁶ Tex. Occ. Code § 2001.601.

⁷⁷ Tex. Occ. Code § 2001.602(a).

⁷⁸ Tex. Occ. Code § 2001.353(a)(1); 16 Tex. Admin. Code § 402.706(f).

- (D) risk to the public or state;
- (E) whether the organization or person has acknowledged a violation and agreed to comply with the terms and conditions of remedial action through an agreed settlement with the Commission; and
- (F) the cost of the investigation, examination or audit associated with the violation.⁷⁹

Staff has not sought administrative penalties in this case. Although Staff sought corrective action at the hearing, Staff now seeks revocation of Respondents' licenses. Staff cites the fact that Lessor continues the practice of invoicing the Unit's expenses separately from lump sum rent payments for items charged by the building owner and listed in Texas Occupations Code § 2001.458(a) as the basis for the recommended remedy of revocation.

The Commission did not offer any evidence on the factors the Commission is required to consider in determining an appropriate remedy. Furthermore, Respondents indicated a willingness to comply with any order of the Commission as a result of this proceeding; Respondents cooperated with the Commission in locating supplemental documentation, even though they were unable to provide the Commission with all of the documents requested; and the evidence did not establish that the violations were intentional. Taking the factors into account, the more appropriate remedy is to require the Lessor to reimburse the Unit for expenses that were not authorized: the snack bar space, the insurance charges, and all other charges included in the \$2,937 payment that were not for the Unit's pro rata share of expenses for utilities or taxes paid on parcels 0091 and 0100.

V. FINDINGS OF FACT

1. The Ingram Late Night Bingo Unit (Unit) is a unit consisting of San Antonio Northwest Lions Club, Southern Federation of Syrian Lebanese American Clubs, Inc., LULAC Council 4416, and SASSL (collectively, Conductors), all charities licensed to conduct charitable bingo operations.
2. BJN Enterprises, LLC (Lessor) is a commercial bingo lessor who is licensed to lease bingo premises at the Westpark Plaza in San Antonio, Texas.

⁷⁹ Tex. Occ. Code § 2001.602(b); 16 Tex. Admin. Code § 402.706(j).

3. Jamal Tawil and ABH Property Management, LLC (ABH) are co-owners of Lessor.
4. The Unit leases space from Lessor, who, through its partnership relationship with ABH, leases the space from the commercial landlord—Westpark Plaza San Antonio, LP.
5. Transwestern is the commercial landlord's property management company.
6. Lessor leases bingo premises to the Conductors.
7. The Texas Lottery Commission (Commission), Charitable Bingo Operations Division, performed a compliance audit for the months of April, May, and June 2016 (Audit Period), to examine the financial records of the Unit to determine if they are in compliance with the Act and Commission rules.
8. Lessor invoiced, and the Conductors paid, bills for what was labeled "taxes, insurance, and utilities" (TEI) for \$2,937 per month for the Audit Period.
9. The \$2,937 invoiced as TEI included expenses other than taxes, utilities, and insurance.
10. The Unit did not receive any supporting documentation for the \$2,937 monthly charge and did not know the \$2,937 charge included more than TEI.
11. All of the \$2,937 monthly payments that Lessor received from the Unit was passed on to the commercial landlord.
12. Lessor charged the Conductors for two tax bills issued by Bexar County, Parcels 0091 and 0100. The square footage leased by the Conductors is physically located on Parcel 0091, but does not extend to Parcel 0100.
13. The bingo hall is located in a single building with a common parking lot, and the building and the parking lot lie in both tax parcels 0091 and 0100.
14. The square footage of the bingo hall premises is 11,828 square feet, 1.6 percent of which is leased by Lessor to a snack bar.
15. The pro rata shares of expenses are apportioned based on the bingo hall's square footage as a percentage of the overall square footage of the entire shopping center.
16. On April 18, 2017, Staff (Staff) of the Commission issued a notice of alleged violations to Lessor and warning letters to the Conductors.
17. On May 9, 2017, a request for an informal conference was received from Lessor.
18. On May 10, 2017, the Unit requested an informal and formal hearing.

19. On June 12, 14, and 16, 2017, the Commission received documents in response to its requests for supporting documentation from Lessor.
20. On June 26, 2017, a Staff issued a Request for Supplemental Information to Lessor with a deadline to respond of July 10, 2017.
21. Lessor attempted to obtain the requested supporting documentation.
22. On June 29, 2017, Lessor requested a formal hearing.
23. An Amended Notice of Hearing was sent to Lessor on July 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.
24. Notices of Hearing were sent to the Conductors on July 19, 2017. The notices 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.
25. The hearing was held on November 6, 2017, before Administrative Law Judge (ALJ) Meitra Farhadi at the State Office of Administrative Hearings (SOAH) in Austin, Texas. Staff was represented by Assistant General Counsel Kristen Guthrie. Respondent Conductors and Lessor were all represented by attorney Robert Johnson. The record closed on January 5, 2018, after the filing of post-hearing briefs and responses.
26. The failure to cite to section 2001.406(b) of the Act in the Notices of Hearing sent to the Conductors did not unfairly surprise or prejudice them; and the Conductors waived any objection to lack of notice when they allowed the issue to be heard by consent.
27. Lessor continues the practice of invoicing the Unit's expenses separately from lump sum rent payments for items charged by the building owner and listed in Texas Occupations Code § 2001.458(a).

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.

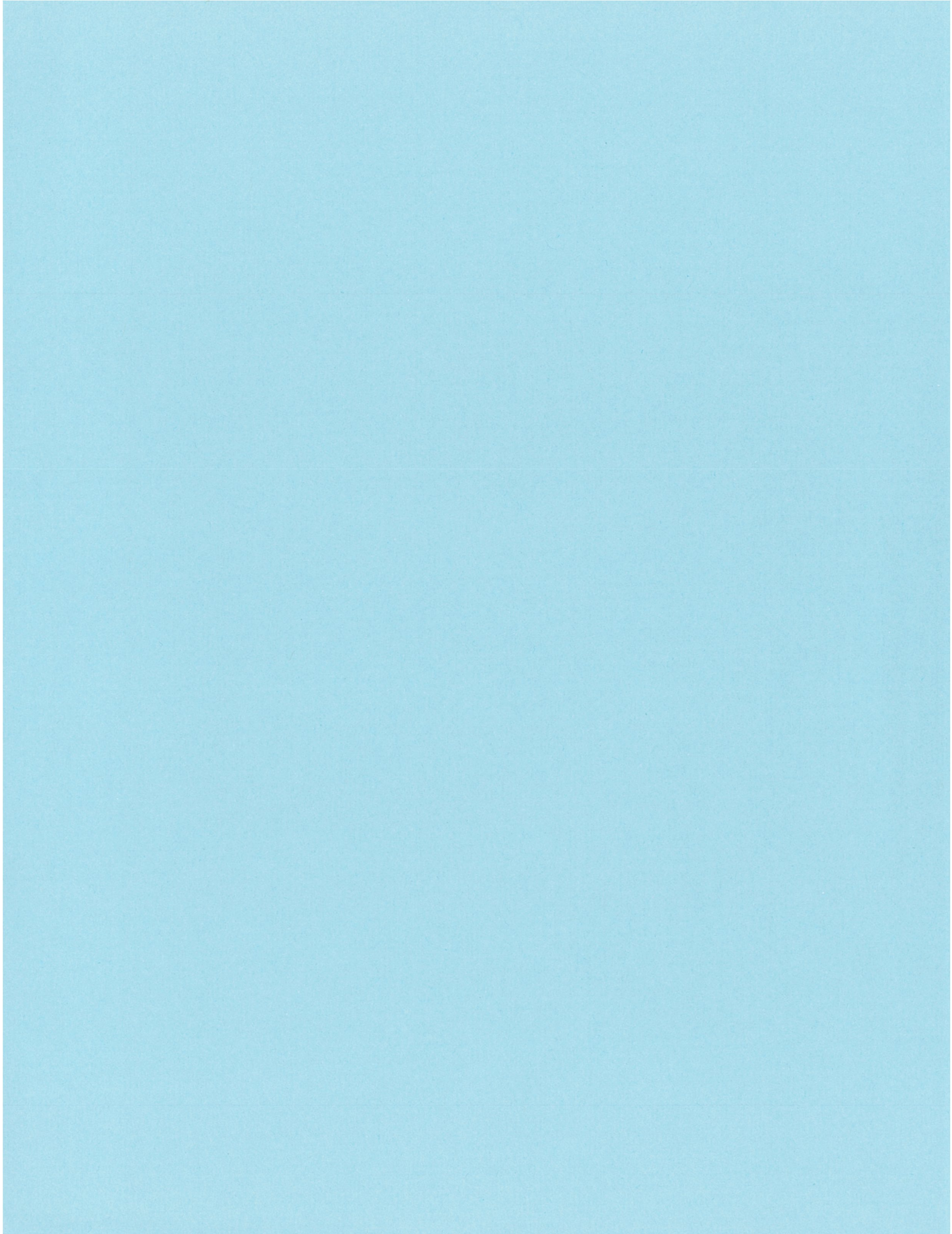
3. Staff has the burden of proof in this proceeding. 1 Tex. Admin. Code § 155.427.
4. Adequate and timely notice of the hearing was provided. Tex. Gov't Code §§ 2001.051-.052.
5. The Commission is authorized to suspend, revoke, or refuse to renew a license or registration issued under the Bingo Enabling Act (Act), or impose an administrative penalty against a person who violates the Act or a Commission rule. Tex. Occ. Code §§ 2001.353(a)(1), .601.
6. Two or more licensed organizations that conduct bingo at the same location joining together to share revenues, authorized expenses, and inventory related to bingo operations may operate a unit. Tex. Occ. Code § 2001.431(1).
7. Each member of a unit is jointly and severally liable for compliance with the Act. Tex. Occ. Code § 2001.438(f).
8. A lessor may not charge licensed organizations more than \$600 in rent for each bingo occasion. Tex. Occ. Code § 2001.406(a).
9. Rent for premises used for bingo must be paid in a lump sum, and must include all authorized expenses that are reasonable or necessary to conduct bingo. Tex. Occ. Code §§ 2001.406(b), .458(a).
10. Reasonable and necessary expenses for security and repairs for premises must be included in rent. Tex. Occ. Code §§ 2001.406(b), .458(a).
11. Licensed organizations may pay for their pro rata shares of property taxes, water, electric, and gas utility expenses, and property and casualty insurance premiums, that are paid by the lessor in addition to their rent payments. Tex. Occ. Code § 2001.406(b)(1)-(3).
12. Lessor charged, and the Unit paid, for rent that was not paid in lump sum in violation of Act § 2001.406(b).
13. Lessor charged rent to the Unit that exceeded \$600 for each bingo occasion conducted on the premises, in violation of Act § 2001.406(a).
14. A licensed organization may only withdraw funds from its bingo account for the payment of reasonable and necessary expenses as permitted under section 2001.458, or for the disbursement of net proceeds. Tex. Occ. Code § 2001.453.
15. Conductors incurred or paid items of expenses in connection with the conduct of a game of bingo that were not reasonable or necessarily expended for authorized expenses, in violation of Act §§ 2001.453(1), .458, and .459.

16. License holders shall submit any supplemental information requested by the Commission; and the Commission may revoke a license based on failure to submit requested supplemental information when required. Tex. Occ. Code § 2001.302.
17. Because Lessor submitted all information it had to the Commission, and diligently attempted to gather supplemental information requested by the Commission, Lessor did not violate section 2001.302 of the Act.
18. The Commission is authorized to impose an administrative penalty, corrective action, or suspension, revocation, or denial of a license or registration against a person who violates the Act or a Commission rule. Tex. Occ. Code §§ 2001.601, .353(a)(1); 16 Tex. Admin. Code §§ 402.706(f), .709.
19. The licenses of Conductors and Lessor should not be revoked.
20. The Lessor should be ordered to take corrective action to reimburse the Unit for the following expenses: the snack bar space, the insurance charges, and all other charges that were part of the \$2,937 monthly payment that were not part of the utilities or taxes paid on parcels 0091 and 0100.

SIGNED March 1, 2018.



METRA FARIADI
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS



State Office of Administrative Hearings



Lesli G. Ginn
Chief Administrative Law Judge

April 27, 2018

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

VIA FACSIMILE NO. 512-478-3682

RE: Docket No. 362-17-5016.B, 362-17-5279.B, 362-17-5280.B, 362-17-5281.B, 362-17-5282.B; Texas Lottery Commission v. BJN Enterprises, LLC, San Antonio Northwest Lions Club, Southern Federation of Syrian Lebanese American Clubs, INC., LULAC Council 4416, SASSL

On March 1, 2018, I issued a Proposal for Decision (PFD) in the above-referenced case. On March 16, 2018, San Antonio Northwest Lions Club, Southern Federation of Syrian Lebanese American Clubs, Inc., LULAC Council 4416, SASSL, (Conductors) and BJN Enterprises, LLC (Lessor) (collectively, Respondents) filed exceptions to the PFD; and on March 29, 2018, Staff of the Charitable Bingo Operations Division of the Texas Lottery Commission filed replies to those exceptions.

Respondents first point to a typo in the spelling of a name in Section II on page 4 of the PFD. The Administrative Law Judge (ALJ) agrees and recommends a change to the PFD to correct the typographical error by changing "Jamil" to "Jamal".

Next Respondents request that the first line of page 16 be modified to state that Lessor was charged the non-TEI expenses, not the Unit. Staff objects to the change, stating that the evidence at the hearing showed that Lessor passed the non-TEI expenses through to the Conductors. The ALJ recommends clarifying the first line of page 16 in the following manner:

"Looking at the 2016 operating expense reconciliation, the ~~Unit~~ Lessor was charged for—and in turn charged the Unit for—a variety of non-TEI expenses, one of which was for "repairs and maintenance."

SOAH Docket Nos. 362-17-5016.B, 362-17-5279.B
 362-17-5280.B, 362-17-5281.B, 362-17-5282.B
 Exceptions Letter
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Respondents additionally request that Finding of Fact (FOF) No. 1 be amended to reflect that the Unit consisted of four conductors “at the time of the audit period.” Respondents seek this clarification because as of the date of the PFD, an additional conductor has joined the Unit. Staff does not object to the change. Therefore, the ALJ recommends clarifying FOF No. 1 in the following manner:

The Ingram Late Night Bingo Unit (Unit) is a unit, at the time of the audit period, consisting of San Antonio Northwest Lions Club, Southern Federation of Syrian Lebanese American Clubs, Inc., LULAC Council 4416, and SASSL (collectively, Conductors), all charities licensed to conduct charitable bingo operations.

Respondents also request that Conclusion of Law (COL) No. 10 be changed to state that “all expenses for security and repairs paid to the lessor must be included in the rent.” Staff objects to the requested change to COL No. 10. In the ALJ’s opinion the phrase “to the lessor” is already implied as that is whom the Unit pays rent to.¹ In addition, the law requires that the expenses be reasonable and necessary.² Therefore, the ALJ does not recommend a change to the PFD based on this exception.

Respondents except to FOF No. 26 and the language on page 16 of the PFD regarding trial by consent because the evidence introduced at the hearing was relevant to both pleaded and unpleaded issues. Staff objects to this exception. For the reasons set forth in the PFD, the ALJ recommends no changes based on this exception.

Respondents also except to the inclusion of the insurance charges as part of the recommended corrective action. Respondents contend that the ALJ’s finding that the insurance charges charged to the Unit were not tied to a specific policy or to the bingo hall location is contrary to the evidence. Respondents point to Staff Exs. J and 13 (Certificates of Liability Insurance) to identify the policy numbers for each type of insurance coverage, and to identify Westpark Plaza San Antonio, LP³ as one of many additional insureds. They then turn to Respondent Exs. 8 and 9 (Insurance invoices to Westpark Plaza San Antonio, LP) to show the amounts the commercial landlord was invoiced for reference the same policy numbers reflected in the Certificates of Liability Insurance. Finally, Respondents point to the testimony of Mr. Heinemeier, the Designated Agent for the Unit, as evidence that the location referenced on the insurance invoices to Westpark Plaza San Antonio, LP in Respondent Exs. 8 and 9 is the location of the shopping center where the bingo hall is located.⁴

¹ See COL No. 8.

² Tex. Occ. Code § 2001.458(a).

³ Westpark Plaza San Antonio, LP is the commercial landlord that the Lessor leases space from. Tr. at 169.

⁴ Tr. at 147.

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 Exceptions Letter
 Page 3

Staff disagrees with Respondents exception, stating that the insurance policy cannot be tied to the charges to the Unit, because although Respondent Exs. 8 and 9 have the same policy numbers as the insurance policy, they pertain to a different time period than the audit period. In addition, Staff states that the invoices that do relate to the audit period, in Staff Ex. 13, have no policy number to tie the expense to the location. Staff also contends that because no details of the policy coverage have been provided, it is not possible to determine which portions of the policy coverage are reasonable and necessary.

The audit period was April, May, and June 2016. Respondent Exs. 8 and 9, indicate that they are for policy periods May 2015 to May 2016, and May 2016 to May 2017 respectively—therefore, the insurance invoices to the commercial landlord relate to the audit period. The evidence shows that during the audit period the commercial landlord was an additional insured for the policies listed on the Certificates of Liability;⁵ the annual premium the commercial landlord paid for the policies;⁶ and there is some evidence that the policies covered the property where the bingo hall was located.⁷ However, the evidence was insufficient to show that any portion of the amount paid by the Unit to the Lessor was for *reasonable and necessary property and casualty* insurance for the bingo hall location. Therefore, the ALJ recommends the following modification to page 18 of the PFD:

Turning to the insurance charges, Respondents failed to demonstrate that the insurance amounts charged to the Unit were for reasonable and necessary property and casualty insurance premiums ~~tied to any specific policy or to the actual location encompassing~~ for the bingo hall. While the Unit expressed the difficulty it encountered in trying to gather documents to support the insurance charges, the Unit is only allowed to pay for a pro rata share of property and casualty insurance for the facility that it uses as the bingo premises.

Lastly, Respondents state that the pro rata share of expenses listed in Respondents' Ex. 10 should be allowed, and not included in any corrective action ordered. Specifically, Respondents urge that the repairs and other shared expenses listed on Respondents' Ex. 10 were reasonable and necessary for the Unit to have a location suitable for bingo sessions. Staff argues that the CAM charges were unreasonable and unnecessary expenses because they were not included in the lump sum rent payment, as required by Texas Occupations Code sections 201.406(b) and .458(a). The ALJ believes that page 20 of the PFD can be amended to more clearly explain that CAM charges in general are allowable expenses so long as they are reasonable and necessary; and that the Unit is only allowed to pay its pro rata share of reasonable and necessary CAM charges insofar as they are included in the lump sum rent payment not to

⁵ Staff Exs. J and 13.

⁶ Respondent Exs. 8, 9.

⁷ Tr. at 147.

SOAH Docket Nos. 362-17-5016.B, 362-17-5279.B
 362-17-5280.B, 362-17-5281.B, 362-17-5282.B
 Exceptions Letter
 Page 4

exceed \$600 per bingo occasion.⁸ Therefore, the ALJ recommends the following modification to page 20 of the PFD:

Staff stressed, in response, that whether or not expenses are passed through from the Unit to the commercial landlord, does not address the issue of whether the expenses themselves are reasonable and necessary. Without documentation to justify the bingo expenses, the Commission considers the charges paid by the Unit as unreasonable and unnecessary. The ALJ agrees; regardless to whom the expenses are paid, they must be reasonable and necessary. CAM charges, in general, are allowable expenses so long as they are reasonable and necessary for bingo, and are included in the lump sum rent payment to the lessor.⁹ Section 2001.458(a) expenses can only be paid as part of the lump sum rent payment to the Lessor. In addition, the Unit must pay section 2001.458(a) expenses as part of the lump sum rent payment to the Lessor. Section 2001.459 expenses are required to be paid from a bingo account, but the Act does not specify that the payments must be paid directly or if they may be passed through another entity. In addition to paying CAM charges outside of the lump sum rent payment, Respondents failed to demonstrate that the dollar amounts charged to the Unit for CAM were reasonable and necessary.

With the modifications set forth above, the PFD is ready for consideration.

Sincerely,



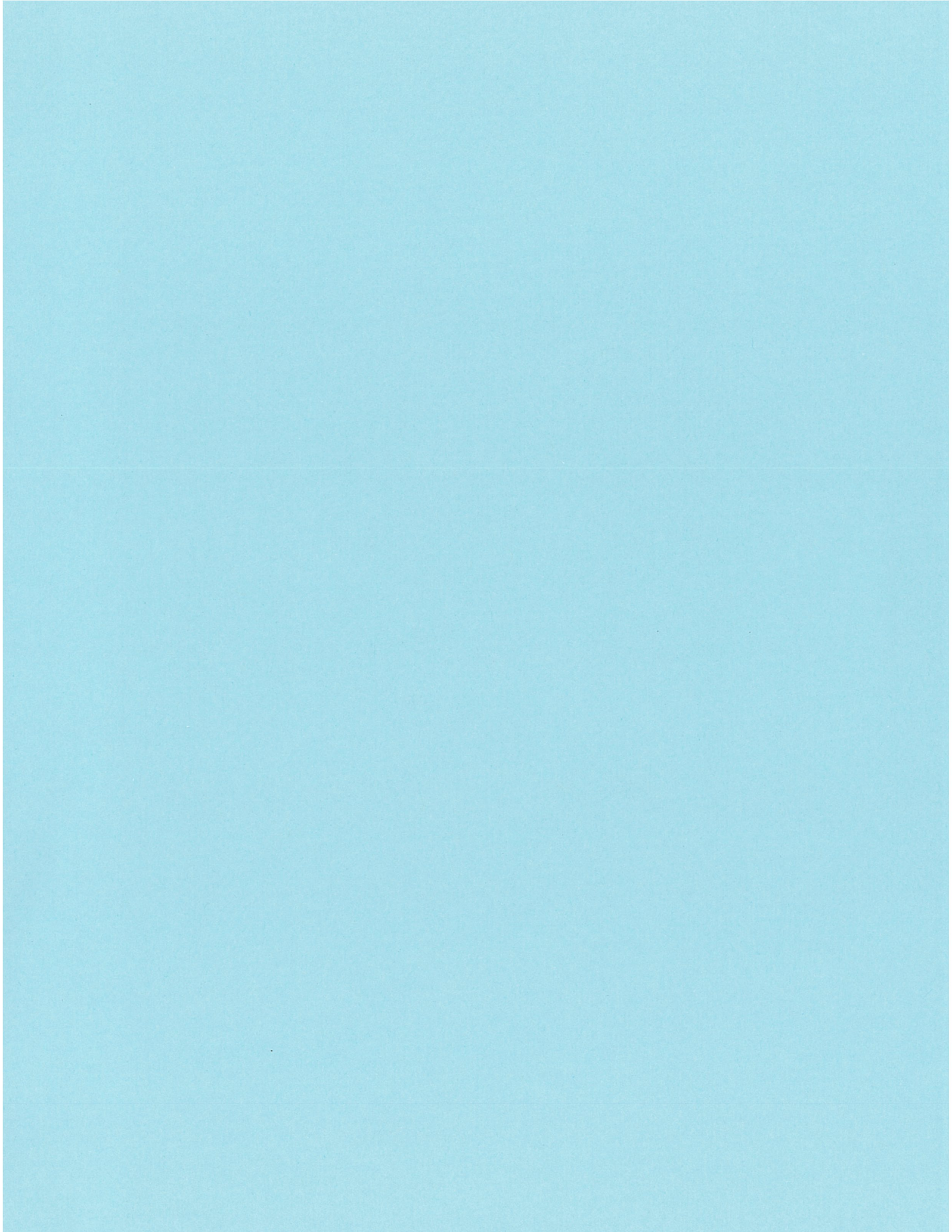
Meitra Farbadi
 Administrative Law Judge

MF/eh

cc: Kristen Guthrie, Assistant General Counsel, Texas Lottery Commission, 611 E. 6th, Austin Texas 78701 - VIA FACSIMILE NO. 512-344-5189
 Robert Johnson, III, Gardere Wynne Sewell, LLP, 600 Congress Avenue, Suite 3000, Austin, Texas 78701 - VIA FACSIMILE NO. 512-542-7327

⁸ See PFD at pg. 10.

⁹ Tex. Occ. Code §§ 2001.406, .458(a).



TO:Kristen Guthrie COMPANY:Texas Lottery Commission

**Respondents' Joint
Exceptions****DOCKET NO. 362-17-5016.B**

IN THE MATTER OF	§	BEFORE THE STATE OFFICE
	§	
BJN ENTERPRISES, LLC,	§	OF
LESSOR	§	
	§	ADMINISTRATIVE HEARINGS

DOCKET NO. 362-17-5279.B

IN THE MATTER OF	§	BEFORE THE STATE OFFICE
	§	
SAN ANTONIO NORTHWEST LIONS CLUB,	§	OF
CONDUCTOR	§	
	§	ADMINISTRATIVE HEARINGS

DOCKET NO. 362-17-5280.B

IN THE MATTER OF	§	BEFORE THE STATE OFFICE
	§	
SOUTHERN FEDERATION OF SYRIAN	§	OF
LEBANESE AMERICAN CLUBS, INC.,	§	
CONDUCTOR	§	ADMINISTRATIVE HEARINGS

DOCKET NO. 362-17-5281.B

IN THE MATTER OF	§	BEFORE THE STATE OFFICE
	§	
LULAC COUNCIL 4416,	§	OF
CONDUCTOR	§	
	§	ADMINISTRATIVE HEARINGS

DOCKET NO. 362-17-5282.B

IN THE MATTER OF	§	BEFORE THE STATE OFFICE
	§	
SASSL,	§	OF
CONDUCTOR	§	
	§	ADMINISTRATIVE HEARINGS

TO:Kristen Guthrie COMPANY:Texas Lottery Commission

RESPONDENTS' JOINT EXCEPTIONS

COME NOW BJN Enterprises, LLC ("Lessor"), the San Antonio Northwest Lions Club, the Southern Federation of Syrian Lebanese American Clubs, Inc., LULAC Council 4416, and SASL (collectively, "the Bingo Charities"), and jointly file their *Joint Exceptions* pursuant to SOAH Rule 155.507.

I. Clerical Errors / Corrections

1. On the fourth line of the full paragraph in Section II on page 4 of the PFD, the name "Jamil" should be corrected to "Jamal." The name is spelled correctly throughout the remainder of the PFD.

2. On the first line of page 16 of the PFD, it states that the 2016 operating expense reconciliation reflects that "the Unit was charged for a variety of non-TEI expenses." However, that document [Staff Exh. J] is clearly addressed to "Tenant: ABH Management," not to the Unit. This line should be corrected to state that the document reflects that Respondent Lessor BJN was charged the expenses in the reconciliation statement, not the Unit.

3. Finding of Fact 1 should be corrected to reflect that the Unit "at the time of the audit period" consisted of the four Respondent Bingo Charities. A fifth charity joined the Unit after the audit period, so it is not accurate to find that there are four charities in the Unit on the date of the PFD.

4. Conclusion of Law 10 should be corrected to follow the text of Tex. Occ. Code § 2001.406(b) that all expenses for security and repairs paid "*to the lessor*" must be included in the rent."

II. Substantive Exceptions

5. No Trial by Consent – On page 16 of the PFD and in Finding of Fact 26, the ALJ finds that the Bingo Charities could be held to violate § 2001.406(b) because "they allowed the issue to be heard by consent." However, the Texas Supreme Court has expressly held that there is no trial by consent if evidence is introduced that is relevant to both pleaded and unpleaded issues. *Boyles v. Kerr*, 855 S.W.2d 593, 601 (Tex. 1993). The evidence introduced by the Commission Staff was relevant to the

TO:Kristen Guthrie COMPANY:Texas Lottery Commission

pleaded charge against Respondent Lessor BJN because § 2001.406(b) was cited in the Notice of Hearing sent to BJN. Introduction of that evidence under those circumstances did not place the Bingo Charities on notice that the same evidence was being introduced for use against them for an unpleaded charge. Therefore, by law, there was no trial by consent and the charge of § 2001.406(b) was not included in the potential violations for which the Bingo Charities received notice. Absent supporting pleadings or a clear trial by consent, the Bingo Charities should not be found to have violated Occ. Code § 2001.406(b) because they were not given notice of the alleged violation.

6. Insurance Charges – On page 18 of the PFD, the ALJ found that charges for insurance coverage were not supported because Respondents failed to demonstrate two things: (1) that the insurance amounts charged were tied to any specific policy, and (2) that it covered the actual location of the bingo hall. These findings are contrary to the evidence in the record. Commission Staff introduced the Certificates of Liability Insurance into evidence in “Insurance” tabs of their Exhibits J and 13. These Certificates clearly show the policy numbers for each type of insurance coverage in the middle column. They also each list “Westpark Plaza San Antonio, LP.” Respondents introduced into evidence the invoices from the insurance firm Swingle, Collins & Associates as Respondents’ Exhibits 8 and 9. These invoices are made out to World Class Capital Group, LLC and BNR Westpark Plaza San Antonio, LP. In the column entitled “Coverage Description,” these invoices list the same policy numbers found on the Certificates of Liability Insurance introduced by Staff. The commercial lease introduced as Respondents’ Exhibit 4 reflects that BNR Westpark Plaza San Antonio, LP is the commercial landlord for the shopping center where the bingo hall is located, and Eddie Heinemeier testified that the location listed on the invoices – 6707 NW Loop 410, San Antonio – is the location of the bingo hall. Tr. at 147. The policy numbers listed on the invoices and the certificates match, and prove that the insurance charges were for specific policies and coverage. The shopping center address in the “RE:” line of the invoices and the references to BNR Westpark Plaza San Antonio, LP in both the invoices and certificates prove that the coverage was for the shopping center in which the bingo hall is located. Both elements were proved by documentary evidence in the record, and the Commission has not offered any controverting evidence.

TO:Kristen Guthrie COMPANY:Texas Lottery Commission

The insurance charges included in the TEI charge are supported by the evidence in the record, and should not be part of the corrective action ordered.

7. Common Area Maintenance charges – In Section III(A)(3) of the PFD, the ALJ discusses pass-through charges such as repairs, security and trash removal. The bottom of page 20 of the PFD recounts testimony based upon the beginning-of-the-year estimate for “Non-Controllable Expenses,” which are limited to taxes, utilities and insurance. The PFD recites that the Unit’s pro rata share was \$2,096.17. However, using the same entries from the end-of-year Reconciliation Statement in Staff’s Exhibit J, the pro rata share based on the actual expenses and percentage comes to \$2,365.52 per month. The PFD appears to hold that no other expenses were permitted because they were not sufficiently documented to demonstrate that they were “reasonable and necessary.” However, Respondents’ Exhibit 10 provides documentation for several additional expenses that are listed in §§ 2001.458(a) and .459. After the list of line-item repairs and other expenses, Resp. Exh. 10 includes a paragraph explaining how the various repairs and expenses were of benefit to every tenant in Ingram Plaza. Eddie Heinemeier provided testimony regarding the importance to the Unit of security and lighting in the parking lot for the safety of their patrons, and that the major repairs described in Resp. Exh. 10 were necessary for the Unit to have a location suitable for bingo sessions. There is evidence in the record proving that the repairs and other shared expenses listed on Resp. Exh. 10 were reasonable and necessary expenses listed in §§ 2001.458(a) and .459. Commission Staff did not introduce any evidence to controvert Resp. Exh. 10 or the testimony of Mr. Heinemeier. The pro rata share of the expenses listed in Resp. Exh. 10 should be allowed under the Act, and should not be included in the corrective action ordered.

III. Prayer

The Respondents respectfully request that the Administrative Law Judge consider these exceptions, and issue an Amended Proposal for Decision incorporating the corrections listed above as clerical corrections pursuant to SOAH Rule 155.507(d)(2), and addressing the substantive exceptions discussed above pursuant to the authority granted by SOAH Rule 155.507(d)(1).

TO:Kristen Guthrie COMPANY:Texas Lottery Commission

Respectfully Submitted,

/s/ Robert F. Johnson

Robert F. Johnson III
Texas Bar No. 10786400
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600 Congress Avenue, Suite 3000
Austin, Texas 78701
(512) 542-7127 Phone
(512) 542-7327 Fax
rjohnson@gardere.com

Attorneys for Lessor and the Bingo Charities

CERTIFICATE OF SERVICE

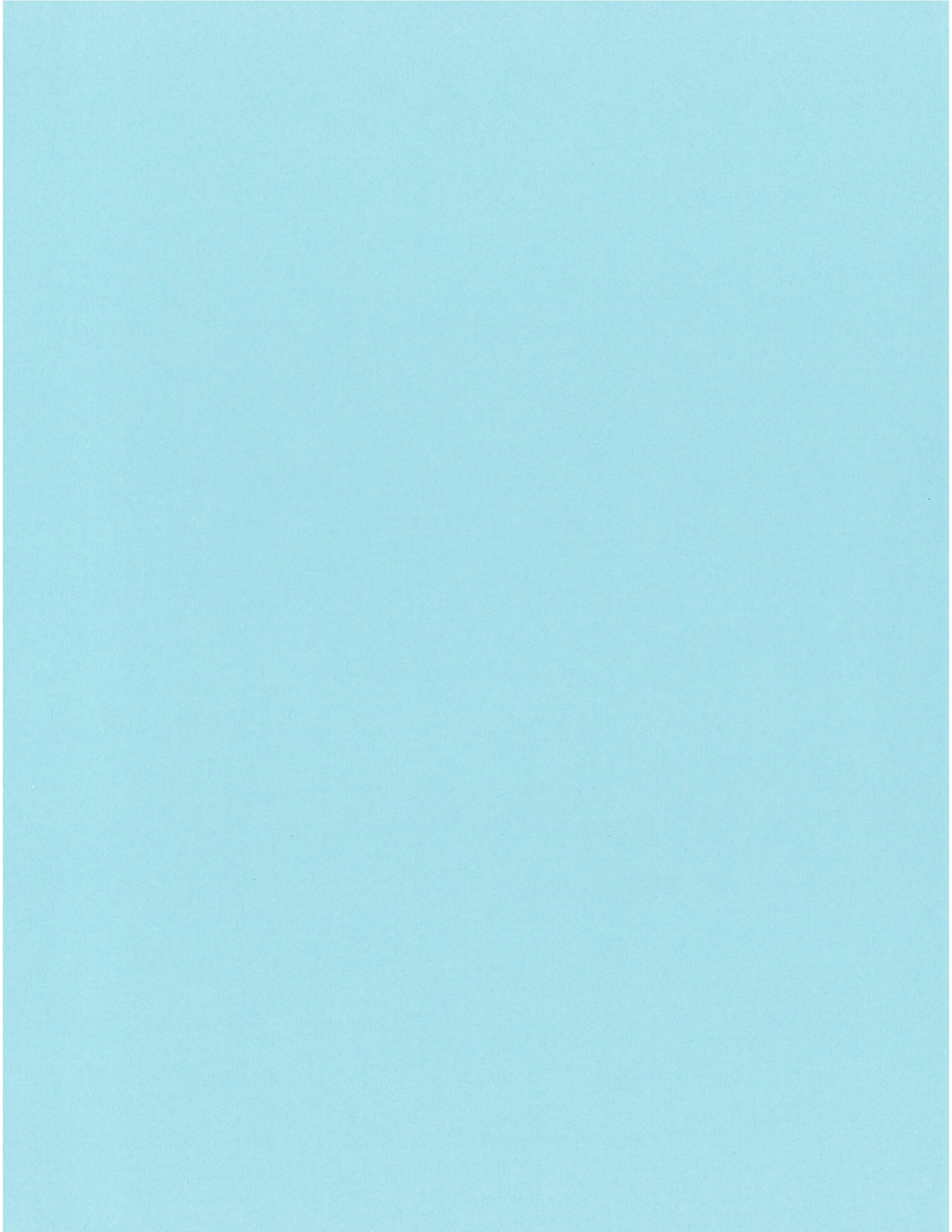
The undersigned hereby certifies that a true and correct copy of the above and foregoing instrument has been served upon all known counsel of record via fax and e-mail on this the 16th day of March, 2018:

Via E-Service

Kristen Guthrie
Texas Lottery Commission
P.O. Box 16630
Austin, Texas 78761-6630
(512) 344-5475 (telephone)
(512) 344-5189 (facsimile)
Kristen.Guthrie@lottery.state.tx.us

/s/ Robert F. Johnson

Robert F. Johnson III



**Commission's Reply to Joint
Exceptions**

SOAH DOCKET NO. 362-17-5016.B

TEXAS LOTTERY COMMISSION Petitioner	§ § § § § § §	BEFORE THE STATE OFFICE
v.		OF
BJN ENTERPRISES, LLC Respondent		ADMINISTRATIVE HEARINGS

SOAH DOCKET NO. 362-17-5279.B

TEXAS LOTTERY COMMISSION Petitioner	§ § § § § § §	BEFORE THE STATE OFFICE
v.		OF
SAN ANTONIO NORTHWEST LIONS CLUB Respondent		ADMINISTRATIVE HEARINGS

SOAH DOCKET NO. 362-17-5280.B

TEXAS LOTTERY COMMISSION Petitioner	§ § § § § § §	BEFORE THE STATE OFFICE
v.		OF
SOUTHERN FEDERATION OF SYRIAN LEBANESE AMERICAN CLUBS, INC. Respondent		ADMINISTRATIVE HEARINGS

SOAH DOCKET NO. 362-17-5281.B

TEXAS LOTTERY COMMISSION Petitioner	§ § § § § § §	BEFORE THE STATE OFFICE
v.		OF
LULAC COUNCIL 4416 LIONS CLUB Respondent		ADMINISTRATIVE HEARINGS

SOAH DOCKET NO. 362-17-5282.B

TEXAS LOTTERY COMMISSION Petitioner	§ § § § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
v.		
SASSL Respondent		

**TEXAS LOTTERY COMMISSION'S REPLY TO RESPONDENTS'
JOINT EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGE'S
PROPOSAL FOR DECISION**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE MEITRA FEHARDI:

The Texas Lottery Commission (Commission), Charitable Bingo Operations Division, files this *Reply to Respondents' Joint Exceptions to the Administrative Law Judge's Proposal for Decision*, as follows:

I. Introduction

On March 1, 2018, the Administrative Law Judge (ALJ) issued the Proposal for Decision (PFD) in the above-referenced matters. On March 16, Ingram Late Night Bingo Unit (Respondent Conductors)¹ and BJN Enterprises, LLC (Respondent Lessor) filed Joint Exceptions to the ALJ's PFD. Except as noted herein, the ALJ should reject Respondents' Exceptions because they are not supported by the Bingo Enabling Act (Act), the Bingo Administrative Rules, and/or the evidence presented at the hearing in this matter.

¹ Ingram Late Night Bingo Unit includes the following bingo conductors: San Antonio Northwest Lions Club; Southern Federation of Syrian Lebanese American Clubs, Inc.; LULAC Council 4416; and SASSL. Respondent Conductors and Respondent Lessor are referred to herein collectively as "Respondents."

II. Clerical Errors/Corrections

Respondents seek to correct page 16, line 1, in the PFD that reads, “the Unit was charged for a variety of non-TEI expenses, one of which was for ‘repairs and maintenance.’” This sentence is correct and should not be changed. The fact that Respondents submitted documentary evidence addressed to Respondent Lessor does not change the fact that the evidence presented at hearing showed Respondent Lessor in turn charged Respondent Conductors for those same items. Respondent Lessor admittedly charged and Respondent Conductors paid for a variety of non-TEI expenses, including “repairs and maintenance.”

Respondents seek to change Conclusion of Law No. 10 by providing incorrect language to describe TEX. OCC. CODE. ANN. § 2001.406(b). Conclusion of Law No. 10 is correctly stated in the PFD.

Respondents request that Finding of Fact No. 1 be corrected to add the following language: “at the time of the audit period,” due to the changing membership of Ingram Late Night Bingo Unit from the time of the allegations. The Commission does not object to this change.

III. Respondents’ “Substantive Exceptions” are Without Merit.

Respondents except to Finding of Fact No. 26. Finding of Fact No. 26 properly notes Respondent Conductors were not unfairly surprised or prejudiced by the allegation that Respondent Conductors violated TEX. OCC. CODE. ANN. § 2001.406(b). Respondent Conductors were provided reasonable notice of the violations alleged.

Respondent Conductors argue that the evidence presented on this issue was applicable only to Respondent Lessor and not Respondent Conductors. Respondent Conductors’ reliance on *Boyles v. Kerr*, 855 S.W.2d 593 (Tex. 1993) is misplaced. The Court in *Boyles v. Kerr* said, “in the absence of special exceptions, the petition should be construed liberally in favor of the pleader.

A court should uphold the petition as to a cause of action that may be reasonably inferred from what is specifically stated, even if an element of the cause of action is not specifically alleged.” *Boyles* at 601 (citations omitted). The Supreme Court cited *Boyles v. Kerr* when it said, “Texas follows a ‘fair notice’ standard for pleading, which looks to whether the opposing party can ascertain from the pleading the nature and basic issues of the controversy and what testimony will be relevant A petition is sufficient if it gives fair and adequate notice of the facts upon which the pleader bases his claim. The purpose of this rule is to give the opposing party information sufficient to enable him to prepare a defense.” *Horizon/CMS Healthcare Corp. v. Auld*, 34 S.W.3d 887, 896–97 (Tex. 2000) (citations omitted).

In this case, Respondent Conductors were copied on Respondent Lessor’s Notice of Hearing, which did cite to TEX. OCC. CODE ANN. § 2001.406(b). Respondent Conductors and Respondent Lessor have the same attorney and are co-Respondents in this matter. Respondent Lessor charged rent for premises used for the conduct of bingo that was not paid by Respondent Conductors in a lump sum that included all expenses authorized by the Act. The Notice of Hearing to Respondent Conductors alleged the violation of TEX. OCC. CODE ANN. § 2001.458. Expenses noted in TEX. OCC. CODE ANN. § 2001.458² are required to be included in the lump sum payment

² TEX. OCC. CODE ANN. § 2001.458(a) states:

An item of expense may not be incurred or paid in connection with the conduct of bingo except an expense that is reasonable or necessary to conduct bingo, including an expense for:

- (1) advertising, including the cost of printing bingo gift certificates;
- (2) security;
- (3) repairs to premises and equipment;
- (4) bingo supplies and equipment;
- (5) prizes;
- (6) stated rental or mortgage and insurance expenses;
- (7) bookkeeping, legal, or accounting services related to bingo;
- (8) fees for bingo chairpersons, operators, managers, salespersons, callers, cashiers, ushers, janitorial services, and utility supplies and services;
- (9) health insurance or health insurance benefits for bingo chairpersons, operators, managers, salespersons, callers, cashiers, and ushers, as provided by Subsection (b);
- (10) license fees;
- (11) attending a bingo seminar or convention required under Section 2001.107; and

according to TEX. OCC. CODE ANN. § 2001.406(b). The Commission alleged TEX. OCC. CODE ANN. §2001.458(a) in the Notice of Hearing. TEX. OCC. CODE ANN. § 2001.406(b) specifically states these items must be paid in a lump sum. Respondent Lessor was put on “fair notice” of the allegations against it. Finding of Fact No. 26 is proper and should not be changed.

IV. Respondent Lessor Charged and Respondent Conductors Paid for Unsupported Insurance Invoices.

Without making any specific exceptions, Respondents erroneously claim the insurance charges were properly supported. The PFD properly found Respondents failed to demonstrate that the insurance amounts charged to Respondent Conductors were tied to any specific policy or to the actual location encompassing the bingo hall. Contrary to Respondents’ assertion that the insurance policy can be tied to the charges, Respondents’ Exhibits 8 and 9 pertain to a different time period than the audit period. Although Exhibits 8 and 9 may have the same policy numbers as the insurance policy, the time period does not pertain to the audit period in this case. The invoices that do relate to the audit period have no policy number to tie the expense to the location.³

The audit period is for April, May and June of 2016, and Respondents’ Exhibits 8 and 9 are invoices dated June 3, 2016 and June 2, 2016, respectively. Further, the invoices reference Westpark Plaza San Antonio, LP, which is the entire shopping center where the Bingo Hall is located, and include several other places of business. Respondents agreed to and do not dispute the PFD statement that prior year expense reconciliation is the accepted practice, as opposed to the actual time period. Respondents’ failed to provide these invoices until the hearing itself even though the Commission repeatedly asked for additional insurance documentation. In admission of the lack of supporting documentation, Respondents argued that commercial reasonableness

(12) debit card transaction fees and electronic funds transfer fees.

³ See Exhibit 13 (Insurance Tab).

justifies its failure to provide insurance information. In Respondents' Closing Arguments, Respondents claimed they were relying on 3rd party documentation and not the actual insurance policies. Respondents submitted bills⁴ that could not be tied to the property, as opposed to actual policy information that could justify such expenses. The insurance documentation provided by Respondents was insufficient to directly tie the amounts Respondent Lessor charged Respondent Conductors for insurance to the bingo hall. Details of the policy coverage were lacking to determine which portions could be considered reasonable and necessary.⁵ Accordingly, Respondents failed to provide adequate insurance documentation to support the charges.

V. Respondent Lessor Charged Respondent Conductors for Common Area Maintenance and Repairs that were not Included in the Respondent Lessor's Lump Sum Rental Charge, as Required by the Act.

Also, without making any specific exceptions, Respondents argue common area maintenance charges were reasonable and necessary. However, the violation at issue is that the expenses were not paid in a lump sum as required by the Act, even if Respondents proved the expenses were reasonable and necessary. Specifically, Respondents argue the importance of security and lighting. The utility bills, which included the electricity for lighting, were accepted by the Commission. Respondent Lessor improperly charged, and Respondent Conductors improperly paid, certain expenses not in a lump sum that are explicitly required by to be paid in a lump sum. Certain expenses noted in TEX. OCC. CODE ANN. § 2001.458⁶ are required to be included in the lump sum payment, according to TEX. OCC. CODE ANN. § 2001.406(b). Respondent Conductors argue they can separately pay security and repairs, contrary to TEX. OCC.

⁴ Respondents' Exhibits 8 and 9.

⁵ Tr. at 57-58, 95; Exhibit J (Insurance).

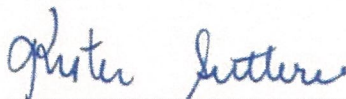
⁶ TEX. OCC. CODE ANN. § 2001.458(a), *supra* footnote 2, at 4.

CODE ANN. § 2001.406(b), which requires Section 2001.458⁷ items be included in a lump sum as part of rent. Respondent Lessor's Section 2001.458 charges were to be included in the rent lump sum payment and were not. Accordingly, Respondent Conductors' payment of these charges in violation of TEX. OCC. CODE ANN. § 2001.406(b) were also unreasonable and unnecessary expenses under TEX. OCC. CODE ANN. § 2001.453(1).⁸

VI. Conclusion

The ALJ properly found that Respondent Lessor charged and Respondent Conductors paid rent that was not in a lump sum, in violation of TEX. OCC. CODE ANN. §2001.406(b). Respondent Lessor charged Respondent Conductors rent that exceeded \$600 for each bingo occasion conducted on the premises, in violation of TEX. OCC. CODE ANN. §2001.406(a). Respondent Conductors incurred or paid items of expenses in connection with the conduct of a game of bingo that were not reasonable or necessary, in violation of TEX. OCC. CODE ANN. §§ 2001.453(1), .458 and .459. Accordingly, the ALJ should reject Respondents' Exceptions as discussed herein.

Respectfully submitted,



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

⁷ Tr. at 219, 221.

⁸ TEX. OCC. CODE ANN. § 2001.453(1) states:

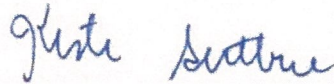
A licensed authorized organization may withdraw funds from its bingo account only for...the payment of necessary or reasonable bona fide expenses, including compensation of personnel, as permitted under Section 2001.458 incurred and paid in connection with the conduct of bingo

CERTIFICATE OF SERVICE

I certify that on March 29, 2018, a true and correct copy of the *Texas Lottery Commission's Reply to Respondents' Joint Exceptions to the Administrative Law Judge's Proposal for Decision* was served on the following individual at the location and in the manner indicated below.

Via Email at rjohnson@gardere.com

Mr. Robert F. Johnson III
Gardere Wynne Sewell LLP
600 Congress Avenue, Suite 3000
Austin, TX 78701



Kristen Guthrie, Assistant General Counsel