



INTEROFFICE MEMO

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

To: J. Winston Krause, Chairman
Mark A. Franz, Commissioner
Robert Rivera, Commissioner

From: Bob Biard, General Counsel *ROB*

Date: August 7, 2019

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.

Commission Order No. 19-0062

Date: AUGUST 7, 2019

Case No. 2019-263

| | | |
|-----------------------------------|----------|---------------------------|
| IN THE MATTER OF | § | BEFORE THE TEXAS |
| | § | |
| S K ELITE ENTERPRISES LLC | § | |
| D/B/A 1ST STOP | § | |
| | § | |
| TEXAS LOTTERY TICKET SALES | § | |
| AGENT LICENSE NO. 177332 | § | LOTTERY COMMISSION |

MEMORANDUM OF AGREEMENT AND CONSENT ORDER

The Texas Lottery Commission (Commission) and S K Elite Enterprises LLC d/b/a 1st Stop (1st Stop) make the following Agreed Findings of Fact, Agreed Conclusions of Law, Memorandum of Agreement, and enter into this Consent Order.

AGREED FINDINGS OF FACT

1. 1st Stop holds Texas Lottery Ticket Sales Agent License No. 177332.
2. Shuaib Ullah is a managing member of 1st Stop, which is located at 24551 Loop 494, Ste. 101, Kingwood, TX 77339.
3. On September 12, 2019, Mr. Ullah presented two (2) lottery ticket prize claims totaling \$2,000 to the Houston Claim Center. Based on an internal review, the Commission initiated an investigation into these claims.
4. On October 25, 2018, when questioned by a Commission investigator about the two claims, Mr. Ullah told the investigator he purchased both winning tickets at 1st Stop. However, neither of the tickets was issued, confirmed, or activated by 1st Stop. Mr. Ullah admitted to the investigator that he purchased both tickets from store customers who did not have time to claim the tickets on their own.

AGREED CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to the State Lottery Act, Tex. Gov't Code, Chapter 466, and 16 Tex. Admin. Code, Chapter 401.

2. 1st Stop is obligated to follow the provisions of the State Lottery Act and Commission rules to maintain its Texas Lottery Ticket Sales Agent License.

3. 1st Stop is subject to disciplinary action pursuant to Tex. Gov't Code §§ 466.308(a), 466.310(a), and 466.402(b); and 16 Tex. Admin. Code §§ 401.158(b)(31), (33), 401.360, and 401.366.

4. Tex. Gov't Code §466.308(a) states:

A person commits an offense if the person intentionally or knowingly:

- (1) claims a lottery prize or a share of a lottery prize by means of fraud, deceit, or misrepresentation; or
- (2) aids or agrees to aid another person or persons to claim a lottery prize or a share of a lottery prize by means of fraud, deceit, or misrepresentation.

5. Tex. Gov't Code §466.310(a) states:

A person commits an offense if the person:

- (1) induces another person to assign or transfer a right to claim a prize;
- (2) offers for sale the right to claim a prize; or
- (3) offers, for compensation, to claim the prize of another person.

6. Tex. Gov't Code §466.402(b) states:

The payment of a prize in an amount of \$600 or more may be made only by the director.

7. 16 Tex. Admin. Code §401.158(b) states, in pertinent parts:

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

- ...
- (31) licensee intentionally or knowingly claims a lottery prize or a share of a lottery prize by means of fraud, deceit, or misrepresentation; or aids or agrees

to aid another person or persons to claim a lottery prize or a share of a lottery prize by means of fraud, deceit, or misrepresentation;

...
(33) licensee:

- (A) induces another person to assign or transfer a right to claim a prize;
- (B) initiates or accepts an offer to sell the right to claim a prize;
- (C) initiates or accepts an offer of compensation from another person to claim a lottery prize; or
- (D) purchases a lottery ticket from a person who is not a licensed lottery retailer.

8. 16 Tex. Admin. Code §401.360 states:

Retailers may pay any lottery prize of less than \$600, after complying with established validation procedures. However, if a retailer validates a ticket of up to \$600, that retailer shall pay the prize amount on the ticket. Prizes of \$600 or more shall be paid by the Texas Lottery by mail or at a designated lottery claim center.

9. 16 Tex. Admin. Code §401.366 states:

Each retailer agrees to operate in a manner consistent with the State Lottery Act, applicable federal laws, Texas laws, local ordinances, with all terms and conditions related to the retailer's license, with all requirements set forth in the most recent Retailer Manual, the rules and regulations promulgated by the commission, and with his/her or its license agreements with the Texas Lottery.

10. The Texas Lottery Ticket Sales Agent License of 1st Stop is subject to suspension or revocation pursuant to Tex. Gov't Code § 466.155(a)(5), as a result of 1st Stop's violation of Tex. Gov't Code §§ 466.308(a), 466.310(a), and 466.402(b); and 16 Tex. Admin. Code §§ 401.158(31), (33), 401.360, and 401.366.

MEMORANDUM OF AGREEMENT

1. By signing this Memorandum of Agreement and Consent Order, 1st Stop agrees to these terms, acknowledges understanding them, and waives all rights to procedural requirements for the entry of the Order consistent with the terms of this Memorandum of Agreement, including but not limited to its right to notice of hearing, a formal hearing, a proposal for decision, a rehearing, and any right to seek judicial review of the Order.

2. The effective date of this Memorandum of Agreement and Consent Order shall be the date it is signed by the Commission.

3. 1st Stop agrees that, as a result of its violation of Tex. Gov't Code §§ 466.308(a), 466.310(a), and 466.402(b); and 16 Tex. Admin. Code §§ 401.158(b)(31), (33), 401.360, and 401.366, its Ticket Sales Agent License will be suspended for a period of ninety (90) consecutive days. The suspension period will begin within seven (7) days from the date this Memorandum of Agreement and Consent Order is signed by the Commission. During the period of suspension, 1st Stop agrees that it will not sell Texas Lottery tickets of any kind, will not validate Texas Lottery tickets, and will not pay lottery prizes to customers.

4. During the entire period of suspension hereunder, 1st Stop is required to post a notice of suspension in the form and at the location prescribed by the Commission, visible to store customers, in the same area where 1st Stop's Ticket Sales Agent License is posted.

5. 1st Stop agrees this Memorandum of Agreement and Consent Order applies only to the facts and circumstances stated herein. The Commission reserves the right to take additional disciplinary action, up to and including suspension or revocation of 1st Stop's Ticket Sales Agent License, for any further violations of the State Lottery Act or Commission rules.

6. 1st Stop acknowledges and agrees that this Memorandum of Agreement and Consent Order, and the Agreed Findings of Fact and the Agreed Conclusions of Law contained herein, may be admitted in any future administrative action initiated against it by the Commission.

7. 1st Stop agrees that if, after a public hearing on the sole issue of compliance with the Memorandum of Agreement and Consent Order, it is found that 1st Stop has failed to comply with the terms of the Memorandum of Agreement and Consent Order, disciplinary action shall be taken against 1st Stop, up to and including revocation of its Texas Lottery Ticket Sales Agent License.

8. 1st Stop agrees to provide all active and settled tickets to the Commission or to an IGT representative on or before the date the suspension begins. It further agrees that these active tickets will settle on the date the suspension begins, and 1st Stop will be charged for tickets sold on or before that date. 1st Stop will be credited for any tickets that have been paid for in previous sweeps and that are returned to and received by the Commission on or before the date the suspension begins.


AGREED AS TO FORM AND SUBSTANCE:

S K Elite Enterprises LLC
d/b-a 1st Stop

Texas Lottery Commission
Lottery Operations Division


By:

By:



Shuaib Ullah
Managing Member

05-24-19
DATE



Ryan S. Mindell
Director

6-18-19
DATE

Commission Order No. 19-0062

Date: AUGUST 7, 2019

Case No. 2019-263

| | | |
|-----------------------------------|----------|---------------------------|
| IN THE MATTER OF | § | BEFORE THE TEXAS |
| | § | |
| S K ELITE ENTERPRISES LLC | § | |
| D/B/A 1ST STOP | § | |
| | § | |
| TEXAS LOTTERY TICKET SALES | § | |
| AGENT LICENSE NO. 177332 | § | LOTTERY COMMISSION |

CONSENT ORDER

NOW, THEREFORE, IT IS ORDERED by the Texas Lottery Commission (Commission), based on the above Agreed Findings of Fact, Conclusions of Law and Memorandum of Agreement, which are hereby adopted and incorporated by reference as if fully set out and separately stated herein, as follows:

(1) IT IS ORDERED by the Commission that, in lieu of revocation of S K Elite Enterprises LLC d/b/a 1st Stop's (1st Stop) Texas Lottery Ticket Sales Agent License, the license is suspended for a period of ninety (90) consecutive days. The suspension period will begin within seven (7) days from the date this Consent Order is signed by the Commission. During the period of suspension, 1st Stop shall not sell Texas Lottery tickets of any kind, shall not validate Texas Lottery tickets, and shall not pay lottery prizes to customers.

(2) IT IS FURTHER ORDERED by the Commission that, during the entire period of suspension, 1st Stop shall post a notice of suspension, in the form and at the location prescribed by the Commission, visible to store customers, in the same area where 1st Stop's Texas Lottery Ticket Sales Agent License is posted.

Commission Order No. 19-0062

Date: AUGUST 7, 2019

(3) IT IS FURTHER ORDERED by the Commission that if, after a public hearing on the sole issue of compliance with this Consent Order, it is found that 1st Stop has failed to comply with the terms of this Order, disciplinary action shall be taken against 1st Stop, up to and including revocation of its Texas Lottery Ticket Sales Agent License.

(4) IT IS FURTHER ORDERED by the Commission that 1st Stop shall provide all active and settled tickets to the Commission or to an IGT representative on or before the date the suspension begins, that these active tickets will settle on that date, and 1st Stop will be charged for the tickets sold on or before that date. 1st Stop will be credited for any tickets that have been paid for in previous sweeps and that are returned to and received by the Commission on or before the date the suspension begins.

Passed and approved at the regular meeting of the Texas Lottery Commission in Austin, Texas, on the 7TH day of AUGUST 2019.

Entered this 7TH day of AUGUST 2019.

J. WINSTON KRAUSE, CHAIRMAN

MARK A. FRANZ, COMMISSIONER

ROBERT RIVERA, COMMISSIONER

Commission Order No. 19-0063

Date: AUGUST 7, 2019

Case No. 2019-661

| | | |
|-----------------------------------|----------|---------------------------|
| IN THE MATTER OF | § | BEFORE THE TEXAS |
| | § | |
| LFC LIQUORS INC. | § | |
| D/B/A LA LA LIQUORS | § | |
| | § | |
| TEXAS LOTTERY TICKET SALES | § | |
| AGENT LICENSE NO. 145635 | § | LOTTERY COMMISSION |

MEMORANDUM OF AGREEMENT AND CONSENT ORDER

The Texas Lottery Commission (Commission) and LFC Liquors Inc. d/b/a La La Liquors (La La Liquors) make the following Agreed Findings of Fact, Agreed Conclusions of Law, Memorandum of Agreement, and enter into this Consent Order.

AGREED FINDINGS OF FACT

1. La La Liquors holds Texas Lottery Ticket Sales Agent License No. 145635.
2. Tommy Ung is an owner of La La Liquors, which is located at 3151 E. Seminary Dr., Fort Worth, TX 76119.
3. On November 5, 2018, Sarah Ung, daughter of Mr. Ung, presented to the Austin Claim Center (ACC) a “Aces and 8s” Texas Lottery scratch ticket with a prize value of \$1,000. The ACC staff noted the ticket was torn in half and taped together with clear tape and subsequently referred the claim for further investigation.
4. On January 10, 2019, when questioned by a Commission investigator about the ticket, Mr. Ung told the investigator that he purchased the ticket for \$1,000 from a store customer. Mr. Ung then gave the ticket to his daughter to claim at the ACC as her own.

AGREED CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to the State Lottery Act, Tex. Gov't Code, Chapter 466, and 16 Tex. Admin. Code, Chapter 401.

2. La La Liquors is obligated to follow the provisions of the State Lottery Act and Commission rules to maintain its Texas Lottery Ticket Sales Agent License.

3. La La Liquors is subject to disciplinary action pursuant to Tex. Gov't Code §§ 466.310(a) and 466.402(b); and 16 Tex. Admin. Code §§ 401.158(b)(33), 401.360, and 401.366.

4. Tex. Gov't Code §466.310(a) states:

A person commits an offense if the person:

- (1) induces another person to assign or transfer a right to claim a prize;
- (2) offers for sale the right to claim a prize; or
- (3) offers, for compensation, to claim the prize of another person.

5. Tex. Gov't Code §466.402(b) states:

The payment of a prize in an amount of \$600 or more may be made only by the director.

6. 16 Tex. Admin. Code §401.158(b) states, in pertinent parts:

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

...
(33) licensee:

- (A) induces another person to assign or transfer a right to claim a prize;
- (B) initiates or accepts an offer to sell the right to claim a prize;
- (C) initiates or accepts an offer of compensation from another person to claim a lottery prize; or
- (D) purchases a lottery ticket from a person who is not a licensed lottery retailer.

7. 16 Tex. Admin. Code §401.360 states:

Retailers may pay any lottery prize of less than \$600, after complying with established validation procedures. However, if a retailer validates a ticket of up to \$600, that retailer shall pay the prize amount on the ticket. Prizes of \$600 or more shall be paid by the Texas Lottery by mail or at a designated lottery claim center.

8. 16 Tex. Admin. Code §401.366 states:

Each retailer agrees to operate in a manner consistent with the State Lottery Act, applicable federal laws, Texas laws, local ordinances, with all terms and conditions related to the retailer's license, with all requirements set forth in the most recent Retailer Manual, the rules and regulations promulgated by the commission, and with his/her or its license agreements with the Texas Lottery.

9. The Texas Lottery Ticket Sales Agent License of La La Liquors is subject to suspension or revocation pursuant to Tex. Gov't Code § 466.155(a)(5), as a result of La La Liquors' violation of Tex. Gov't Code §§ 466.310(a) and 466.402(b); and 16 Tex. Admin. Code §§ 401.158(33), 401.360, and 401.366.

MEMORANDUM OF AGREEMENT

1. By signing this Memorandum of Agreement and Consent Order, La La Liquors agrees to these terms, acknowledges understanding them, and waives all rights to procedural requirements for the entry of the Order consistent with the terms of this Memorandum of Agreement, including but not limited to its right to notice of hearing, a formal hearing, a proposal for decision, a rehearing, and any right to seek judicial review of the Order.

2. The effective date of this Memorandum of Agreement and Consent Order shall be the date it is signed by the Commission.

3. La La Liquors agrees that, as a result of its violation of Tex. Gov't Code §§ 466.310(a) and 466.402(b); and 16 Tex. Admin. Code §§ 401.158(b)(33), 401.360, and 401.366, its Ticket Sales Agent License will be suspended for a period of ninety (90) consecutive days. The suspension period will begin within seven (7) days from the date this Memorandum of

Agreement and Consent Order is signed by the Commission. During the period of suspension, La La Liquors agrees that it will not sell Texas Lottery tickets of any kind, will not validate Texas Lottery tickets, and will not pay lottery prizes to customers.

4. During the entire period of suspension hereunder, La La Liquors is required to post a notice of suspension in the form and at the location prescribed by the Commission, visible to store customers, in the same area where La La Liquors' Ticket Sales Agent License is posted.

5. La La Liquors agrees this Memorandum of Agreement and Consent Order applies only to the facts and circumstances stated herein. The Commission reserves the right to take additional disciplinary action, up to and including suspension or revocation of La La Liquors' Ticket Sales Agent License, for any further violations of the State Lottery Act or Commission rules.

6. La La Liquors acknowledges and agrees that this Memorandum of Agreement and Consent Order, and the Agreed Findings of Fact and the Agreed Conclusions of Law contained herein, may be admitted in any future administrative action initiated against it by the Commission.

7. La La Liquors agrees that if, after a public hearing on the sole issue of compliance with the Memorandum of Agreement and Consent Order, it is found that La La Liquors has failed to comply with the terms of the Memorandum of Agreement and Consent Order, disciplinary action shall be taken against La La Liquors, up to and including revocation of its Texas Lottery Ticket Sales Agent License.

8. La La Liquors agrees to provide all active and settled tickets to the Commission or to an IGT representative on or before the date the suspension begins. It further agrees that these active tickets will settle on the date the suspension begins, and La La Liquors will be charged for tickets sold on or before that date. La La Liquors will be credited for any tickets that have been

paid for in previous sweeps and that are returned to and received by the Commission on or before the date the suspension begins.

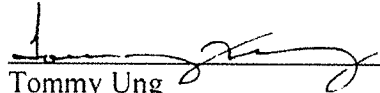
AGREED AS TO FORM AND SUBSTANCE:

LFC Liquors Inc.
d/b/a La La Liquors

Texas Lottery Commission
Lottery Operations Division

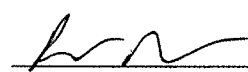
By:

By:


Tommy Ung
Owner

06-21-19

DATE


Ryan S. Mindell
Director

6-21-19

DATE

Commission Order No. 19-0063

Date: AUGUST 7, 2019

Case No. 2019-661

| | | |
|-----------------------------------|----------|---------------------------|
| IN THE MATTER OF | § | BEFORE THE TEXAS |
| | § | |
| LFC LIQUORS INC. | § | |
| D/B/A LA LA LIQUORS | § | |
| | § | |
| TEXAS LOTTERY TICKET SALES | § | |
| AGENT LICENSE NO. 145635 | § | LOTTERY COMMISSION |

CONSENT ORDER

NOW, THEREFORE, IT IS ORDERED by the Texas Lottery Commission (Commission), based on the above Agreed Findings of Fact, Conclusions of Law and Memorandum of Agreement, which are hereby adopted and incorporated by reference as if fully set out and separately stated herein, as follows:

(1) IT IS ORDERED by the Commission that, in lieu of revocation of LFC Liquors Inc. d/b/a La La Liquors' (La La Liquors) Texas Lottery Ticket Sales Agent License, the license is suspended for a period of ninety (90) consecutive days. The suspension period will begin within seven (7) days from the date this Consent Order is signed by the Commission. During the period of suspension, La La Liquors shall not sell Texas Lottery tickets of any kind, shall not validate Texas Lottery tickets, and shall not pay lottery prizes to customers.

(2) IT IS FURTHER ORDERED by the Commission that, during the entire period of suspension, La La Liquors shall post a notice of suspension, in the form and at the location prescribed by the Commission, visible to store customers, in the same area where La La Liquors' Texas Lottery Ticket Sales Agent License is posted.

Commission Order No. 19-0063

Date: AUGUST 7, 2019

(3) IT IS FURTHER ORDERED by the Commission that if, after a public hearing on the sole issue of compliance with this Consent Order, it is found that La La Liquors has failed to comply with the terms of this Order, disciplinary action shall be taken against La La Liquors, up to and including revocation of its Texas Lottery Ticket Sales Agent License.

(4) IT IS FURTHER ORDERED by the Commission that La La Liquors shall provide all active and settled tickets to the Commission or to an IGT representative on or before the date the suspension begins, that these active tickets will settle on that date, and La La Liquors will be charged for the tickets sold on or before that date. La La Liquors will be credited for any tickets that have been paid for in previous sweeps and that are returned to and received by the Commission on or before the date the suspension begins.

Passed and approved at the regular meeting of the Texas Lottery Commission in Austin, Texas, on the 7TH day of AUGUST 2019.

Entered this 7TH day of AUGUST 2019.

J. WINSTON KRAUSE, CHAIRMAN

MARK A. FRANZ, COMMISSIONER

ROBERT RIVERA, COMMISSIONER

Date: AUGUST 7, 2019

DOCKET NO. 362-18-4978

| | | |
|--------------------------|---|--------------------|
| TEXAS LOTTERY COMMISSION | § | BEFORE THE TEXAS |
| PETITIONER | § | |
| | § | |
| V. | § | |
| | § | |
| TEXAS GIANT KIM'S INC. | § | |
| D/B/A STATELINE CITGO | § | |
| RETAILER NO. 143380 | § | |
| RESPONDENT | § | LOTTERY COMMISSION |

ORDER OF THE COMMISSION

TO: Texas Giant Kim's Inc.
d/b/a Stateline Citgo
5023 N. Stateline Ave.
Texarkana, TX 75503
via email at kims 83310@gmail.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 case was heard by an Administrative Law Judge (ALJ) who made and filed a Proposal for Decision (PFD) containing the ALJ's Findings of Fact and Conclusions of Law. The PFD was properly served and all parties were given an opportunity to file exceptions and replies as part of the record herein.

The Commission, after review and due consideration of the PFD and exceptions and replies filed, if any, adopts the ALJ's Findings of Fact and Conclusions of Law as if fully set out and separately stated herein. All proposed Findings of Fact and Conclusions of Law not specifically adopted herein are hereby denied.

NOW, THEREFORE, IT IS ORDERED that the Texas Lottery Ticket Sales Agent License of Texas Giant Kim's Inc. d/b/a Stateline Citgo is hereby suspended for thirty (30) days.

Commission Order No. 19-0064

Date: AUGUST 7, 2019

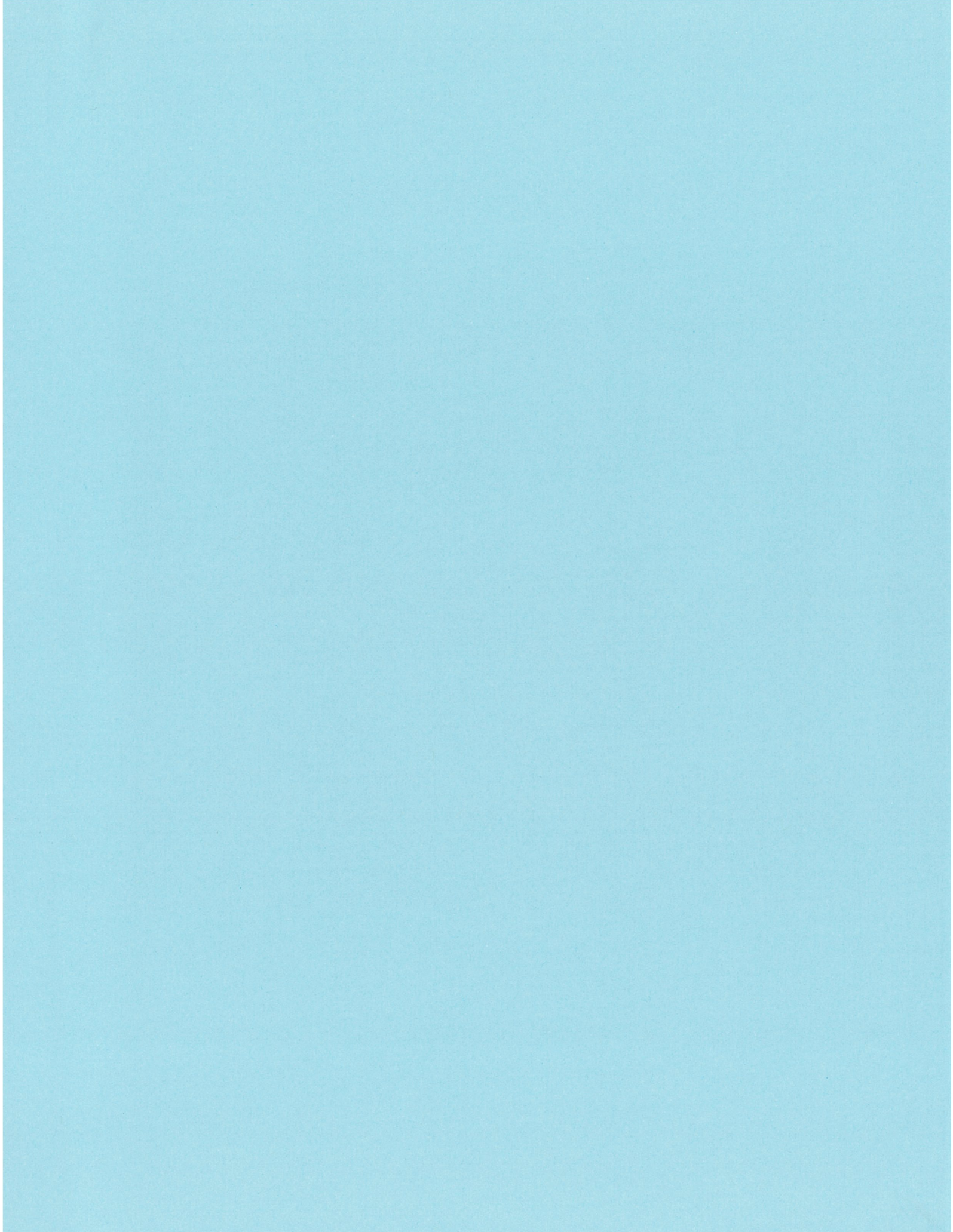
Passed and approved at the regular meeting of the Texas Lottery Commission in Austin, Texas, on the 7TH day of AUGUST 2019.

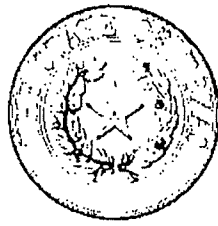
Entered this 7TH day of AUGUST 2019.

J. WINSTON KRAUSE, CHAIRMAN

MARK A. FRANZ, COMMISSIONER

ROBERT RIVERA, COMMISSIONER





State Office of Administrative Hearings

Kristofer Monson
Chief Administrative Law Judge

June 11, 2019

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

VIA E-MAIL

RE: Docket No. 362-18-4978; Texas Lottery Commission v. Texas Giant Kim's Inc. DBA Stateline Citgo Texas Lottery Ticket Sales Agent License No. 143380

Dear Mr. Grief:

Please find enclosed a Proposal for Decision (PFD) in this case. It contains my recommendation and underlying rationale. My apologies for issuing this PFD late. Unfortunately, family circumstances intervened and delayed the issuance.

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Fernando Rodriguez".

Fernando Rodriguez
Administrative Law Judge

FR:lmc
Enclosure

cc: Kristen Guthrie, Assistant General Counsel, Texas Lottery Commission, 611 E. 6th, Austin Texas 78701 –
VIA E-MAIL
Sang Kim, Texas Giant Kim's, Inc. D/B/A Stateline Citgo, 5023 N. Stateline Ave., Texarkana, TX 75503 –
VIA REGULAR MAIL

P.O. Box 13025 Austin, Texas 78711-3025 | 300 W. 15th Street Austin, Texas 78701
Phone: 512-475-4993 | Fax: 512-475-4994
www.soah.texas.gov

SOAH DOCKET NO. 362-18-4978

TEXAS LOTTERY COMMISSION,
Petitioner

v.

TEXAS GIANT KIM'S INC.
DBA STATELINE CITGO
TEXAS LOTTERY TICKET SALES
AGENT LICENSE NO. 143380
Respondent

§
§
§
§
§
§
§
§
§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff (Staff) of the Texas Lottery Commission (Commission) requested a 30-day suspension of the lottery ticket sales agent license held by Texas Giant Kim's Inc., dba Stateline Citgo (Stateline Citgo), which is owned by Sang Kim. Staff alleged that a Stateline Citgo employee, Tiffanie Musgraves, purchased a lottery ticket for less than face value, then attempted to cash the ticket herself for full face value at the Tyler Claims Center (TCC). After considering the evidence and arguments presented, the Administrative Law Judge (ALJ) recommends a 30-day suspension of the lottery ticket sales agent license held by Stateline Citgo.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

Jurisdiction and notice were not disputed and are discussed in the Findings of Fact and Conclusions of Law without further discussion here. On January 30, 2019, State Office of Administrative Hearings (SOAH) ALJ Fernando Rodriguez convened the hearing on the merits in this case. Kristen Guthrie, Assistant General Counsel, represented Staff. Mr. Kim appeared and represented himself and Stateline Citgo. Mr. Kim requested that his son, Jason Kim, be allowed to act as his interpreter. Staff had no objection to the request, so the ALJ administered the interpreter's oath to the younger Mr. Kim. After Staff began the presentation of its case, Mr. Kim demanded a new hearing and requested that his son be "fired" as his interpreter. The ALJ denied Mr. Kim's request for a new hearing but granted Mr. Kim's request to excuse his son. After several attempts to engage a Korean interpreter using SOAH's Language Line interpreter service, the ALJ was unable to find an interpreter who could properly translate the proceedings. The hearing was recessed and

reconvened on March 6, 2019, after an in-person Korean interpreter was engaged to translate the proceedings for Mr. Kim. The hearing concluded on March 6, 2019, and the record closed the same day.

II. APPLICABLE LAW

The relevant statutory and regulatory provisions in this case are found in the State Lottery Act (SLA), Chapter 466 of the Texas Government Code, and 16 Texas Administrative Code Chapter 401. SLA § 466.155 states, in pertinent part:

- (a) After a hearing, the director shall deny an application for a license or the commission shall suspend or revoke a license if the director or commission, as applicable, finds that the applicant or sales agent : . . .
 - (5) has violated this chapter or a rule adopted under this chapter
- (c) At a hearing, an applicant or sales agent must show by a preponderance of the evidence why the application should not be denied or the license suspended or revoked.

SLA § 466.310(a) provides that:

A person commits an offense if the person:

- (1) induces another person to assign or transfer a right to claim a prize;
- (2) offers for sale the right to claim a prize; or
- (3) offers, for compensation, to claim the prize of another person.

SLA § 466.402(b) provides that, “The payment of a prize in an amount of \$600 or more may be made only by the director.”

16 Texas Administrative Code § 401.158 states, in pertinent part that:

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

- (b) Without limiting the commission's ability to consider factors listed in § 401.153(b) of this title as grounds for suspension or revocation of a license issued under this subchapter, the commission may also suspend or revoke a license for reasons including, but not limited to, any of the following: . . .
- (7) licensee endangers the security and integrity of the lottery games operated by the Commission; . . .
 - (33) licensee:
 - (A) induces another person to assign or transfer a right to claim a prize;
 - (B) initiates or accepts an offer to sell the right to claim a prize;
 - (C) initiates or accepts an offer of compensation from another person to claim a lottery prize; or
 - (D) purchases a lottery ticket from a person who is not a licensed lottery retailer. . . .
 - (40) licensee has violated a provision of the State Lottery Act, Government Code, Chapter 466, or a commission rule adopted under the State Lottery Act.

The Commission's rules provide that lottery scratch tickets shall be validated according to the validation procedures prior to payment for a prize,¹ and impose on each ticket retailer the duty to follow all rules and guidelines contained in the most recent Retailer Manual, the Commission's rules, and any agreements made with the Texas Lottery.² The most recent Retailer Manual states:

If a customer presents a high-tier winning ticket, you should provide the customer with the appropriate Texas Lottery Winner Claim Form (see Exhibits section) and explain that the customer may claim a prize up to and including \$2.5 million at any Texas Lottery claim center. Claim Forms also are available at txlottery.org. A customer may also claim a prize by mail, but the customer bears any risk associated with mailing a ticket.³

¹ 16 Tex. Admin. Code § 401.302(d)(1).

² 16 Tex. Admin. Code § 401.366.

³ https://www.txlottery.org/export/sites/lottery/Retailers/Retailer_Guide.html

A ticket sales agent or licensee is not permitted to offer, for compensation, the right to claim a prize for a winning lottery ticket. If a licensee cashes a winning lottery ticket for a person for less than the face value of the ticket and subsequently claims the full-face value, the ticket sales agent has violated 16 Texas Government Code § 466.310 and, after hearing, the Commission shall deny an application, or suspend or revoke a license.⁴ If a hearing is requested by the licensee, the burden of proof is on the licensee to show that the application should not be denied, or the license should not be suspended or revoked.⁵

III. EVIDENCE AND DISCUSSION

At the hearing, Staff moved to admit nine exhibits into evidence, all of which were admitted without objection, except Staff Exhibit 9, which was comprised of a copy of a SOAH proposal for decision (PFD) in SOAH Docket No. 362-18-3432, and the corresponding Commission order. While Staff Exhibit 9 was not admitted, the ALJ has taken judicial notice of the PFD and order in that case. Staff also offered into evidence the testimonies of Anthony Kozak and Nancy Guerra. Mr. Kozak worked in law enforcement for 31 years and has been an investigator with the Commission's Enforcement Division for 10 years. Ms. Guerra is a Retail Specialist in the Lottery Operations Division. Mr. Kim offered no documentary evidence and testified briefly on his own behalf.

The evidence in this case is essentially undisputed. Mr. Kozak testified that on March 29, 2017, Stateline Citgo employee, Tiffanie Musgraves, purchased a "High Roller Casino Action" Texas Lottery scratch-off ticket with a prize value of \$1,000 from a store customer.⁶ On March 31, 2017, Ms. Musgraves attempted to cash the ticket for the full value at TCC. However, the ticket she presented was torn in half. She alleged that her child had gotten the ticket out of her purse and torn it while playing.⁷ Because of the suspicious circumstances, TCC reported the incident to the Austin Claim Center (ACC) as a possible violation of Commission rules. Mr. Kozak prepared an investigative report (Report), dated May 15, 2017, in which he detailed the Commission's

⁴ Tex. Gov't Code § 466.155(a).

⁵ Tex. Gov't Code § 466.155(c).

⁶ Staff Ex. 2.

⁷ Staff Ex. 2.

investigation.⁸ The Report notes that Eric Pressler, another Commission investigator, was initially assigned to interview Ms. Musgraves.⁹ Mr. Pressler reported that the ticket in question was issued to Stateline Citgo on October 5, 2016, and was activated on March 28, 2017. The contact telephone number listed on the ticket was the telephone number for Stateline Citgo, the same telephone number Ms. Musgraves provided as her work telephone number.¹⁰

On May 3, 2017, Mr. Pressler arrived at Stateline Citgo and interviewed Ms. Musgraves regarding her March 31, 2017 claim at TCC. Ms. Musgraves told Mr. Pressler that the purchaser of the ticket was a truck driver who visited Stateline Citgo every few months. On this particular occasion, the truck driver purchased a winning ticket at which point Ms. Musgraves purportedly told the winning truck driver that he needed to cash in the ticket at TCC. However, she apparently did not provide the customer a Texas Lottery Winner Claim form. According to Ms. Musgraves, the truck driver said he could not go to TCC to cash the \$1,000 ticket. Ms. Musgraves told the investigator that she believed the truck driver owed child support, and by paying him \$700 in cash he would not have to report his winnings to TCC or the state.¹¹ When informed by Mr. Pressler that purchasing the winning ticket from the customer was a violation of the Texas Government Code, Ms. Musgraves told the investigator that she had observed Mr. Kim do the same thing.¹² Mr. Kim was working across the store, and when the investigator confronted him with Ms. Musgraves' statement, he became angry and shouted that he had never purchased tickets from customers.¹³

During her direct examination, Ms. Guerra testified that Stateline Citgo was licensed to sell lottery tickets on August 22, 2005, and its employees had received training and refresher courses at various times, including most recently from 2010-2019. Ms. Guerra stated that Ms. Musgraves attended several of those training sessions. She also testified that Stateline Citgo employees know, or should know, that they cannot pay more than \$600 for a lottery ticket, and winning numbers over

⁸ Staff Ex. 4.

⁹ Staff Ex. 4 at TLC0029.

¹⁰ Staff Ex. 4 at TLC0030.

¹¹ Staff Ex. 6 at TLC0041.

¹² Staff Ex. 4 at TLC0031.

¹³ Staff Ex. 4 at TLC0031.

that amount must be redeemed at a claim center. Ms. Guerra emphasized that, regardless of who cashed the ticket in question, the owner is ultimately responsible for compliance with the Texas Government Code and the Commission rules, otherwise a licensee could easily evade compliance with SLA or the Commission's rules by blaming an employee for a violation.

Ms. Guerra also discussed a previous Commission case involving Stateline Citgo in which a SOAH ALJ recommended, and the Commission approved, a 10-day suspension for a similar violation, albeit a violation involving a smaller \$80 multi-draw Pick 3 lottery ticket.¹⁴ Ms. Guerra testified that this case is more serious than the previous Stateline Citgo case because the violation in this case involves a greater amount of money and a person actively trying to evade the review process. As a result, Ms. Guerra recommended a 30-day license suspension in this case. Ms. Guerra also discussed a more recent case in which an ALJ recommended no penalty in a case where a licensee's employee fraudulently paid out a lottery prize in an amount greater than \$600.¹⁵ In that case, the ALJ recommended that the employee's misconduct should not be attributed to the owner. The Commission disagreed and reversed the ALJ, holding in the process that a violation of the Commission's rules committed by an employee during the course of his or her employment is within the scope of the employee's employment. Therefore, an employer is liable for the acts of the employee.¹⁶

During his testimony, Mr. Kim did not dispute Staff's allegations, but argued that he should not be liable for Ms. Musgraves's actions. According to Mr. Kim, Ms. Musgrave had a personal relationship with the truck driver who cashed the winning ticket. However, Mr. Kim also conceded that Ms. Musgraves's handling of the ticket in question was within the course and scope of her employment. Mr. Kim also testified that if given a 30-suspension, he would have to shut down his store, which would not be fair to the other employees. Staff noted during cross-examination that Mr. Kim's other stores would not be affected by a suspension and he could explain to his regular

¹⁴ See SOAH Docket No. 362-10-3739, *Texas Lottery Commission v. Texas Giant Kim 's, Inc. Agent dba Stateline Citgo*, (July 6, 2010); Commission Order No. 10-0144 (August 10, 2010).

¹⁵ See SOAH Docket No. 362-18-3432, *Texas Lottery Commission v. Anna Plaza, Inc. dba Coyote Den (Coyote Den)*, (July 23, 2018); Commission Order No. 19-0017 (December 13, 2018).

¹⁶ *Coyote Den* at 7.

customers that the suspension, if approved, was only for this particular store and was only temporary. According to Mr. Kim, that explanation would not suffice because his stores are known as "lottery stores," and his customers would not understand. According to him, they would simply stop coming.

During her rebuttal examination, Ms. Guerra testified that Mr. Kim should have acted more forcefully and terminated Ms. Musgraves immediately after the incident. Instead, Mr. Kim allowed Ms. Musgraves to continue working until such time as she resigned. Given the severity of the violation, Ms. Guerra recommended that a 30-day suspension for this single store was appropriate. In conclusion, Ms. Guerra testified that, despite Mr. Kim's protestations to the contrary, he as the store owner was ultimately responsible for the actions of his employees in the course and scope of their employment. She noted that selling and redeeming lottery tickets was within the course and scope of Ms. Musgraves's employment and Mr. Kim could not evade responsibility by blaming Ms. Musgraves for the violation of the SLA and the Commission's rules.

IV. ANALYSIS AND RECOMMENDATION

The lottery ticket sales license held by Stateline Citgo should be suspended for 30 days, as requested by Staff. Mr. Kim did not rebut the allegations raised by Staff. The preponderance of evidence shows that on March 29, 2017, Stateline Citgo employee Tiffanie Musgraves purchased a winning \$1,000 lottery ticket from a customer for \$700 and then attempted to cash the ticket at TCC for the full face value of the ticket. When Ms. Musgraves purchased the ticket for \$700 she was acting within the course and scope of her employment, and was an agent for Stateline Citgo and Mr. Kim. Mr. Kim did not deny or controvert these facts, but claimed Ms. Musgraves had a personal relationship with the customer. For purposes of deciding whether Stateline Citgo's lottery ticket sales agent's license should be suspended, whether Ms. Musgraves had a personal relationship with the customer is not dispositive because it is Stateline Citgo's and Mr. Kim's responsibility to comply with the SLA and the Commission's rules and safeguard the security and integrity of the lottery games.

Under SLA § 466.310, a person commits an offense if the person induces a person to assign or transfer a right to claim a prize. That is precisely what Ms. Musgraves did when she purchased the

\$1,000 lottery ticket for \$700. In addition, Ms. Musgraves told investigators that she purchased the ticket because the customer owed child support. Ms. Guerra pointed out that the Commission is required to withhold funds from winning prizes if the winner owes child support, is delinquent in paying back student loans, or is delinquent in repaying a number of other government debts. Ms. Musgraves's actions fly in the face of the Commission's goals and violate the security and integrity of the lottery games by actively participating in a fraud for purposes of hiding the fact that the customer owned child support.

SLA § 466.402(b) provides that only the director can cash a lottery ticket for more than \$600. Ms. Musgraves paid the winner of the scratch-off game \$700 which is a direct violation of this section of the SLA. SLA § 466.155(a)-(b) requires the Commission to suspend a license if the licensee has violated a chapter of the SLA or a Commission rule adopted thereunder, and further shifts the burden of showing by a preponderance of the evidence to the sales agent to show that the license should *not* be suspended. Stateline Citgo and Mr. Kim did not sustain that burden. In this case, Ms. Musgraves, acting within the scope and course of her Stateline Citgo employment, violated the SLA and the Commission's rules, and her employer is vicariously liable for her misconduct. That being the case, the ALJ concludes that the Commission should suspend the lottery sales agent's license held by Stateline Citgo and its owner, Sang Kim, for 30 days.

V. FINDINGS OF FACT

1. Texas Giant Kim's Inc., dba Stateline Citgo (Stateline Citgo) is owned by Sang Kim and holds a lottery ticket sales agent license (No. 143380) issued by the Texas Lottery Commission (Commission).
2. Stateline Citgo is located at 5023 N. Stateline Ave., Texarkana, Texas.
3. On March 29, 2017, Tiffanie Musgraves, a Stateline Citgo employee, paid the winner of a \$1,000 "High Roller Casino Action" scratch-off ticket \$700.
4. On March 31, 2017, Ms. Musgraves attempted to cash in the ticket for the full face value at the Tyler Claims Center (TCC) in Tyler, Texas.
5. The ticket Ms. Musgraves attempted to redeem was torn in half, which caused TCC staff to report the ticket to the Austin Claim Center because of the suspicious circumstances related to the ticket's condition.

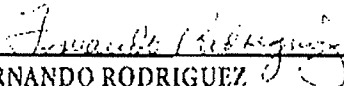
6. The Commission initiated an investigation into the circumstances behind the winning ticket Ms. Musgraves purchased for \$700.
7. Ms. Musgraves purchased the winning ticket from the customer because she thought he may have child support obligations and she could help by purchasing the ticket so he could avoid having to deal with TCC.
8. In 2010, Stateline Citgo was penalized with a 10-day suspension for violating the Commission's rules when a Stateline Citgo employee cashed in a winning ticket for \$80 after it had already been redeemed.
9. Stateline Citgo's employees, including Ms. Musgraves, underwent training and refresher courses regarding the proper administration of Commission Lottery games.
10. Mr. Kim did not contest the allegations raised by Commission staff (Staff), but argued that he should not be responsible for Ms. Musgraves's actions.
11. Ms. Musgraves was an employee of Stateline Citgo at the time she purchased the \$1,000 lottery ticket for \$700, and was acting within the course and scope of her employment when she purchased the winning ticket.
12. On June 12, 2018, Staff provided Mr. Kim with a Notice of Opportunity to Show Compliance, offering Mr. Kim an opportunity to contest Staff's finding that Stateline Citgo was subject to disciplinary action for having violated the Texas Government Code ch. 466 *et seq.*, the Texas State Lottery Act, and rules of the Commission.
13. On August 13, 2018, Staff mailed Mr. Kim a Notice of Final Hearing on Suspension or Revocation of Lottery License for Texas Lottery License Ticket Sales Agent License No. 143380 (Notice of Hearing). The Notice of Hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and either a short plain statement of the factual matters asserted or an attachment that incorporated by reference the factual matters asserted in the complaint or petition filed with the agency.
14. The hearing was continued several times, but on January 30, 2019, State Office of Administrative Hearings Administrative Law Judge (ALJ) Fernando Rodriguez convened the hearing on the merits in this case. Kristen Guthrie, Assistant General Counsel, appeared and represented Staff. Mr. Kim appeared and represented himself. Mr. Kim requested that his son be allowed to interpret for him. Staff did not object, and the ALJ administered the interpreter's oath to the younger Mr. Kim. After Staff began the presentation of its case, Mr. Kim demanded a new hearing and requested that his son be "fired" as his interpreter. The ALJ denied Mr. Kim's request for a new hearing but granted his request to excuse his son as interpreter. The ALJ was not able to secure a Korean interpreter who could interpret for Mr. Kim so the hearing was recessed until an in-person Korean interpreter could be engaged.

On March 6, 2019, the hearing reconvened after an in-person Korean interpreter was employed to translate the hearing. The hearing concluded on March 6, 2019, and the record closed the same day.

VI. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to the Texas State Lottery Act. Tex. Gov't Code § 466.155.
2. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a Proposal for Decision with proposed Findings of Fact and Conclusions of Law, as provided by Texas Government Code ch. 2003.
3. Timely and adequate notice of the hearing was provided in accordance with Texas Government Code §§ 2001.051, and .052.
4. Stateline Citgo and Mr. Kim violated the Texas State Lottery Act when an employee, Tiffanie Musgraves, acting within the course and scope of her employment, purchased a winning \$1,000 scratch-off ticket from a customer for \$700 and attempted to cash it for the full face value at the Tyler Claims Center. Tex. Gov't Code § 466.310(a)(1)-(3); 16 Tex. Admin. Code §§ 401.158(b); .302.
5. The Commission shall deny an application for a license, or suspend or revoke a license, if the applicant or license holder has violated the Texas State Lottery Act, Texas Government Code ch. 466, or a Commission rule adopted under that chapter. Tex. Gov't Code § 466.155(a)(5).
6. An applicant or license holder has the burden of proof, by a preponderance of the evidence, to show why the application should not be denied or the license should not be suspended or revoked. Tex. Gov't Code § 466.155(c).
7. The lottery sales agent license of Stateline Citgo, owned by Sang Kim, License No. 143380, should be suspended for 30 days pursuant to Texas Government Code § 466.155 and 16 Texas Administrative Code § 401.158.

SIGNED June 11, 2019.



FERNANDO RODRIGUEZ
ADMINISTRATIVE LAW JUDGE
STATE OFFICE ADMINISTRATIVE HEARINGS

Commission Order No. 19-0065

Date: AUGUST 7, 2019

DOCKET NO. 362-19-1517

| | | |
|-------------------------------|---|--------------------|
| TEXAS LOTTERY COMMISSION | § | BEFORE THE TEXAS |
| Petitioner | § | |
| | § | |
| V. | § | |
| | § | |
| HOMELAND ENTERPRISES INC. | § | |
| D/B/A PINEHURST COUNTRY STORE | § | |
| RETAILER LICENSE NO. 450602 | § | |
| Respondent | § | LOTTERY COMMISSION |

ORDER DENYING REHEARING

TO: Mr. Mohammed Aissa
Homeland Enterprises Inc.
d/b/a Pinehurst Country Store
35427 Hwy. 249
Pinehurst, TX 77362
via email at mohammedaissa54@yahoo.com

On June 6, 2019, the Texas Lottery Commission (Commission) entered a final order in the above-styled case. On June 27, Respondent timely filed a *Motion for Rehearing*, and on July 1 the Commission Executive Director issued an *Order Extending Time for Agency Action on Motion for Rehearing*. On August 7, during an open meeting in Austin, Texas, the Commission considered Respondent's *Motion for Rehearing* and after review and due consideration thereof:

IT IS ORDERED by the Commission that Respondent's *Motion for Rehearing* is DENIED.

Commission Order No. 19-0065

Date: AUGUST 7, 2019

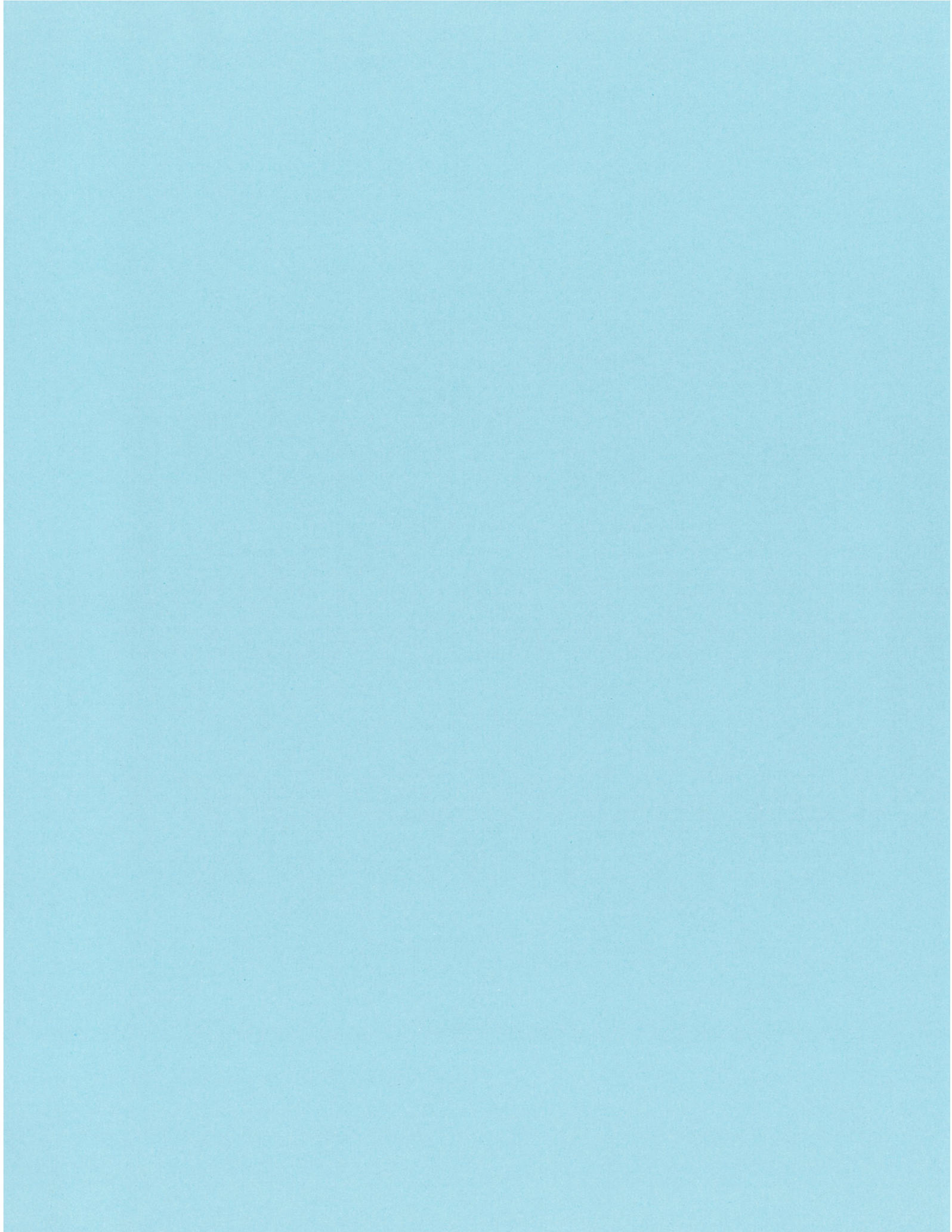
Passed and approved at the regular meeting of the Texas Lottery Commission in Austin, Texas, on the 7TH day of AUGUST 2019.

Entered this 7TH day of AUGUST 2019.

J. WINSTON KRAUSE, CHAIRMAN

MARK A. FRANZ, COMMISSIONER

ROBERT RIVERA, COMMISSIONER



Commission Order No. 19-0060

Date: JUNE 6, 2019

DOCKET NO. 362-19-1517

| | | |
|-------------------------------|---|--------------------|
| TEXAS LOTTERY COMMISSION | § | BEFORE THE TEXAS |
| PETITIONER | § | |
| | § | |
| V. | § | |
| | § | |
| HOMELAND ENTERPRISES INC. | § | |
| D/B/A PINEHURST COUNTRY STORE | § | |
| RETAILER NO. 450602 | § | |
| RESPONDENT | § | LOTTERY COMMISSION |

ORDER OF THE COMMISSION

TO: Mr. Mohammed Aissa
Homeland Enterprises Inc.
d/b/a Pinehurst Country Store
35427 Hwy. 249
Pinehurst, TX 77362
via email at mohammedaissa54@yahoo.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 case was heard by an Administrative Law Judge (ALJ) who made and filed a Proposal for Decision (PFD) containing the ALJ's Findings of Fact and Conclusions of Law. The PFD was properly served and all parties were given an opportunity to file exceptions and replies as part of the record herein.

The Commission, after review and due consideration of the PFD and exceptions and replies filed, if any, adopts the ALJ's Findings of Fact and Conclusions of Law as if fully set out and separately stated herein. All proposed Findings of Fact and Conclusions of Law not specifically adopted herein are hereby denied.

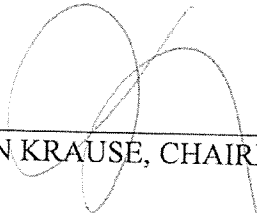
NOW, THEREFORE, IT IS ORDERED that the Texas Lottery Ticket Sales Agent License of Homeland Enterprises Inc. d/b/a Pinehurst Country Store is hereby suspended for thirty (30) days.

Commission Order No. 19-0060


Date: JUNE 6, 2019

Passed and approved at the regular meeting of the Texas Lottery Commission in Austin, Texas, on the 6TH day of JUNE 2019.


Entered this 6TH day of JUNE 2019.



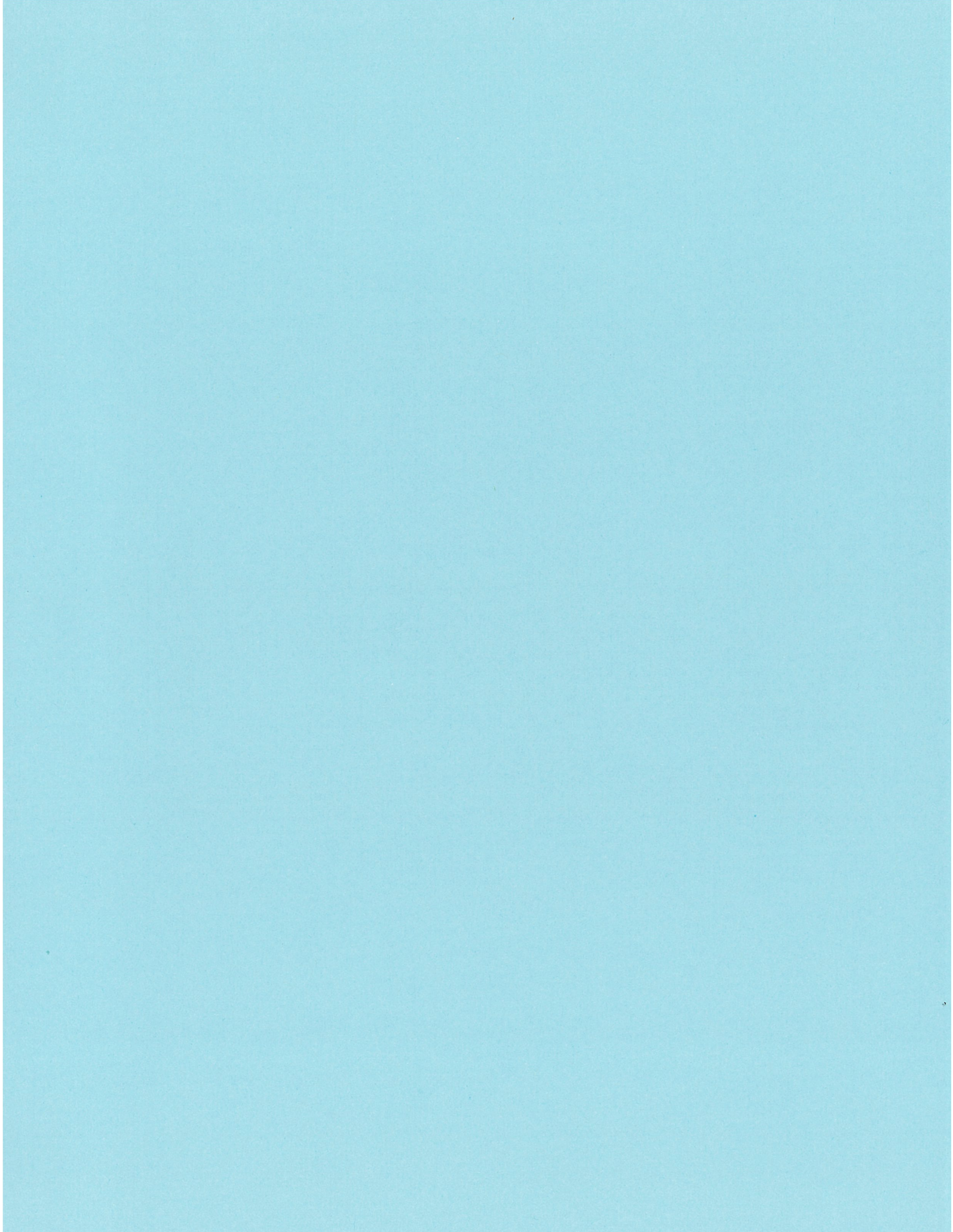
J. WINSTON KRAUSE, CHAIRMAN



MARK A. FRANZ, COMMISSIONER



ROBERT RIVERA, COMMISSIONER



Commissioners:

J. Winston Krause,

Chairman

Mark A. Franz

Robert Rivera



TEXAS LOTTERY COMMISSION

Gary Grief, *Executive Director*

Michael P. Farrell, *Charitable Bingo Operations Director*

July 16, 2019

J. Winston Krause, Chairman
Mark A. Franz, Commissioner
Robert Rivera, Commissioner
Texas Lottery Commission
P.O. Box 16630
Austin, TX 78761-6630

RE: Motion for Rehearing; SOAH Docket No. 362-19-1517, *Texas Lottery Commission v. Homeland Enterprises Inc. d/b/a Pinehurst Country Store*

Commissioners:

On June 6, 2019, the Commission issued a Final Order in the referenced case. On June 27, 2019, Respondent Homeland Enterprises Inc. d/b/a Pinehurst Country Store emailed a request for a new hearing. *See Attachment A.* Respondent also mailed the Commission a request for a new hearing (Attachment B), which the Commission received on June 29, 2019. Neither of Respondent's requests complain of any particular findings of fact or conclusions of law, nor claim that any evidentiary or legal ruling is erroneous. Further, the requests fail to state any legal or factual basis for any claimed error. Consequently, the requests do not comply with the motion for rehearing requirements set forth in Tex. Gov't Code §2001.146(g) and Commission Rule 401.220 (Motion for Rehearing).

Accordingly, Commission staff respectfully requests that the Commission deny Respondent's requests for a new hearing.

Sincerely,

A handwritten signature in cursive script that reads "Kristen Guthrie".

Kristen Guthrie
Assistant General Counsel

Enclosure(s)

Homeland Enterprises Inc.
d/b/a Pinehurst Country Store
Page 2 of 2

cc: State Office of Administrative
Hearings

via fax at 512.322.2061

Mr. Mohammed Aissa
Homeland Enterprises Inc.
d/b/a Pinehurst Country Store
35427 Hwy. 249
Pinehurst, TX 77362

via email at mohammedaissa54@yahoo.com

Carson, Dorota

From: Mohammed Aissa <mohammedaissa54@yahoo.com>
Sent: Thursday, June 27, 2019 9:20 AM
To: Carson, Dorota
Subject: Re: Pinehurst Country Store: Order of the Commission

CAUTION: This email originated outside the Texas Lottery's email system. DO NOT click links or open attachments unless you expect them from the sender and know the content is safe.

Dorota,

I have received the letter from the Texas Lottery Commission from June 10th 2019 and would like to inform you that I intended to contest the decision and request a new hearing.

Please accept this reply as a formal request.

You can reach me at any time via email or phone. 281-216-1193

Sincerely,
Mohammed Aissa

On Jun 27, 2019, at 9:00 AM, Carson, Dorota <Dorota.Carson@lottery.state.tx.us> wrote:

From: Carson, Dorota
Sent: Monday, June 10, 2019 9:58 AM
To: Mohammed Aissa <mohammedaissa54@yahoo.com>
Cc: Guthrie, Kristen <Kristen.Guthrie@lottery.state.tx.us>
Subject: Pinehurst Country Store: Order of the Commission

Good morning,

Mr. Aissa, I hope you are doing well.

Attached is a transmittal letter and the Order of the Commission that was signed on June 6, 2019. Please don't hesitate to call or email if you have any questions. My phone number is 512.344.5392.

Thank you,
Dorota

<Transmittal Letter 6.10.19.pdf>

<Order of the Commission 6.6.19.pdf>



Mohammed Aissa

Re: Pinehurst Country Store: Order of the
Commission

Jun 27, 2019 at 9:20:03 AM
Carson, Dorota

Dorota,

I have received the letter from the Texas Lottery Commission from June 10th 2019 and would like to inform you that I intended to contest the decision and request a new hearing.

Please accept this reply as a formal request.

You can reach me at any time via email or phone.

Thank you For your Cooperation,

Sincerely,

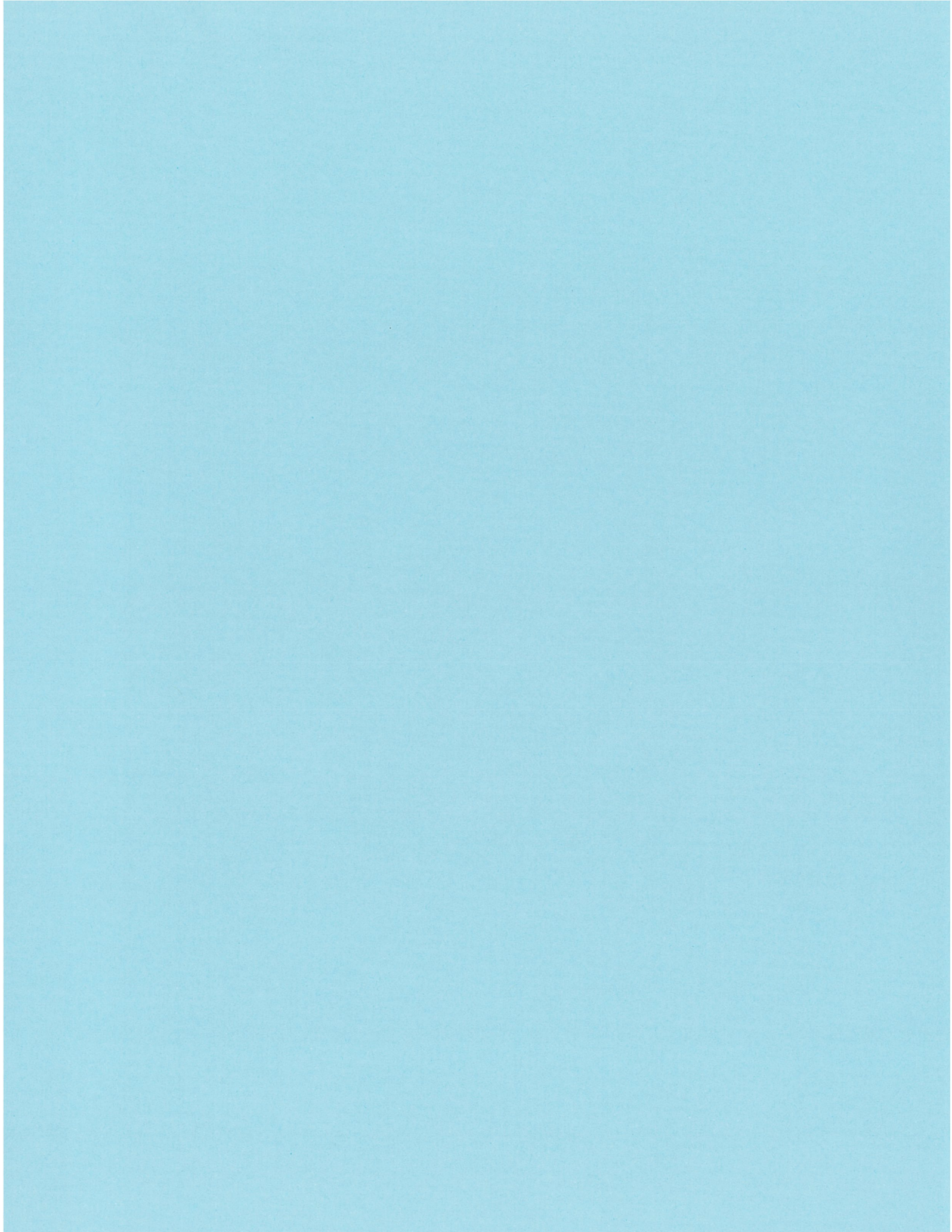
Mohammed Aissa

*Home Land Enterprisiss INE
281-216-1193*

2019 JUL -1 AM 9:48
OFFICIAL USE ONLY

EXHIBIT
B

*2018-200 06
07/4/19*



Commissioners:

J. Winston Krause,

Chairman

Mark A. Franz

Robert Rivera



TEXAS LOTTERY COMMISSION

Gary Grief, *Executive Director*

Michael P. Farrell, *Charitable Bingo Operations Director*

July 1, 2019

Mr. Mohammed Aissa
Homeland Enterprises Inc.
d/b/a Pinehurst Country Store
35427 Hwy. 249
Pinehurst, TX 77362

via email at mohammedaissa54@yahoo.com

Ms. Kristen Guthrie
Assistant General Counsel
Texas Lottery Commission
P.O. Box 16630
Austin, TX 78761-6630

via email at kristen.guthrie@lottey.state.tx.us

RE: SOAH Docket No. 362-19-1517, *Texas Lottery Commission v. Homeland Enterprises Inc. d/b/a Pinehurst Country Store*, Order Extending Time for Agency Action on Motion for Rehearing

To the Parties:

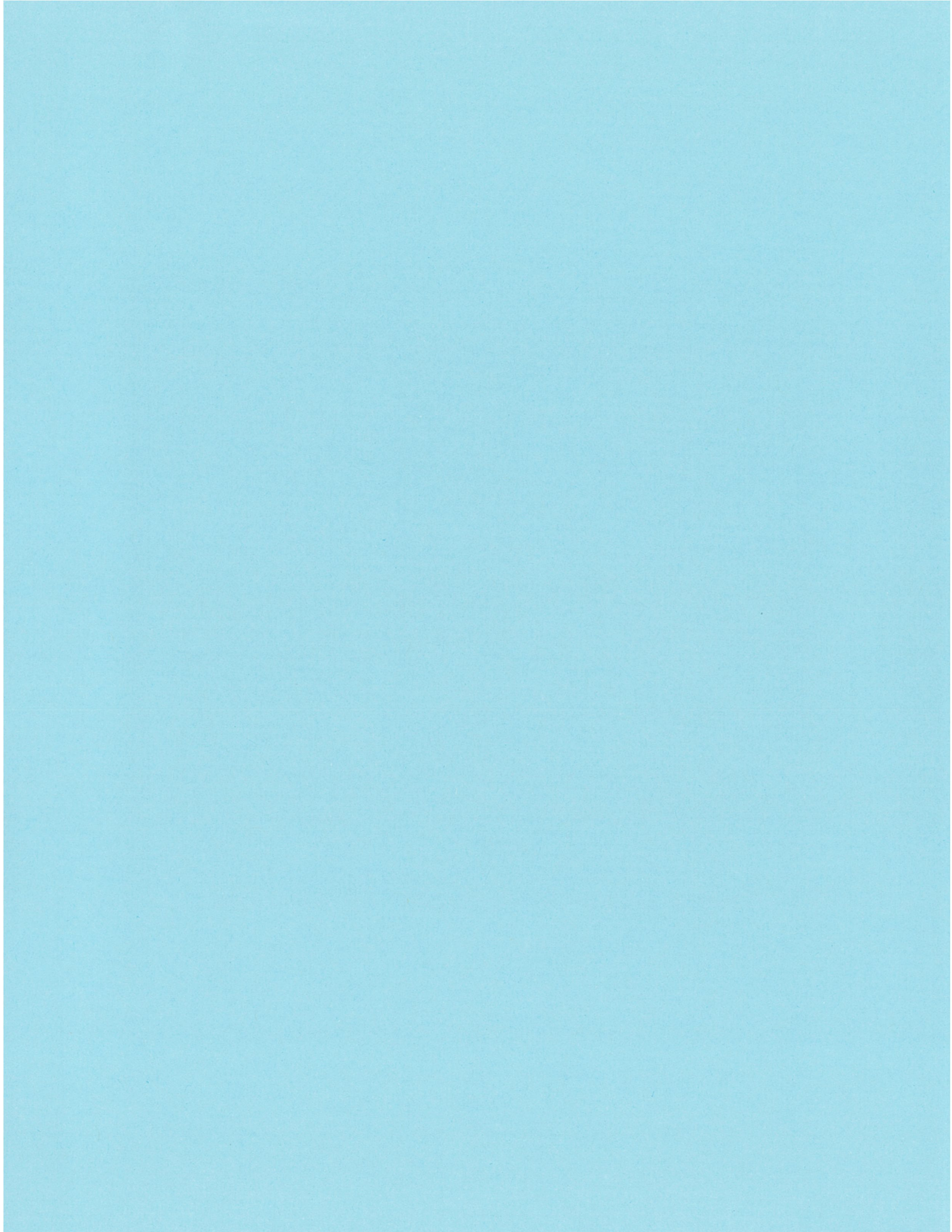
On June 27, 2019, Homeland Enterprises Inc. d/b/a Pinehurst Country Store filed with the Texas Lottery Commission (Commission) a Motion for Rehearing (Motion) in the above-referenced matter. If the Commission does not act on the Motion by July 31, 2019 (the 55th day after the Commission signed the June 6, 2019 Order adopting the State Office of Administrative Hearings Proposal for Decision), the Motion will be overruled by operation of law. The next open meeting of the Commission is scheduled for August 7, 2019.

Therefore, pursuant to 16 Tex. Admin. Code §401.220, to allow the Commission sufficient time to act on the Motion, the deadline for the Commission to act is hereby extended for an additional 45 days, for a total of 100 days after June 6, 2019 (September 14, 2019).

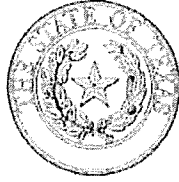
Sincerely,


Gary Grief
Executive Director

cc: State Office of Administrative Hearings (Docketing Division)



State Office of Administrative Hearings



Lesli G. Ginn
Chief Administrative Law Judge

March 26, 2019

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

VIA E-MAIL

RE: Docket No. 362-19-1517; Texas Lottery Commission v. Homeland Enterprises, Inc. d.b.a. Pinehurst Country Store, Texas Lottery Ticket Sales Agent License No. 450602

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, a SOAH rule found at www.soah.state.tx.us.

Sincerely,

A handwritten signature in black ink that reads "Rebecca S. Smith".

Rebecca S. Smith
Administrative Law Judge

RS/lc

cc: Kristen Guthrie, Assistant General Counsel, Texas Lottery Commission, 611 E. 6th, Austin Texas 78701 - VIA E-MAIL
Ali Abuain, Homeland Enterprises Inc., d/b/a Pinehurst Country Store, 35427 S.H. 249, Pinehurst, TX 77362 - VIA REGULAR MAIL

SOAH DOCKET NO. 362-19-1517

| | | |
|---|----------------------------|-------------------------|
| TEXAS LOTTERY COMMISSION, Petitioner | § | BEFORE THE STATE OFFICE |
| | § | |
| | § | |
| v. | § | |
| | § | OF |
| HOMELAND ENTERPRISES, INC. DBA PINEHURST COUNTRY STORE, TEXAS LOTTERY TICKET SALES AGENT LICENSE NO. 450602, Respondent | § § § § § § | ADMINISTRATIVE HEARINGS |

PROPOSAL FOR DECISION

The staff (Staff) of the Texas Lottery Commission (Commission) seeks a 30-day suspension of the lottery ticket sales agent's license held by Homeland Enterprises, Inc. dba Pinehurst Country Store (Pinehurst). Staff alleges that Pinehurst's employee, John Jordan, violated the Commission's rules by purchasing a winning ticket from a customer. After considering the evidence and arguments presented, the Administrative Law Judge (ALJ) recommends a 30-day suspension of the lottery ticket sales agent's license held by Pinehurst.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

Jurisdiction and notice were not disputed and are discussed in the Findings of Fact and Conclusions of Law without further mention here. On February 26, 2019, State Office of Administrative Hearings ALJ Rebecca S. Smith convened the hearing on the merits in this case. Kristen Guthrie, Assistant General Counsel, represented Staff. Pinehurst's president and co-owner Mohammed Aissa appeared for Pinehurst. The record closed the same day.

II. APPLICABLE LAW

The relevant statutory and regulatory provisions in this case are found in the State Lottery Act, chapter 466 of the Texas Government Code, and 16 Texas Administrative Code chapter 401. Texas Government Code § 466.155 states, in pertinent part:

- (a) After a hearing, the director shall deny an application for a license or the commission shall suspend or revoke a license if the director or commission, as applicable, finds that the applicant or sales agent:

...

- (5) has violated this chapter or a rule adopted under this chapter.

Texas Government Code § 466.308 states, in pertinent part:

- (a) A person commits an offense if the person intentionally or knowingly:
 - (1) claims a lottery prize or a share of a lottery prize by means of fraud, deceit, or misrepresentation; or
 - (2) aids or agrees to aid another person or persons to claim a lottery prize or a share of a lottery prize by means of fraud, deceit, or misrepresentation.

The Commission's rule at 16 Texas Administrative Code § 401.158 states, in pertinent part:

- (a) The commission may suspend or revoke any license issued under this subchapter if the commission finds that any factor listed as grounds for denial of a license under § 401.153(b) of this title (relating to Qualifications for License) or any factor listed in subsection (b) of this section apply to the licensee.
- (b) Without limiting the commission's ability to consider factors listed in § 401.153(b) of this title as grounds for suspension or revocation of a license issued under this subchapter, the commission may also suspend or revoke a license for reasons including, but not limited to, any of the following:

...

- (31) licensee intentionally or knowingly claims a lottery prize or a share of a lottery prize by means of fraud, deceit, or misrepresentation; or aids or

agrees to aid another person or persons to claim a lottery prize or a share of a lottery prize by means of fraud, deceit, or misrepresentation;

...

(33) licensee:

- (A) induces another person to assign or transfer a right to claim a prize;
- (B) initiates or accepts an offer to sell the right to claim a prize;
- (C) initiates or accepts an offer of compensation from another person to claim a lottery prize; or
- (D) purchases a lottery ticket from a person who is not a licensed lottery retailer;

If a hearing is requested by the licensee, the burden of proof is on the licensee to show by a preponderance of the evidence that the application should not be denied, or the license should not be suspended or revoked.¹

III. EVIDENCE

Staff's exhibits 1 through 7 were admitted without objection. They include, among other things, an investigation report prepared by Commission investigator Daniel Heinz, and the Texas Lottery Winner Claim Form completed by Mr. Jordan. Staff called two witnesses: Mr. Heinz and Nancy Guerra, who is in charge of monitoring retail accounts for the Commission. Mr. Aissa testified on behalf of Pinehurst.

A. Daniel Heinz

Mr. Heinz is an investigator with the Commission. He testified in the hearing, and his report concerning the investigation of Pinehurst was introduced into evidence as Staff Exhibit 4.

According to Mr. Heinz, the investigation began when Mr. Jordan presented a \$1,000 winning lottery ticket (the Ticket) at the Commission's Houston Claim Center. The Ticket

¹ Tex. Gov't Code § 466.155(c).

originally came to the Commission's attention because it had been torn and taped back together. Mr. Heinz was able to determine that the Ticket had been the subject of four validation attempts at three different locations, including Pinehurst. Mr. Heinz spoke with both an employee and a manager at the store on FM 1774 in Magnolia, Texas, where the Ticket was sold, but they had no information or video for him. After locating Mr. Jordan, Mr. Heinz noticed that Mr. Jordan's living quarters were attached to Pinehurst, which is located on Highway 249 in Montgomery County, Texas. Because one of the validation attempts had taken place at Pinehurst, Mr. Heinz went into the store. There, he spoke with one of the owners, Ali Abuain, who identified Mr. Jordan as his brother. According to Mr. Abuain, Mr. Jordan works part-time at Pinehurst.

Mr. Heinz interviewed Mr. Jordan, who told him that a customer brought in the torn Ticket. The customer said he was too ill to travel to Houston and asked if Mr. Jordan would give him some money for the Ticket. Mr. Jordan admitted that he paid the customer \$700 for the Ticket. Mr. Jordan was cooperative and told Mr. Heinz the customer's name. Mr. Heinz spoke with the customer, whose story matched Mr. Jordan's. The customer also added that a clerk at another store had mistakenly torn the Ticket.

Mr. Heinz also discussed the Texas Lottery Winner Claim Form that Mr. Jordan submitted to the Houston Claim Center, which indicated that the Ticket had been purchased at a store located on Highway 249 in Montgomery County. Mr. Heinz noted that this was not, in fact, the store where the Ticket had been originally purchased. In the same form, Mr. Jordan checked a box indicating "I purchased the ticket."²

B. Nancy Guerra

Ms. Guerra, who monitors retail accounts for the Commission, also testified at the hearing. She testified that a retailer is responsible for training their employees. According to Ms. Guerra, the Commission provides training for retailers and retailers may request additional Commission training. Although additional training was available, Pinehurst's only training was

² Staff Ex. 5.

an initial training in 1997. Ms. Guerra added that the Commission's rules contain no provision for assessing a penalty instead of a suspension.

C. Mr. Aissa

Mr. Aissa testified on behalf of Pinehurst. He noted that Pinehurst and the store where the Ticket was originally purchased are located close together in Montgomery County. He added that Pinehurst employees had close ties to the community and would not intentionally break the rules. He also emphasized that a suspension would harm five families and so requested to be assessed a penalty, rather than a suspension.

IV. ANALYSIS AND RECOMMENDATION

The ALJ determines that Mr. Jordan violated the Commission's rules by accepting an offer of compensation from another person to claim a lottery prize.³

However, Staff did not establish the allegation that Mr. Jordan intentionally or knowingly claimed a lottery prize by means of fraud, deceit, or misrepresentation. At hearing, Staff argued that the following two things were misrepresentation: (1) Mr. Jordan's representation that he bought the Ticket at a location on Highway 249 in Montgomery County, and (2) Mr. Jordan's checking the box indicating that he had purchased the Ticket. Staff failed to establish that either of those statements constituted misrepresentation, though. Mr. Jordan did, in fact, purchase the Ticket, albeit illegally from a customer. And he purchased it when working at Pinehurst on Highway 249, making his statement that he purchased the Ticket at the address not truly a misrepresentation.⁴

³ 16 Texas Administrative Code § 401.158(b)(33)(C).

⁴ Staff also suggested in its pleading that Mr. Jordan violated Texas Government Code § 466.402(b), which provides that "[t]he payment of a prize in an amount of \$600 or more may be made only by the director." The ALJ does not believe that this section, which is in the subchapter labeled "Prizes" not the subchapter labeled "Offenses," creates something that can be violated by a licensee. But even if this subsection did create a rule that could be violated by a licensee, there was no violation: the prize was still going to be paid by the Director. Moreover, Staff's assertion that Mr. Jordan's actions in paying for the Ticket constituted paying a prize is inconsistent with the violation Staff already established—that Mr. Jordan accepted *an offer to sell the right to claim a prize*. Having found that Mr. Jordan bought the right to claim a prize, the ALJ will not find that Mr. Jordan also paid a prize.

Under Commission precedent, Mr. Jordan's wrongful action is attributable to Pinehurst, the Lottery licensee. The ALJ finds it credible that Mr. Jordan was unaware that his actions were prohibited. But as Staff pointed out, that lack of awareness could have been resolved by training, which Pinehurst chose not to provide.

Pinehurst's license is subject to suspension or revocation.⁵ Pinehurst did not demonstrate that the proposed 30-day suspension is unreasonable.⁶ Additionally, as Staff pointed out, there is no provision in the Government Code or the Commission's rules allows for the assessment of an administrative penalty instead of suspension. The ALJ recommends that Pinehurst's lottery ticket sales agent's license be suspended for 30 days.

V. FINDINGS OF FACT

1. Homeland Enterprises, Inc. dba Pinehurst Country Store (Pinehurst) holds a lottery ticket sales agent's license issued by the Texas Lottery Commission (Commission).
2. Pinehurst is located on Highway 249 in Montgomery County, Texas.
3. One of Pinehurst's owners is its president, Mohammed Aissa.
4. On April 17, 2018, John Jordan presented a scratch-off ticket with a prize value of \$1,000 (Ticket) at the Commission's Houston Claim Center.
5. In his Texas Lottery Winner Claim Form submitted for the Ticket, Mr. Jordan represented that he had purchased the Ticket at a store on Highway 249 in Montgomery County, Texas.
6. Mr. Jordan, who occasionally worked at Pinehurst, had purchased the Ticket for \$700 from a customer, who had told Mr. Jordan he was too ill to travel to Houston to claim the prize.
7. Mr. Jordan's actions, which took place in the context of his employment, are attributable to Pinehurst.

⁵ Tex. Gov't Code § 466.155(a)(5); 16 Tex. Admin. Code § 401.158(a)-(b).

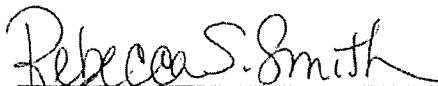
⁶ Tex. Gov't Code § 466.155(c).

8. On December 6, 2018, Staff sent Pinehurst a Notice of Final Hearing on Suspension or Revocation of Lottery License (Notice of Hearing). The Notice of Hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and either a short plain statement of the factual matters asserted or an attachment that incorporated by reference the factual matters asserted in the complaint or petition filed with the state agency.
9. On February 26, 2019, State Office of Administrative Hearings (SOAH) Administrative Law Judge Rebecca S. Smith convened the hearing on the merits in this case. Kristen Guthrie, Assistant General Counsel, represented Staff. Pinehurst's president and co-owner Mohammed Aissa appeared for Pinehurst. The record closed the same day.

VI. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to the State Lottery Act. Tex. Gov't Code § 466.155.
2. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a Proposal for Decision with proposed Findings of Fact and Conclusions of Law, as provided by Texas Government Code ch. 2003.
3. Timely and adequate notice of the hearing was provided in accordance with Texas Government Code §§ 2001.051, .052.
4. Pinehurst violated 16 Texas Administrative Code §§ 401.158(b)(33)(B).
5. Pinehurst's license is subject to suspension or revocation. Tex. Gov't Code § 466.155(a); 16 Tex. Admin. Code § 401.158(a)-(b).
6. Pinehurst did not demonstrate that a 30-day suspension of its license is unreasonable. Tex. Gov't Code § 466.155(c).
7. Pinehurst's lottery ticket sales agent's license should be suspended for 30 days.

SIGNED March 26, 2019.


REBECCA S. SMITH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS