



INTEROFFICE MEMO

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

To: J. Winston Krause, Chairman
Doug Lowe, Commissioner
Robert Rivera, Commissioner

From: Bob Biard, General Counsel

A handwritten signature in purple ink, appearing to be "RB", is written over the name "Bob Biard".

Date: April 11, 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.

Date: APRIL 11, 2019

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 §§ 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

Commission Order No. 19-0033

Date: APRIL 11, 2019

the Commission for informal disposition, in accordance with Tex. Gov't Code §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 §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 §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 §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: APRIL 11, 2019

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 11TH day of APRIL 2019.

Entered this 11TH day of APRIL 2019.

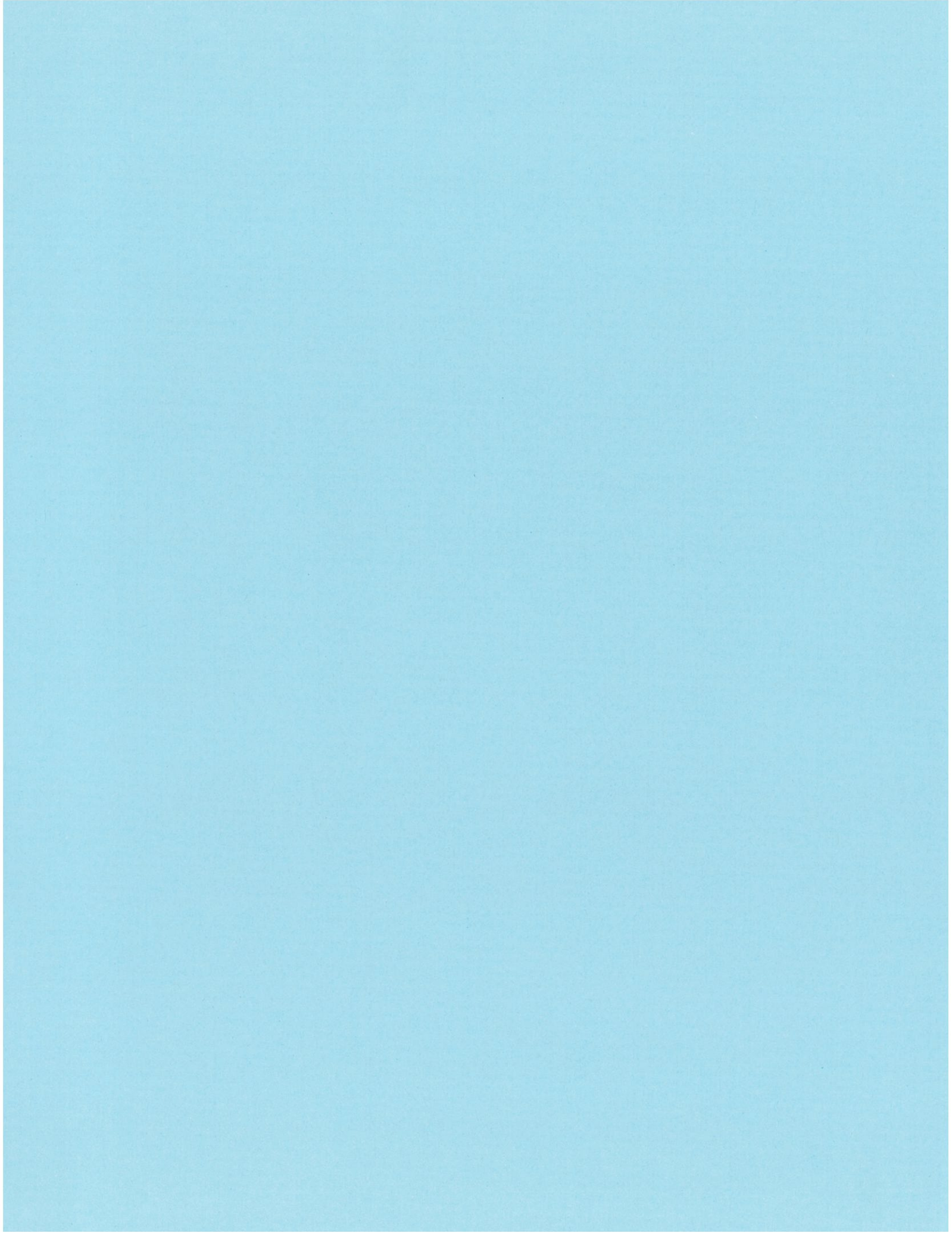
J. WINSTON KRAUSE, CHAIRMAN

DOUG LOWE, COMMISSIONER

ROBERT RIVERA, COMMISSIONER

Date: APRIL 11, 2019**ATTACHMENT A**

TAB NO.	SOAH DOCKET NO.	TICKET SALES AGENT NAME	TICKET SALES AGENT ADDRESS	LOTTERY LICENSE NO.
A.	362-19-1441	Jivani First Stop Inc. d/b/a 1st Stop Beverage Barn	1342 Pinnacle Falls San Antonio, TX 78260	175713
B.	362-19-1532	A A Union Inc. d/b/a Valley Food Mart 1	11008 Culzean Dr. Austin, TX 78754	183599
C.	362-19-1534	Gresham USA LLC d/b/a Liberty Crossing	1820 Shiloh Rd. Tyler, TX 75703	184471
D.	362-19-1746	Pay Point LLC d/b/a Kountry Mart	1809 N. Washington Ave. Livingston, TX 77351	185613
E.	362-19-1747	Two Texans United LLC d/b/a Raceway	106 Crosswind Dr. Victoria, TX 77904	185652
F.	362-19-1795	M and M Stores Inc. d/b/a Super Quick Mart	24814 Kuykendahl Tomball, TX 77375	182833
G.	362-19-1941	Aslam Corporation d/b/a Xpress Beer & Wine	6300 Independence Pkwy., Suite D Plano, TX 75023	181261
H.	362-19-1942	Ashaji Enterprises, Inc. d/b/a Z K L Food Mart	606 S. Market St. Hearne, TX 77859	184594
I.	362-19-1944	Mashoo Enterprise Inc. d/b/a Madi Food Mart	118 N. 5 th St. Rosebud, TX 76570	185121



DOCKET NO. 362-19-1441

IN THE MATTER	§	BEFORE THE STATE OFFICE
	§	
OF THE REVOCATION OF	§	
LOTTERY RETAILER LICENSE OF	§	OF
JIVANI FIRST STOP INC., DBA	§	
1 ST STOP BEVERAGE BARN,	§	
LICENSE NO. 175713	§	ADMINISTRATIVE HEARINGS

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

On January 10, 2019, a hearing was convened before the State Office of Administrative Hearings (SOAH) on the revocation of the lottery sales agent license held by Jivani First Stop Inc., dba 1st Stop Beverage Barn, License No. 175713 (Retailer). Notice of the hearing was provided to 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 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. Retailer did not appear. Based on 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 ALJ concludes that the motion has merit and should be granted.

Accordingly, the motion to dismiss and remand this case 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. 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 January 22, 2019.

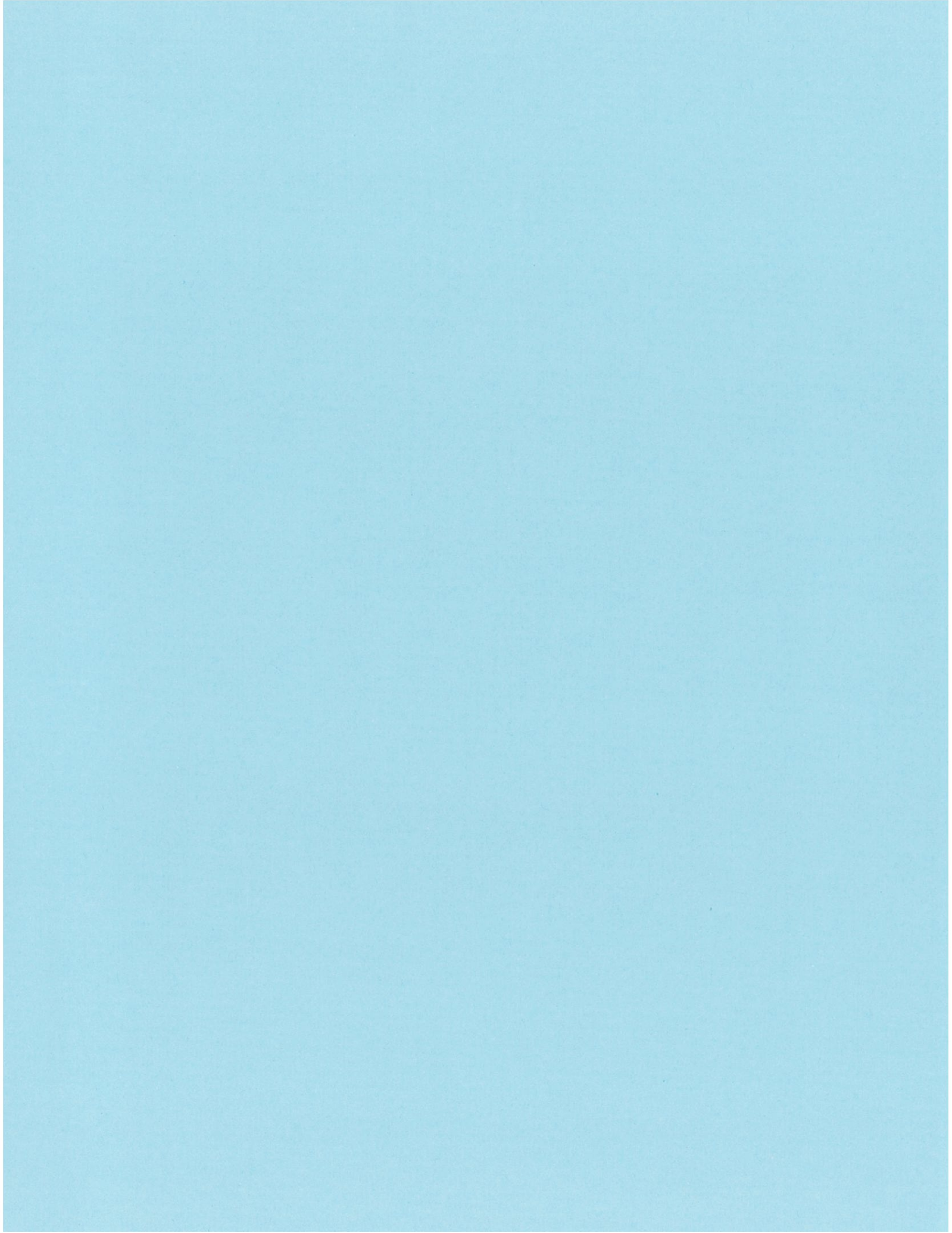
Holly Vandrovec

HOLLY VANDROVEC

ADMINISTRATIVE LAW JUDGE

STATE OFFICE OF ADMINISTRATIVE HEARINGS

4/10/15



DOCKET NO.: SEE ATTACHMENT A

IN THE MATTER

OF THE REVOCATION OF
CERTAIN LOTTERY RETAILER
LICENSES

§
§
§
§
§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

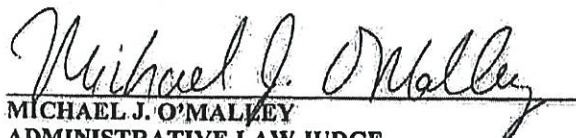
**CONDITIONAL ORDER DISMISSING CASES FROM SOAH
AND REMANDING CASES TO COMMISSION**

On January 17, 2019, a hearing was convened before the State Office of Administrative Hearings (SOAH) on the revocation of the lottery sales agent license held by each retailer listed on Attachment A. Notice of the hearing was provided to each retailer in accordance with 1 Texas Administrative Code § 155.501(b)(2). The Texas Lottery Commission (Commission) served the notice of hearing via certified mail at each retailer's last known address as it appears in the Commission's records, as authorized by 16 Texas Administrative Code § 401.205(4). Each notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing would be held; a reference to the particular sections of the statutes and rules involved; a short, plain statement of the factual matters asserted; and a statement in at least 12-point, bold-face type that the factual allegations listed in the notice could be deemed admitted and the relief sought might be granted by default against a party that failed to appear at the hearing.

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

Accordingly, the motions to dismiss and remand each case listed on Attachment A are conditionally granted, and the cases are conditionally dismissed from SOAH's docket and remanded to the Commission for informal disposition under Texas Government Code § 2001.056. Each 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 January 18, 2019.


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

ATTACHMENT A

TEXAS LOTTERY COMMISSION

REVOCATION HEARING

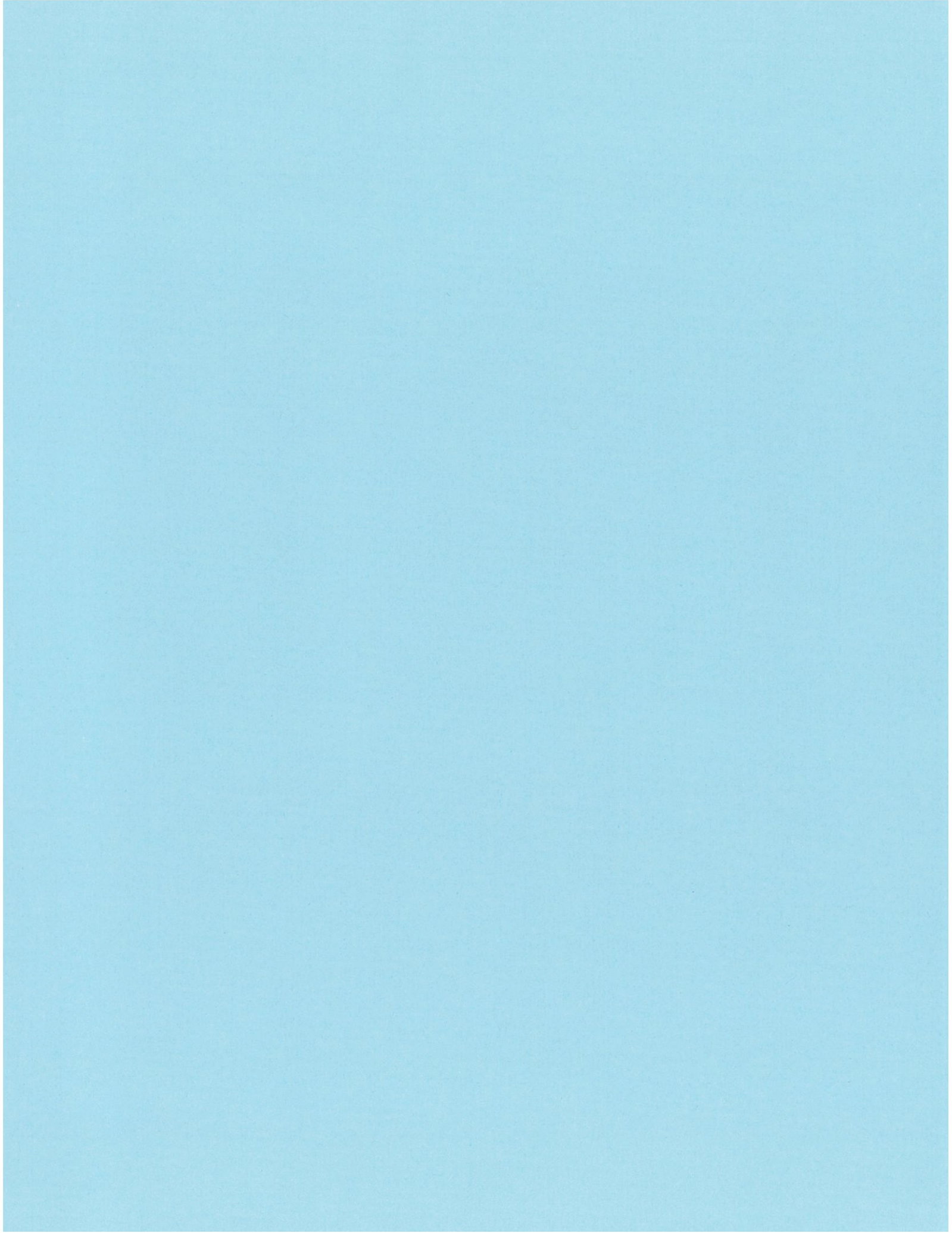
STATE OFFICE OF ADMINISTRATIVE HEARINGS

EXHIBIT 1

HEARING HELD: January 17, 2019

SOAH DOCKET NO.	RETAILER NAME	RETAILER ADDRESS	RETAILER NUMBER
362-19-1532	A A Union Inc., Agent DBA Valley Food Mart 1	11008 Culzean Dr. Austin, Texas 78754	183599
362-19-1534	Gresham USA LLC, Agent DBA Liberty Crossing	1820 Shiloh Rd Tyler, Texas 75703	184471

EXHIBIT 1



DOCKET NO.: SEE ATTACHMENT A

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


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

On January 31, 2019, a hearing was convened before the State Office of Administrative Hearings (SOAH) on the revocation of the lottery sales agent license held by each retailer listed on Attachment A. Notice of the hearing was provided to each retailer in accordance with 1 Texas Administrative Code § 155.501(b)(2). The Texas Lottery Commission (Commission) served the notice of hearing via certified mail at each retailer's last known address as it appears in the Commission's records, as authorized by 16 Texas Administrative Code § 401.205(4). Each notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing would be held; a reference to the particular sections of the statutes and rules involved; a short, plain statement of the factual matters asserted; and a statement in at least 12-point, bold-face type that the factual allegations listed in the notice could be deemed admitted and the relief sought might be granted by default against a party that failed to appear at the hearing.

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

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

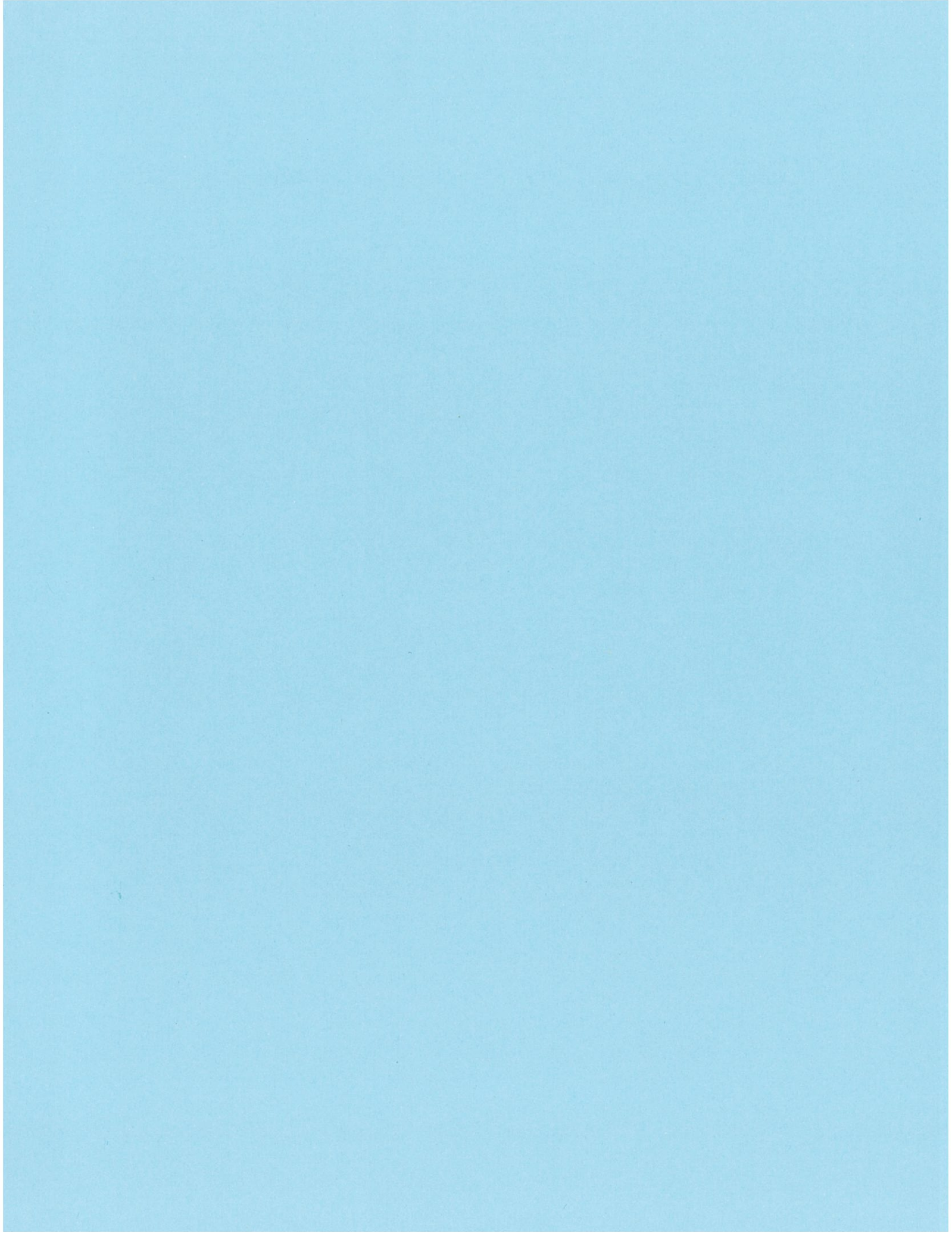
SIGNED February 21, 2019.



CHRISTIAAN SIANO
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

TEXAS LOTTERY COMMISSION
SUMMARY SUSPENSION HEARINGS
STATE OFFICE OF ADMINISTRATIVE HEARINGS
ATTACHMENT A
HEARING HELD: January 31, 2019

SOAH DOCKET NO.	RETAILER NAME	RETAILER ADDRESS	RETAILER NUMBER
362-19-1746	Pay Point LLC d/b/a Kountry Mart	1809 N. Washington Ave. Livingston, Texas 77351	185613
362-19-1747	Two Texans United LLC d/b/a Raceway	106 Crosswind Dr. Victoria, Texas 77904	185652



DOCKET NO.: SEE ATTACHMENT A

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

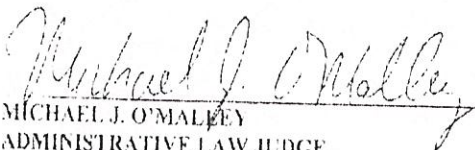
CONDITIONAL ORDER DISMISSING CASE(S) FROM SOAH
AND REMANDING CASE(S) TO COMMISSION

On February 7, 2019, a hearing was convened before the State Office of Administrative Hearings (SOAH) on the revocation of the lottery sales agent license held by the retailer listed on Attachment A. 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 referenced retailer failed to 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 ALJ concludes that the motion has merit and should be granted.

Accordingly, the motion to dismiss and remand for the case listed on Attachment A 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(c).

SIGNED February 8, 2019.


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

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GENERAL COUNSEL

ATTACHMENT A

TEXAS LOTTERY COMMISSION

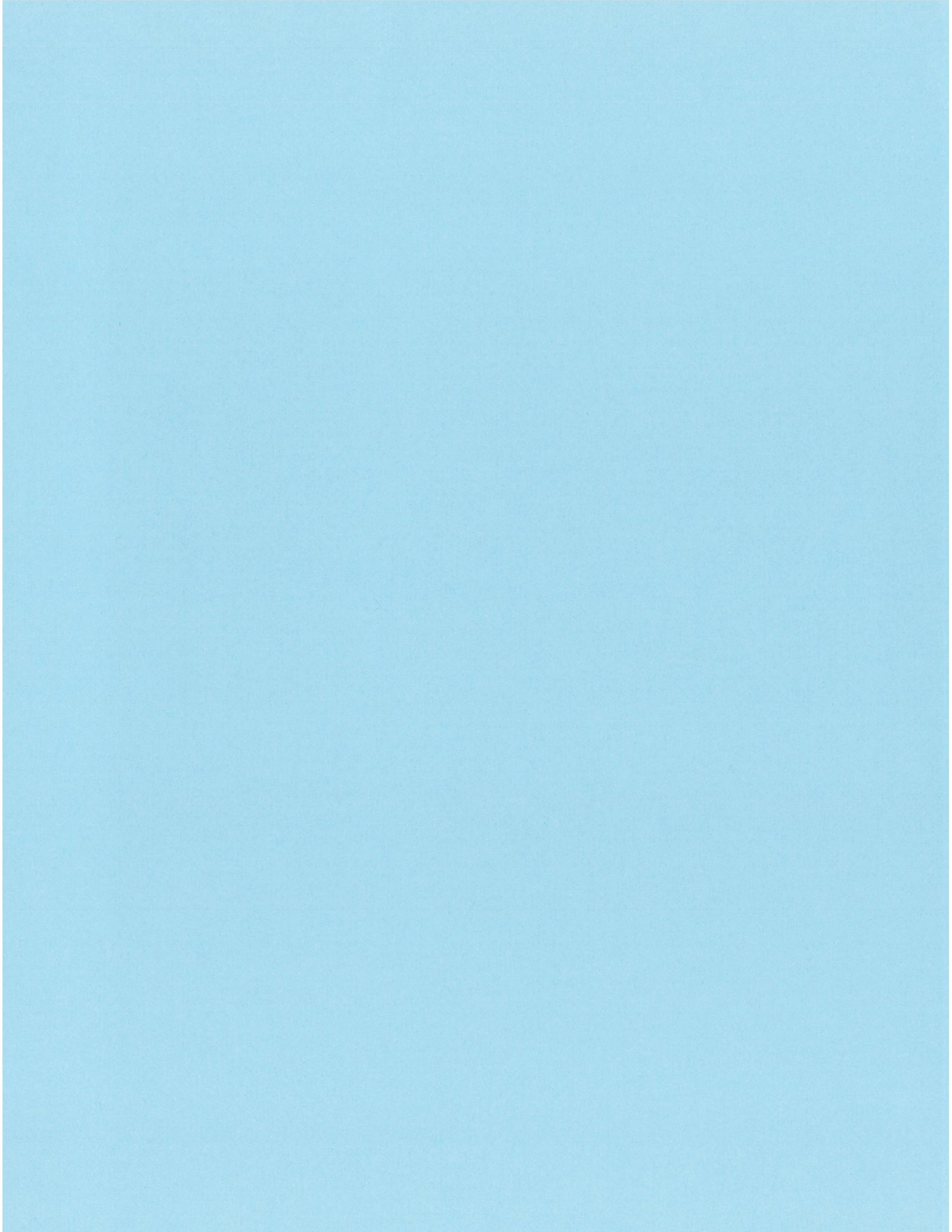
REVOCATION HEARING

STATE OFFICE OF ADMINISTRATIVE HEARINGS

EXHIBIT 1

HEARING HELD: February 7, 2019

SOAH DOCKET NO.	RETAILER NAME	RETAILER ADDRESS	RETAILER NUMBER
362-19-1795	M and M Stores Inc., Agent DBA Super Quick Mart	24814 Kuykendahl Tomball, Texas 77375	182833



DOCKET NO.: SEE ATTACHMENT A

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

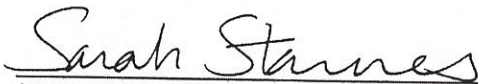
**CONDITIONAL ORDER DISMISSING CASES FROM SOAH
AND REMANDING CASES TO COMMISSION**

On February 21, 2019, a hearing was convened before the State Office of Administrative Hearings (SOAH) on the revocation of the lottery sales agent license held by each retailer listed on Attachment A. Notice of the hearing was provided to each retailer in accordance with 1 Texas Administrative Code § 155.501(b)(2). The Texas Lottery Commission (Commission) served the notice of hearing via certified mail at each retailer's last known address as it appears in the Commission's records, as authorized by 16 Texas Administrative Code § 401.205(4). Each notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing would be held; a reference to the particular sections of the statutes and rules involved; a short, plain statement of the factual matters asserted; and a statement in at least 12-point, bold-face type that the factual allegations listed in the notice could be deemed admitted and the relief sought might be granted by default against a party that failed to appear at the hearing.

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

Accordingly, the motion to dismiss and remand each case listed on Attachment A is conditionally granted, and the case(s) are conditionally dismissed from SOAH's docket and remanded to the Commission for informal disposition under Texas Government Code § 2001.056. Each 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 February 25, 2019.



SARAH STARNES
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

TEXAS LOTTERY COMMISSION

REVOCATION HEARINGS

STATE OFFICE OF ADMINISTRATIVE HEARINGS

ATTACHMENT A

HEARING HELD: February 21, 2019

SOAH DOCKET NO.	RETAILER NAME	RETAILER ADDRESS	RETAILER NUMBER
362-19-1941	Aslam Corporation d/b/a Xpress Beer & Wine	6300 Independence Pkwy, Suite D Plano, Texas 75023	181261
362-19-1942	Ashaji Enterprises, Inc. d/b/a Z K L Food Mart	606 S. Market St. Hearne, Texas 77859	184594
362-19-1944	Mashoo Enterprise, Inc. d/b/a Madi Food Mart	118 N. 5 th St. Rosebud, Texas 76570	185121

Date: APRIL 11, 2019

DOCKET NO. 362-19-0857

TEXAS LOTTERY COMMISSION	§	BEFORE THE TEXAS
PETITIONER	§	
	§	
V.	§	
	§	
STORY INVESTMENTS INC.	§	
D/B/A STEPHENS COUNTRY STORE	§	
RETAILER NO. 153066	§	
RESPONDENT	§	LOTTERY COMMISSION

ORDER OF THE COMMISSION

TO: Story Investments Inc.
d/b/a Stephens Country Corner
404 N. Second St.
Hico, TX 76457
via email at chaudhrymuzaffar@hotmail.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.

Commission Order No. 19-0049

Date: APRIL 11, 2019

NOW, THEREFORE, IT IS ORDERED that the Texas Lottery Ticket Sales Agent License of Story Investments Inc. d/b/a Stephens Country Corner is hereby suspended for ninety (90) days.

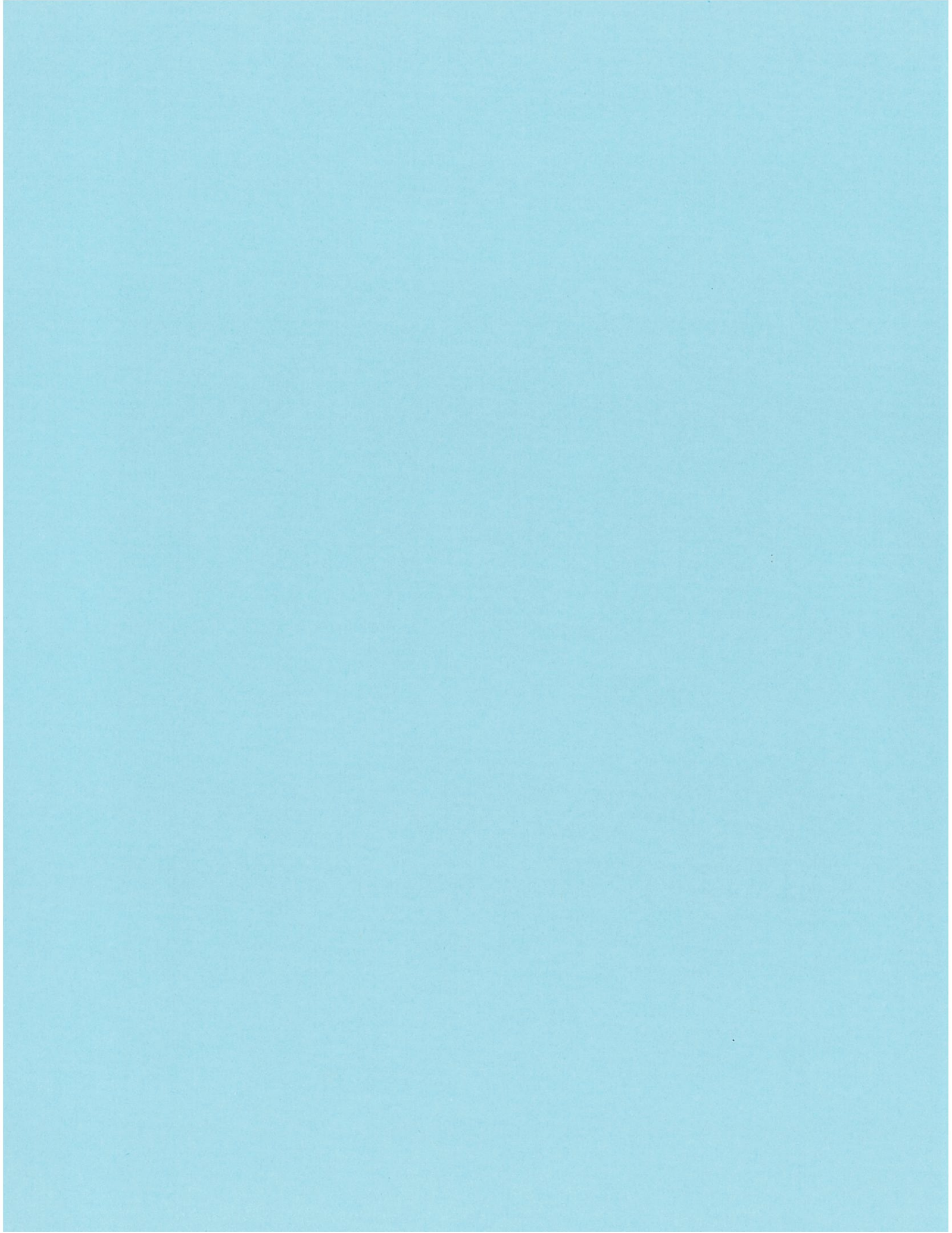
Passed and approved at the regular meeting of the Texas Lottery Commission in Austin, Texas, on the 11TH day of APRIL 2019.

Entered this 11TH day of APRIL 2019.

J. WINSTON KRAUSE, CHAIRMAN

DOUG LOWE, COMMISSIONER

ROBERT RIVERA, COMMISSIONER



State Office of Administrative Hearings



Lesli G. Ginn
Chief Administrative Law Judge

March 18, 2019

Gary Grief
Executive Director
Texas Lottery Commission
611 East 6th St.
Austin, TX 78701

VIA FAX: 512-478-3682

**RE: Docket No. 362-19-0857; Texas Lottery Commission v.
Story Investments Inc., d/b/a Stephens Country Corner,
License No.153066**

Dear Mr. Grief:

I issued the Proposal for Decision (PFD) in this case on February 20, 2019. On Sunday, March 10, 2019, I received an email from Chaudhry Muzaffar on behalf of Story Investment, Inc., that consisted of a “re-appeal”—or, exceptions—concerning the PFD.¹ On March 12, 2019, Mr. Muzaffar uploaded the same document to the case management system of the State Office of Administrative Hearings (SOAH).

Under SOAH’s rule at 1 Texas Administrative Code § 155.507, exceptions to a PFD are due within 15 days after the date the PFD is issued, and a motion to change the time to file exceptions shall be filed no later than the applicable deadline.² The deadline for parties to file exceptions in this case was March 7, 2019. No motion to change this deadline was filed. Therefore, Mr. Muzaffar’s exceptions were untimely. (Nonetheless, I have reviewed the exceptions and determined that they do not raise any new arguments that were not already considered in the preparation of the PFD.)

¹ My assistant contacted Mr. Muzaffar on March 11, 2019, to tell him that the proper procedure is to formally file the document with the State Office of Administrative Hearings and copy the other party.

² 1 Tex. Admin. Code § 155.507(b)(1), (3).

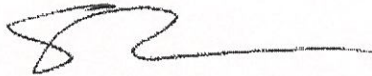
SOAH DOCKET NO. 362-19-0857

EXCEPTIONS LETTER

PAGE 2

No change to the PFD is necessary, and it is ready for consideration by the Texas Lottery Commission.

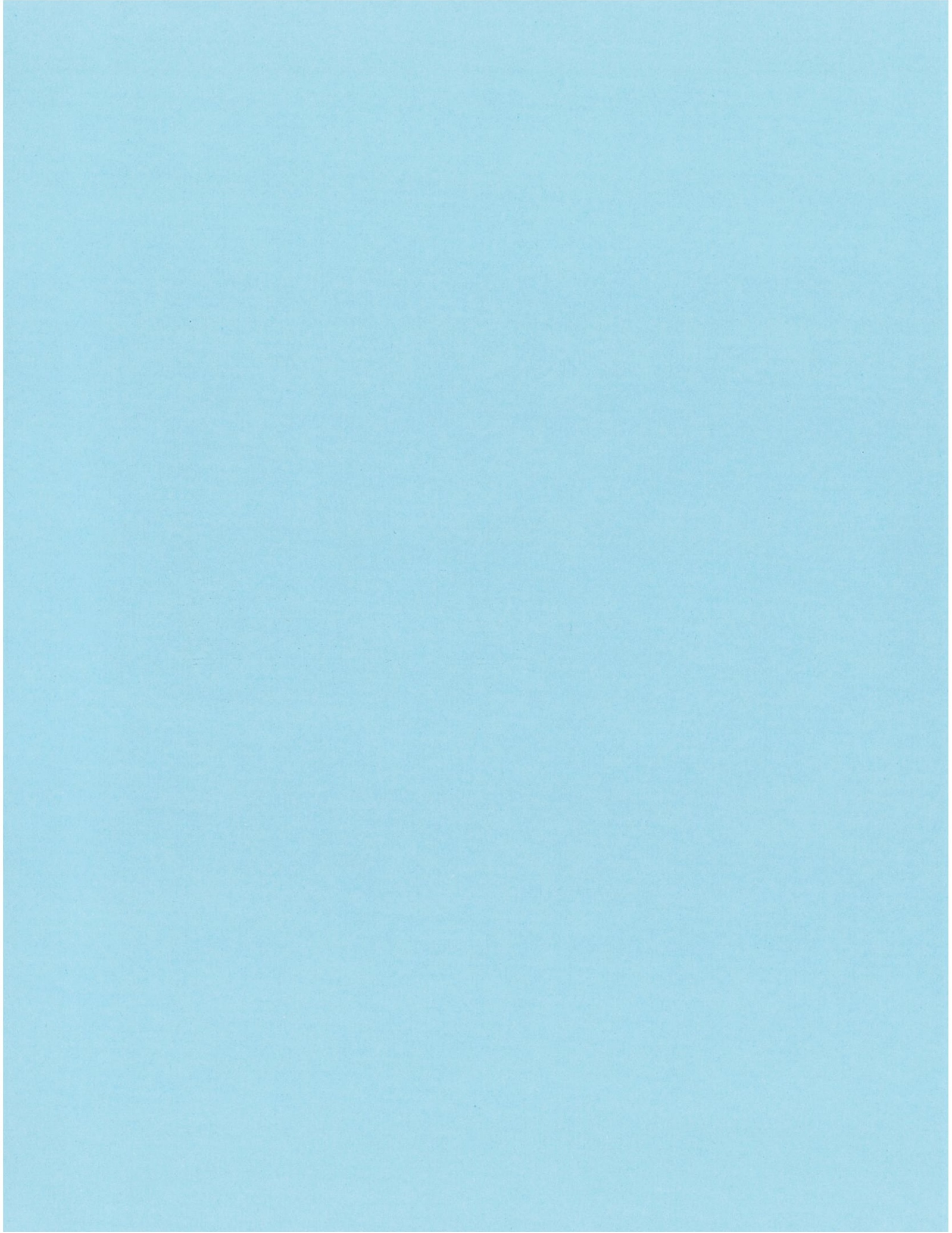
Sincerely,



Shannon Kilgore
Administrative Law Judge

SK/tt

cc: Kristen Guthrie, Assistant General Counsel, Texas Lottery Commission, 611 E. 6th, Austin TX 78701 -
VIA FAX: 512-344-5189
Story Investments Inc. d/b/a Stephens Country Corner, 404 N. Second St., Hico, TX 76457 -
VIA REGULAR MAIL
Story Investments Inc. d/b/a Stephens Country Corner, 9505 Hwy. 377 East, Cresson, TX 76035 -
VIA REGULAR MAIL



State Office of Administrative Hearings



Lesli G. Ginn
Chief Administrative Law Judge

February 20, 2019

Gary Grief
Executive Director
Texas Lottery Commission
611 East 6th St.
Austin, TX 78701

VIA E-MAIL

**RE: Docket No. 362-19-0857; Texas Lottery Commission v.
Story Investments Inc., d/b/a Stephens Country Corner,
License No.153066**

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.texas.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Shannon Kilgore".

Shannon Kilgore
Administrative Law Judge

SK/tt
Enclosure

cc: Kristen Guthrie, Assistant General Counsel, Texas Lottery Commission, 611 E. 6th, Austin TX 78701 -
VIA E-MAIL
Story Investments Inc. d/b/a Stephens Country Corner, 404 N. Second St., Hico, TX 76457 -
VIA REGULAR MAIL
Story Investments Inc. d/b/a Stephens Country Corner, 9505 Hwy. 377 East, Cresson, TX 76035 -
VIA REGULAR MAIL

TEXAS LOTTERY COMMISSION,
Petitioner

v.

STORY INVESTMENTS, INC. DBA
STEPHENS COUNTRY STORE,
TEXAS LOTTERY TICKET SALES
AGENT LICENSE NO. 153066,
Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff (Staff) of the Texas Lottery Commission (Commission) seeks a 90-day suspension of the lottery ticket sales agent's license held by Story Investments, Inc. dba Stephens Country Store (Story), which is owned by Chaudry Muzaffar. Staff alleges that Story's employee, Bhushan Koshe, scratched multiple "Mega 7's" Texas Lottery scratch tickets, sold the losing tickets to customers, and claimed the prizes on the winning tickets. After considering the evidence and arguments presented, the Administrative Law Judge (ALJ) recommends a 90-day suspension of the lottery ticket sales agent's license held by Story.

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 January 23, 2019, State Office of Administrative Hearings ALJ Shannon Kilgore convened the hearing on the merits in this case. Kristen Guthrie, Assistant General Counsel, represented Staff. Mr. Muzaffar appeared for his company, Story. 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 § 466.307 states, in pertinent part:

- (a) A person commits an offense if the person intentionally or knowingly influences or attempts to influence the selection of the winner of a lottery game.

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:

...

- (6) licensee fails to establish or maintain reasonable security precautions with regard to the handling of lottery tickets and other materials;

- (7) licensee endangers the security and/or integrity of the lottery games operated by the Commission; or

...

- (30) licensee intentionally or knowingly influences or attempts to influence the selection of the winner of a lottery game.

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, a report by the Hico Police Department (Hico PD) and an investigation report prepared by Commission investigator Anthony (A.J.) Kozak. Staff called three witnesses: Officer Brandi Hoffman of the Hico PD; Mr. Kozak; and Nancy Guerra, who is in charge of monitoring retail accounts for the Commission. Mr. Muzaffar testified on behalf of Story.

A. Officer Brandi Hoffman

Officer Hoffman testified,² and her report was admitted as Staff Exhibit 4. Officer Hoffman stated that she received a complaint in July 2018 from someone who had purchased Mega 7's tickets at Stephens Country Store and noticed that the tickets were not connected or in sequence, and the bonus was already scratched. She contacted the Commission and then visited Stephens Country Store, seizing 269 tickets. The clerk at the store would not give her the name or contact information for the manager or the owner.

Upon examining the tickets, Officer Hoffman found that they had been disconnected from each other, the bonuses had all been scratched, and there were missing tickets throughout the packs. She contacted the Commission and was informed that 21 tickets had been cashed at one time at the local H.E.B. grocery store. Mr. Koshe, the store manager, then called her, telling her that the in-store video at Stephens Country Store was not functional. Officer Hoffman next obtained a subpoena and visited the H.E.B. to view its surveillance video recording for the time when the 21 tickets were cashed there. The recordings showed Mr. Koshe cashing Lottery tickets at the H.E.B. counter.

¹ Tex. Gov't Code § 466.155(c).

² Tr. at 15-25.

Mr. Kozak and Officer Hoffman then visited the store together. Mr. Koshe told them that he did not play Lottery games. He also stated that he is the only person in the store who activates packs of tickets for sale.

After getting Mr. Muzaffar's contact information from the Commission, Officer Hoffman contacted him. She left a message, but Mr. Muzaffar did not return her call. Mr. Muzaffar did return a call from Mr. Kozak. According to Officer Hoffman, Mr. Muzaffar would not meet them at the store, but instead talked to them by phone. When told about their investigation, Mr. Muzaffar stated that he did not believe Mr. Koshe would do anything like what they were suggesting.

B. A.J. Kozak

Mr. Kozak is an investigator of 10 years with the Commission and was previously with the El Paso Police Department as a peace officer. He testified in the hearing,³ and his reports concerning the investigation of Story are included in Staff Exhibit 5.⁴ Much of what he stated in his testimony and reports corresponded to what Officer Hoffman reported.

According to Mr. Kozak, Mr. Koshe told him that he is the only person who activates Lottery tickets for sale and places them in the dispenser. Also according to Mr. Kozak, Mr. Muzaffar told him that the first name of the manager of the Stephens Country Store was Bhushan, but he could not provide the last name because the name was too difficult to spell. Mr. Muzaffar stated that Mr. Bhushan had complete control of the store, including the video. He said that, although the Lottery account at the store had been losing money, he trusted Bhushan and did not believe he was stealing. After being told about the H.E.B. video showing Mr. Koshe cashing the Lottery tickets, Mr. Muzaffar declined to participate in a criminal prosecution of Mr. Koshe and also did not go to the store to meet with Mr. Kozak, saying he was in another town. Mr. Muzaffar did authorize Mr. Kozak to talk to Mr. Koshe.

³ Tr. at 27-45.

⁴ Mr. Kozak prepared a criminal report and an administrative enforcement report. The two are very similar and are both in Staff Exhibit 5.

Mr. Kozak explained that, on Mega 7's tickets, there is a small place on the bonus box where a small scratch will reveal if the ticket is a winner. He stated that tickets come in packs, are sequentially numbered, and are connected to each other but can be separated at a perforation. Retailers, he said, sell the tickets in order. But at Stephens Country Store, the tickets seized by Officer Hoffman had been separated at the perforation, and tickets were missing from the sequence. Mr. Kozak interpreted this evidence to mean that someone was scratching the tickets, determining the winners and taking those, and leaving the losing tickets for sale to the public. He stated that to scratch a ticket, determine it is a losing ticket, and then sell the ticket amounts to influencing the outcome of the game.

Mr. Kozak further stated that the missing tickets were cashed either at the Stephens Country Store (immediately upon activation) or at the H.E.B. Each ticket bears a unique identifying number, and the Commission's electronic system tracks the location and exact time when a ticket is cashed. Officer Hoffman and Mr. Kozak were able to see on the H.E.B. video, at the exact time when the Stephens Country Store winning tickets were cashed, that the person standing at the H.E.B. counter cashing the tickets was Mr. Koshe.

C. Nancy Guerra

Ms. Guerra, who monitors retail accounts for the Commission, testified at the hearing.⁵ She stated that the violation in this case is grave, given that Lottery players were defrauded of their fair chance to win the Lottery games they paid to participate in. She stated that when Mr. Muzaffar was confronted with evidence of fraud, rather than immediately terminating Mr. Koshe to protect the integrity of the Lottery, he told Mr. Kozak that he trusted his employee. Ms. Guerra pointed to Commission precedent to the effect that Commission licensees are responsible for the illegal acts of their employees.⁶

⁵ Tr. at 46-51.

⁶ Ms. Guerra cited to the Commission's final order in *Texas Lottery Commission v. Anna Plaza, Inc.*, Commission Order No. 19-0017 (Dec. 13, 2018) (SOAH Docket No. 362-18-3432). See Staff Ex. 7.

D. Mr. Muzaffar

Mr. Muzaffar testified at the hearing.⁷ He stated that he does not go to the Stephens Country Store, and that Mr. Koshe handled all matters there. Mr. Muzaffar said he did not avoid Mr. Kozak, but was several hours away at the time of Mr. Kozak's visit to the store. Mr. Muzaffar told Mr. Kozak he would come if necessary, but Mr. Kozak said it was not necessary. He gave Mr. Kozak full permission to investigate and see whatever paperwork or videos he needed. Mr. Muzaffar did not believe he needed to assist in Mr. Koshe's prosecution because it seemed Mr. Kozak had sufficient proof. He said that it is common in his business for employees to steal, in which case it is best to fire the person and find someone else. He testified that he has been in the business for two decades and has always tried to do the right thing and run a fair business.

When asked about his reaction to hearing that Mr. Koshe might be stealing, Mr. Muzaffar stated that he always believes that the people who work for him are honest. In an October 23, 2018 email, Mr. Mazaffar stated that he would fire Mr. Koshe due to the accusations.⁸

IV. ANALYSIS AND RECOMMENDATION

The ALJ determines that Mr. Koshe's wrongful actions are attributable to Story, the Lottery licensee. Mr. Koshe was responsible for all the handling of Lottery tickets at the Stephens Country Store (including the placement of tickets in the dispenser). Mr. Koshe determined which tickets were winning tickets, took and cashed those for himself, and placed only losing tickets in the dispenser for sale to the public. Mr. Koshe's actions with regard to the Lottery tickets were within the course and scope of his employment at the store. Through the actions of Mr. Koshe, Story intentionally or knowingly influenced or attempted to influence the selection of the winner of a Lottery game, and endangered the security and/or integrity of the Lottery games operated by the Commission.⁹ Story's license is subject to suspension or revocation.¹⁰ Story did not

⁷ Tr. at 54-57.

⁸ Staff Ex. 3 at 1.

⁹ Tex. Gov't Code § 466.307(a); 16 Tex. Admin. Code §§ 401.158(b)(7), (30), .366. Because the issue here was not one of an applicant's experience, character, or general fitness, and the problem was not so much a failure to take precautions as deliberate acts of fraud, the ALJ does not believe that Texas Government Code § 466.151(e) and 16 Texas Administrative Code § 401.158(b)(6) apply to the facts of this case.

¹⁰ Tex. Gov't Code § 466.155(a); 16 Tex. Admin. Code § 401.158(a)-(b).

demonstrate that the proposed 90-day suspension is unreasonable, given the fraudulent nature of the violations and the fact that Mr. Muzaffar had not fired Mr. Koshe even months after these matters were brought to Mr. Muzaffar's attention.¹¹ The ALJ recommends that Story's lottery ticket sales agent's license be suspended for 90 days.

V. FINDINGS OF FACT

1. Story Investments, Inc. dba Stephens Country Store (Story) holds a lottery ticket sales agent's license issued by the Texas Lottery Commission (Commission).
2. Story is owned by Chaudhry Muzaffar.
3. In June and July 2018, Bhushan Koshe was the general manager of the Stephens Country Store and was in charge of all aspects of the store, including the handling of Lottery tickets.
4. During this time, Mr. Koshe went through Mega 7's Lottery tickets provided to Stephens Country Store for sale, scratching the bonus box to determine the winning tickets, cashing the winning tickets for himself, and placing the losing tickets in the dispenser for sale to the public.
5. Mr. Koshe's actions with regard to the Lottery tickets were within the course and scope of his employment at the store.
6. Through Mr. Koshe's pre-scratching of Lottery tickets and selling of only losing tickets, Story intentionally or knowingly influenced or attempted to influence the selection of the winner of a Lottery game, and endangered the security and/or integrity of the Lottery games operated by the Commission.
7. When apprised of the situation by local law enforcement and Commission staff (Staff), Mr. Muzaffar did not immediately terminate Mr. Koshe.
8. Mr. Koshe was still employed at the Stephens Country Store in October 2018.
9. On November 12, 2018, Staff sent Story 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.

¹¹ Tex. Gov't Code § 466.155(c).

10. On January 23, 2019, State Office of Administrative Hearings (SOAH) Administrative Law Judge Shannon Kilgore convened the hearing on the merits in this case. Kristen Guthrie, Assistant General Counsel, represented Staff. Mr. Muzaffar appeared for his company, Story. The record closed the same day.

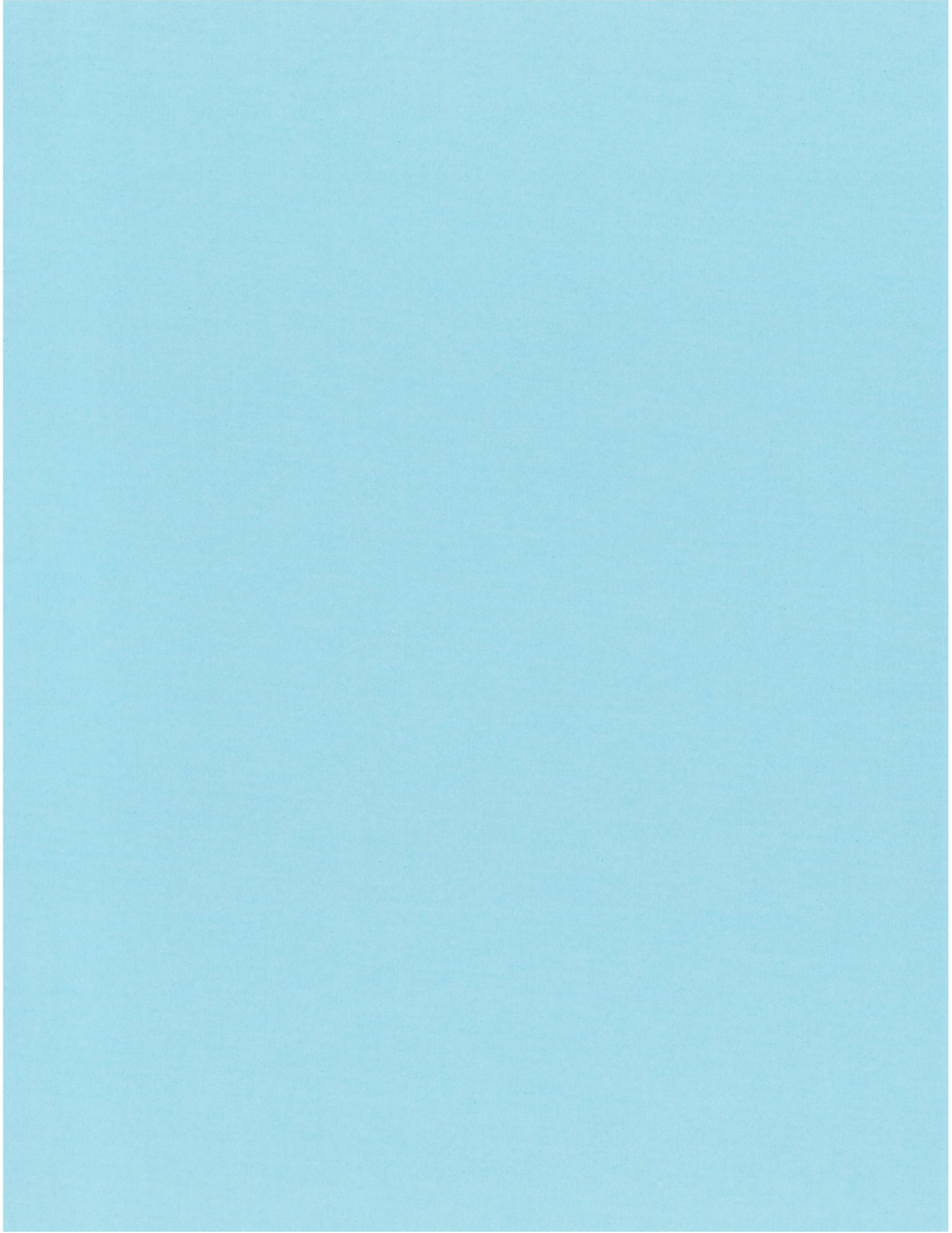
VI. CONCLUSIONS OF LAW

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. Story violated Texas Government Code § 466.307(a) and 16 Texas Administrative Code §§ 401.158(b)(7), (30) and .366.
5. Story's license is subject to suspension or revocation. Tex. Gov't Code § 466.155(a); 16 Tex. Admin. Code § 401.158(a)-(b).
6. Story did not demonstrate that a 90-day suspension of its license is unreasonable, given the fraudulent nature of the violations and the fact that Mr. Muzaffar had not fired Mr. Koshe months after these matters were brought to Mr. Muzaffar's attention. Tex. Gov't Code § 466.155(c).
7. The Lottery ticket sales agent's license of Story should be suspended for 90 days.

SIGNED February 20, 2019.



**SHANNON KILGORE
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**



To,

Shannon Kilgore

Administrative Law Judge

State Office of Administrative Hearings

300 W. 15th Street, Suite 504

Austin, Texas 78701

RE: Docket No. 362-19-0857; Texas Lottery Commission v. Story Investment Inc., d/b/a Stephens Country Corner, License No.153066

Dear Judge Shannon.

I have appeared in your court on January 23rd, 2019 regarding the **"Docket No. 362-19-0857; Texas Lottery Commission v. Story Investment Inc., d/b/a Stephens Country Corner, License No.153066"**.

Presented myself and have explained the whole situation and my position to best of my knowledge and I have received a letter from your office dated February 20th, 2019 in which Texas Lottery is pressing a charge to suspend my Lottery license for 90 days.

In response to that I want to file an appeal against the decision because I feel that the Texas Lottery investigator (A.J.) Kozak and their witnesses have manipulated and twisted the whole story and my position, I would like to provide some more information about the whole case so that it will help you to understand my situation.

Once this investigation started and brought to my knowledge when I have received a call from Texas Lottery investigator (A.J.) Kozak explaining the whole situation and findings about the store employee who was involved in this case or wrong doing I have told Mr. Kozak that I am an absentee owner of the convenient store and live quite far away and just visits the store once in a week to check the paper work and I have authorized Mr. Kozak to prosecute the employee as law permits and I am in compliance with it, Mr. Kozak told me that the district Attorney has already built the case against the involved employee and we do not need you and we are just informing you about the case and situation and I told Mr. Kozak that they can go ahead and prosecute him and I will not challenge it at all because they have all the proofs and videos against the employee but instead of prosecuting the involved employee they have built a case against me and presented it to you that I was fully aware and kind a involved with this while this is totally wrong and even on the date of above Docket in your court the Texas Lottery


investigator Mr. Kozak, Assistant General Counsel Mrs. Kristen Guthrie and other team members have tried to force me to accept the guilt and they can reduce the suspension of license to 30-days but I argued why should I accept the blame when I am not involve at all with it and I have assured that they are free to prosecute the employee involved as per law and I will not challenge it, it is a same situation when an employee sells a tobacco/alcohol beverage(s) to an underage customer the law prosecute the employee who has been fully trained with respect to laws and do not put the blame on the owner of that business or charge the business.

So I would request you to please reconsider my situation and please do not suspend the Texas Lottery license issued to my business as it will greatly affect the whole convenient store business.

I will be very grateful and thankful to you for your reconsideration of the above Docket:

Thanks and Sincerely

Chaudhry, T Muzaffar


Stephens Country Store (DBA)

817-734-1758

