





# 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

*RB*

**Date:** June 6, 2019

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

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

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**Date: JUNE 6, 2019**

<b>IN THE MATTER OF</b>	<b>§</b>	<b>BEFORE THE STATE OFFICE</b>
	<b>§</b>	
	<b>§</b>	<b>OF</b>
<b>THE REVOCATION OF CERTAIN</b>	<b>§</b>	
<b>LOTTERY RETAILER LICENSES</b>	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>

**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 the Commission for informal disposition, in accordance with Tex. Gov’t Code §2001.058(d-1) and 1 Tex. Admin. Code §155.501(d).



**Commission Order No. 19-0054**

**Date: JUNE 6, 2019**

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.

**III. Order**

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

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

**Commission Order No. 19-0054**

**Date: JUNE 6, 2019**

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 6<sup>TH</sup> day of JUNE 2019.

Entered this 6<sup>TH</sup> day of JUNE 2019.

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J. WINSTON KRAUSE, CHAIRMAN

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MARK A. FRANZ, COMMISSIONER

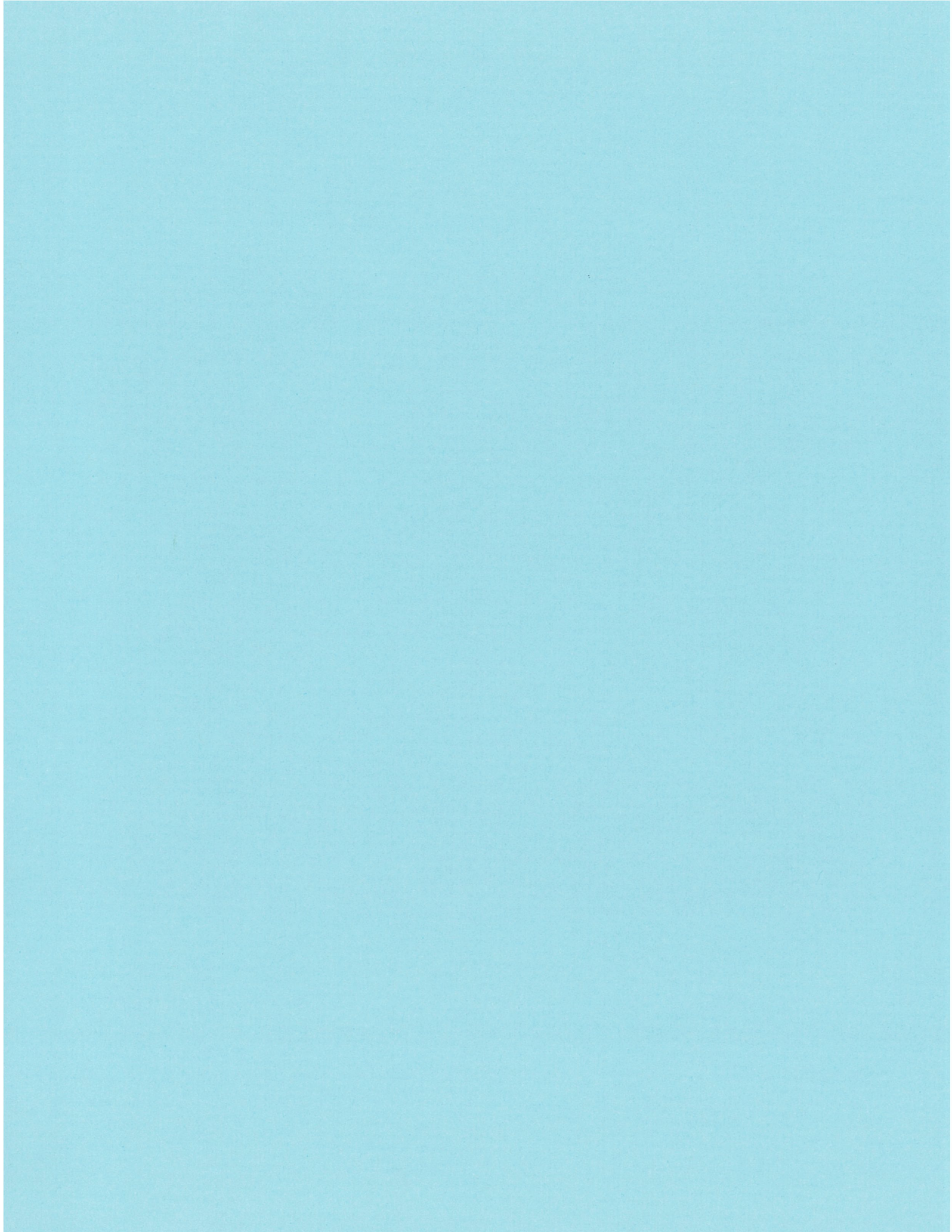
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ROBERT RIVERA, COMMISSIONER

Date: JUNE 6, 2019

**ATTACHMENT A**

<b>TAB NO.</b>	<b>SOAH DOCKET NO.</b>	<b>TICKET SALES AGENT NAME</b>	<b>TICKET SALES AGENT ADDRESS</b>	<b>LOTTERY LICENSE NO.</b>
A.	362-19-2527	MS & GK Enterprises Inc. d/b/a Neighborhood Food Mart	2417 Castorville Road San Antonio, TX 78237-3366	178509
B.	362-19-2699	Dallas Trading Enterprises Inc. d/b/a Kuick Check	P.O. Box 642 Meridian, TX 76665	128089
C.	362-19-2700	New S & B Group Inc. d/b/a Cap's Mini Mart	2801 Justin Rd. Flower Mound, TX 75028	129022
D.	362-19-2702	Wildcat Donuts LLC d/b/a Wildcat Donuts #3	1301 15 Street Corpus Christi, TX 78404	182266
E.	362-19-2703	Noor Sodhi LLC d/b/a Super Mart One	1406 Esters Rd., Apt. 2020 Irving, TX 75061	184364
F.	362-19-3494	Texas KSD Enterprise Inc. d/b/a D Savannah Food & Deli	15403 Longhorn Cavern Sugar Land, TX 77498	178346



DOCKET NO.: SEE ATTACHMENT A

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

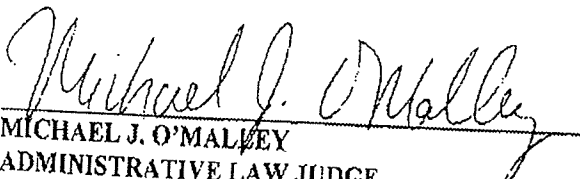
CONDITIONAL ORDER DISMISSING CASE(S) FROM SOAH  
AND REMANDING CASE(S) TO COMMISSION

On March 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 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(e).

SIGNED March 21, 2019.

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

# ATTACHMENT A

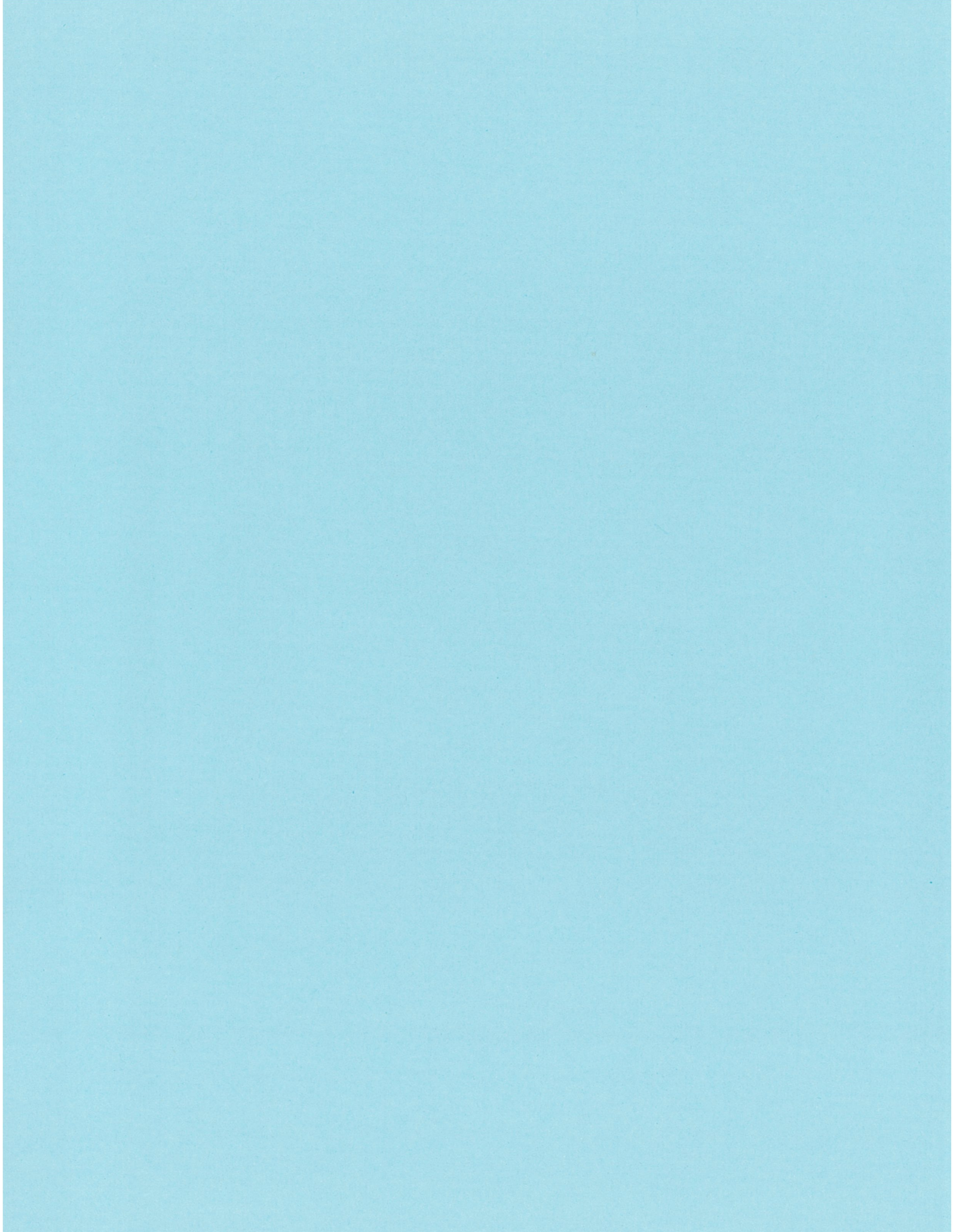
TEXAS LOTTERY COMMISSION  
REVOCATION HEARING  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

EXHIBIT 1

HEARING HELD: March 21, 2019

SOAH DOCKET NO.	RETAILER NAME	RETAILER ADDRESS	RETAILER NUMBER
362-19-2527	MS & GK Enterprises Inc., Agent DBA Neighborhood Food Mart	2417 Castorville Road San Antonio, Texas 78237-3366	178509









TEXAS LOTTERY COMMISSION

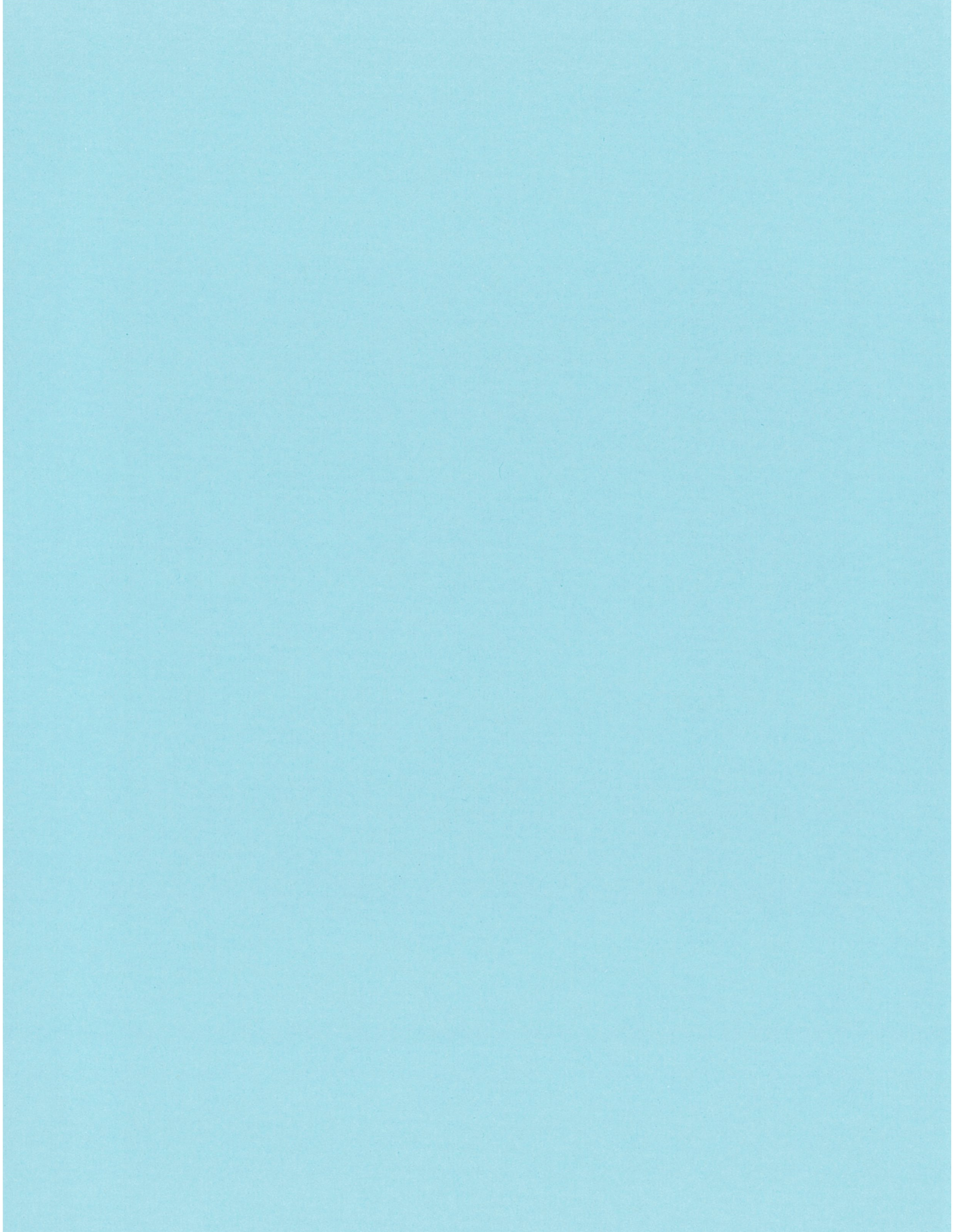
REVOCACTION HEARING

STATE OFFICE OF ADMINISTRATIVE HEARINGS

*Attachment A*

HEARING HELD: March 28, 2019

SOAHDCKET NO.	RETAILER NAME	RETAILER ADDRESS	RETAILER NUMBER
362-19-2699	Dallas Trading Enterprises Inc., Agent DBA Kuick Check	P.O. Box 642 Meridian, Texas 76665	128089
362-19-2700	New S & B Group Inc., Agent DBA Cap's Mini Mart	2801 Justin Rd Flower Mound, Texas 75028	129022
362-19-2702	Wildcat Donuts LLC, Agent DBA Wildcat Donuts #3	1301 15 Street Corpus Christi, Texas 78404	182266
362-19-2703	Noor Sodhi LLC, Agent DBA Super Mart One	1406 Esters Rd., Apt. 2020 Irving, Texas 75061	184364



DOCKET NO.: SEE ATTACHMENT A

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

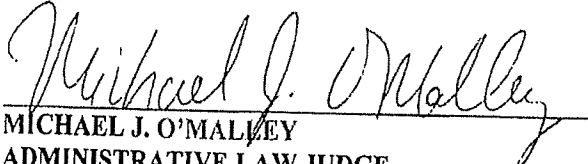
**CONDITIONAL ORDER DISMISSING CASE(S) FROM SOAH  
AND REMANDING CASE(S) TO COMMISSION**

On May 2, 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 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 at the hearing. 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(e).

**SIGNED May 2, 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: May 2, 2019

SOAH DOCKET NO.	RETAILER NAME	RETAILER ADDRESS	RETAILER NUMBER
362-19-3494	Texas KSD Enterprise Inc., Agent DBA D Savannah Food & Deli	15403 Longhorn Cavern Sugar Land, Texas 77498	178346



**Commission Order No. 19-0055**

**Date: JUNE 6, 2019**

**Case No. 2019-39**

<b>IN THE MATTER OF</b>	§	<b>BEFORE THE TEXAS</b>
	§	
<b>PANJWANI ENERGY LLC</b>	§	
<b>D/B/A STAR STOP 34</b>	§	
	§	
<b>TEXAS LOTTERY TICKET SALES</b>	§	
<b>AGENT LICENSE NO. 596179</b>	§	<b>LOTTERY COMMISSION</b>

**MEMORANDUM OF AGREEMENT AND CONSENT ORDER**

The Texas Lottery Commission (Commission) and Panjwani Energy LLC d/b/a Star Stop 34 (Star Stop 34) make the following Agreed Findings of Fact, Agreed Conclusions of Law and Memorandum of Agreement, and enter into this Consent Order.

**AGREED FINDINGS OF FACT**

1. Star Stop 34 holds Texas Lottery Ticket Sales Agent License No. 596179.
2. Feroz Panjwani is president of Star Stop 34, which is located at 4545 S. Lamar Blvd., Austin, TX 78745.
3. On June 27, 2018, the Commission received a complaint that, on June 26 and 27, 2018, Star Stop 34 sold several Texas Lottery scratch tickets that had been partially scratched in the bonus play area.
4. On June 29, 2018, a Commission investigator found two tickets for sale at Star Stop 34 that had been pre-scratched in the bonus play area. Additionally, the investigator found one pack of tickets had been arranged for sale from high number to low with some tickets already removed. When asked by the investigator about scratching tickets, Lima Begum, a Star Stop 34

employee, stated that she scratched them so that she could identify possible winning tickets to sell to regular customers.

**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 the Commission rules, 16 Tex. Admin. Code Chapter 401.

2. Star Stop 34 is obligated to follow the provisions of the State Lottery Act and the Commission rules to maintain its Texas Lottery Ticket Sales Agent License.

3. Star Stop 34, by and through its employee Lima Begum, is subject to disciplinary action pursuant to Tex. Gov't Code §466.307(a) and 16 Tex. Admin. Code §§ 401.158(b)(6), (7), and (30) and 401.366.

4. Tex. Gov't Code §466.307(a) states:

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.

5. 16 Tex. Admin. Code §401.158(b) states, in pertinent part:

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

...

(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;

...

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

6. 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.



7. The Texas Legislature has mandated that the Commission “exercise strict control and close supervision over all lottery games conducted in this state to promote and ensure integrity, security, honesty, and fairness in the operation and administration of the lottery.” Tex. Gov’t Code §466.014(a).

8. Under Texas law, an employer is liable, vicariously, for the acts of its servants committed in the course and scope of their employment. *GTE Southwest, Inc. v. Bruce*, 998 S.W.2d 605, 617–18 (Tex. 1999). An employee is acting within the scope of their employment if they are performing duties generally assigned to them, regardless of whether the employee acted intentionally and unlawfully. *Fink v. Anderson*, 477 S.W.3d 460, 468 (Tex. App.— Houston [1st Dist.] 2015, no pet.).

9. The State Lottery Act recognizes that a sales agent’s unlicensed employees may lawfully perform lottery-related duties of their licensee employers, including selling and handling lottery tickets and handling the revenue generated from ticket sales. Tex. Gov’t Code §§ 466.201(a)(7), 466.303(a), 466.305(a), 466.3051(a), and 466.353(a). Thus, the Commission’s ability to attribute employee violations committed within the course and scope of their employment to their licensee employer is reasonably necessary to fulfill the Commission’s express duty to exercise strict control and supervision over the lottery, and is within the Commission’s implied authority.

10. The Texas Lottery Ticket Sales Agent License of Star Stop 34 is subject to suspension or revocation pursuant to Tex. Gov’t Code §466.155(a)(5), as a result of Star Stop 34’s violation of Tex. Gov’t Code §466.307(a) and 16 Tex. Admin. Code §§ 401.158(b)(6), (7), and (30) and 401.366.



## MEMORANDUM OF AGREEMENT

1. By signing this Memorandum of Agreement and Consent Order, Star Stop 34 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. Star Stop 34 agrees that, as a result of its violation of Tex. Gov't Code §466.307(a) and 16 Tex. Admin Code §§ 401.158(b)(6), (7), and (30) and 401.366, its Ticket Sales Agent License will be suspended for a period of thirty (30) 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, Star Stop 34 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, Star Stop 34 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 Star Stop 34's Ticket Sales Agent License is posted.

5. Star Stop 34 agrees that Lima Begum is prohibited from employment at Star Stop 34 for as long as Star Stop 34 holds a Texas Lottery Ticket Sales Agent License.

6. Star Stop 34 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 Star Stop 34's

Ticket Sales Agent License, for any further violations of the State Lottery Act or Commission rules.

7. Star Stop 34 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.

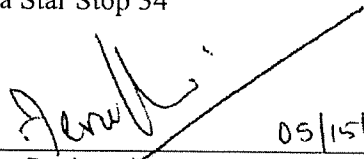
8. Star Stop 34 agrees that if, after a public hearing on the sole issue of compliance with the Memorandum of Agreement and Consent Order, it is found that Star Stop 34 has failed to comply with the terms of the Memorandum of Agreement and Consent Order, disciplinary action shall be taken against Star Stop 34, up to and including revocation of its Texas Lottery Ticket Sales Agent License.

9. Star Stop 34 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 Star Stop 34 will be charged for tickets sold on or before that date. Star Stop 34 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:

Panjwani Energy LLC  
d/b/a Star Stop 34

By:

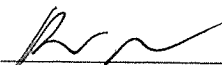
  
Feroz Panjwani  
President

05/15/2019

DATE

Texas Lottery Commission  
Lottery Operations Division

By:

  
Ryan S. Mindell  
Director

5-20-19

DATE

**Commission Order No. 19-0055**

**Date: JUNE 6, 2019**

**Case No. 2019-39**

<b>IN THE MATTER OF</b>	<b>§</b>	<b>BEFORE THE TEXAS</b>
	<b>§</b>	
<b>PANJWANI ENERGY LLC</b>	<b>§</b>	
<b>D/B/A STAR STOP 34</b>	<b>§</b>	
	<b>§</b>	
<b>TEXAS LOTTERY TICKET SALES</b>	<b>§</b>	
<b>AGENT LICENSE NO. 596179</b>	<b>§</b>	<b>LOTTERY COMMISSION</b>

**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 Panjwani Energy LLC d/b/a Star Stop 34's (Star Stop 34) Texas Lottery Ticket Sales Agent License, the license is suspended for a period of thirty (30) 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, Star Stop 34 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, Star Stop 34 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 Star Stop 34's Texas Lottery Ticket Sales Agent License is posted.

**Commission Order No. 19-0055**

**Date: JUNE 6, 2019**

(3) IT IS FURTHER ORDERED by the Commission that Lima Begum is prohibited from employment at Star Stop 34 for as long as Star Stop 34 holds a Texas Lottery Ticket Sales Agent License.

(4) 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 Star Stop 34 has failed to comply with the terms of this Order, disciplinary action shall be taken against Star Stop 34, up to and including revocation of its Texas Lottery Ticket Sales Agent License. .

(5) IT IS FURTHER ORDERED by the Commission that Star Stop 34 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 Star Stop 34 will be charged for the tickets sold on or before that date. Star Stop 34 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.

**Commission Order No. 19-0055**

**Date: JUNE 6, 2019**

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

Entered this 6<sup>TH</sup> day of JUNE 2019.

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J. WINSTON KRAUSE, CHAIRMAN

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MARK A. FRANZ, COMMISSIONER

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ROBERT RIVERA, COMMISSIONER



**Commission Order No. 19-0056**

**Date: JUNE 6, 2019**

**Case No. 2019-160**

<b>IN THE MATTER OF</b>	§	<b>BEFORE THE TEXAS</b>
	§	
<b>PANJWANI ENERGY LLC</b>	§	
<b>D/B/A STAR STOP 42</b>	§	
	§	
<b>TEXAS LOTTERY TICKET SALES</b>	§	
<b>AGENT LICENSE NO. 600757</b>	§	<b>LOTTERY COMMISSION</b>

**MEMORANDUM OF AGREEMENT AND CONSENT ORDER**

The Texas Lottery Commission (Commission) and Panjwani Energy LLC d/b/a Star Stop 42 (Star Stop 42) make the following Agreed Findings of Fact, Agreed Conclusions of Law and Memorandum of Agreement, and enter into this Consent Order.

**AGREED FINDINGS OF FACT**

1. Star Stop 42 holds Texas Lottery Ticket Sales Agent License No. 600757.
2. Feroz Panjwani is president of Star Stop 42, which is located at 14304 Gulf Freeway, Houston, TX 77034.
3. On August 26, 2018, the Commission received a complaint that Star Stop 42 sold Texas Lottery scratch tickets for the same game out of numerical sequence. On September 25, 2018, a Commission investigator found three (3) scratch tickets at Star Stop 42 that had been pre-scratched in the bonus play area. The investigator reviewed a surveillance video for September 25, 2018, in the presence of store managers Jalaluddin Venkani and Fahim Ali, and witnessed Kishan Awal, a Star Stop 42 employee, pre-scratching the tickets seized by the investigator. Mr. Awal admitted to the investigator that he scratched the tickets.

**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 the Commission rules, 16 Tex. Admin. Code Chapter 401.

2. Star Stop 42 is obligated to follow the provisions of the State Lottery Act and the Commission rules to maintain its Texas Lottery Ticket Sales Agent License.

3. Star Stop 42, by and through its employee Kishan Awal, is subject to disciplinary action pursuant to Tex. Gov't Code §466.307(a) and 16 Tex. Admin. Code §§ 401.158(b)(6), (7), and (30) and 401.366.

4. Tex. Gov't Code §466.307(a) states:

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.

5. 16 Tex. Admin. Code §401.158(b) states, in pertinent part:

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

...

(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;

...

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

6. 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.

7. The Texas Legislature has mandated that the Commission "exercise strict control and close supervision over all lottery games conducted in this state to promote and ensure integrity,



security, honesty, and fairness in the operation and administration of the lottery.” Tex. Gov’t Code §466.014(a).

8. Under Texas law, an employer is liable, vicariously, for the acts of its servants committed in the course and scope of their employment. *GTE Southwest, Inc. v. Bruce*, 998 S.W.2d 605, 617–18 (Tex. 1999). An employee is acting within the scope of their employment if they are performing duties generally assigned to them, regardless of whether the employee acted intentionally and unlawfully. *Fink v. Anderson*, 477 S.W.3d 460, 468 (Tex. App.— Houston [1st Dist.] 2015, no pet.).

9. The State Lottery Act recognizes that a sales agent’s unlicensed employees may lawfully perform lottery-related duties of their licensee employers, including selling and handling lottery tickets and handling the revenue generated from ticket sales. Tex. Gov’t Code §§ 466.201(a)(7), 466.303(a), 466.305(a), 466.3051(a), and 466.353(a). Thus, the Commission’s ability to attribute employee violations committed within the course and scope of their employment to their licensee employer is reasonably necessary to fulfill the Commission’s express duty to exercise strict control and supervision over the lottery, and is within the Commission’s implied authority.

10. The Texas Lottery Ticket Sales Agent License of Star Stop 42 is subject to suspension or revocation pursuant to Tex. Gov’t Code §466.155(a)(5), as a result of Star Stop 42’s violation of Tex. Gov’t Code §466.307(a) and 16 Tex. Admin. Code §§ 401.158(b)(6), (7), and (30) and 401.366.

### **MEMORANDUM OF AGREEMENT**

1. By signing this Memorandum of Agreement and Consent Order, Star Stop 42 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. Star Stop 42 agrees that, as a result of its violation of Tex. Gov't Code §466.307(a) and 16 Tex. Admin Code §§ 401.158(b)(6), (7), and (30) and 401.366, its Ticket Sales Agent License will be suspended for a period of thirty (30) 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, Star Stop 42 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, Star Stop 42 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 Star Stop 42's Ticket Sales Agent License is posted.

5. Star Stop 42 agrees that Kishan Awal is prohibited from employment at Star Stop 42 for as long as Star Stop 42 holds a Texas Lottery Ticket Sales Agent License.

6. Star Stop 42 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 Star Stop 42's Ticket Sales Agent License, for any further violations of the State Lottery Act or Commission rules.

7. Star Stop 42 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.

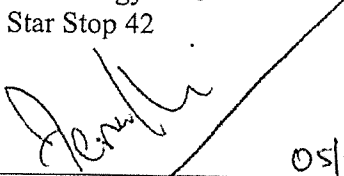
8. Star Stop 42 agrees that if, after a public hearing on the sole issue of compliance with the Memorandum of Agreement and Consent Order, it is found that Star Stop 42 has failed to comply with the terms of the Memorandum of Agreement and Consent Order, disciplinary action shall be taken against Star Stop 42, up to and including revocation of its Texas Lottery Ticket Sales Agent License.

9. Star Stop 42 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 Star Stop 42 will be charged for tickets sold on or before that date. Star Stop 42 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:

Panjwani Energy LLC  
d/b/a Star Stop 42

By:

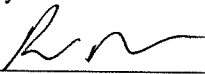
  
\_\_\_\_\_  
Feroz Panjwani  
President

05/15/2019

DATE

Texas Lottery Commission  
Lottery Operations Division

By:

  
\_\_\_\_\_  
Ryan S. Mindell  
Director

5-20-19

DATE

**Commission Order No. 19-0056**

**Date: JUNE 6, 2019**

**Case No. 2019-160**

<b>IN THE MATTER OF</b>	<b>§</b>	<b>BEFORE THE TEXAS</b>
	<b>§</b>	
<b>PANJWANI ENERGY LLC</b>	<b>§</b>	
<b>D/B/A STAR STOP 42</b>	<b>§</b>	
	<b>§</b>	
<b>TEXAS LOTTERY TICKET SALES</b>	<b>§</b>	
<b>AGENT LICENSE NO. 600757</b>	<b>§</b>	<b>LOTTERY COMMISSION</b>

**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 Panjwani Energy LLC d/b/a Star Stop 42's (Star Stop 42) Texas Lottery Ticket Sales Agent License, the license is suspended for a period of thirty (30) 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, Star Stop 42 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, Star Stop 42 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 Star Stop 42's Texas Lottery Ticket Sales Agent License is posted.

**Commission Order No. 19-0056**

**Date: JUNE 6, 2019**

(3) IT IS FURTHER ORDERED by the Commission that Kishan Awal is prohibited from employment at Star Stop 42 for as long as Star Stop 42 holds a Texas Lottery Ticket Sales Agent License.

(4) 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 Star Stop 42 has failed to comply with the terms of this Order, disciplinary action shall be taken against Star Stop 42, up to and including revocation of its Texas Lottery Ticket Sales Agent License.

(5) IT IS FURTHER ORDERED by the Commission that Star Stop 42 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 Star Stop 42 will be charged for the tickets sold on or before that date. Star Stop 42 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.

**Commission Order No. 19-0056**

**Date: JUNE 6, 2019**

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

Entered this 6<sup>TH</sup> day of JUNE 2019.

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J. WINSTON KRAUSE, CHAIRMAN

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MARK A. FRANZ, COMMISSIONER

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ROBERT RIVERA, COMMISSIONER



Commission Order No. 19-0057

Date: JUNE 6, 2019

Case No. 2019-442

IN THE MATTER OF	§	BEFORE THE TEXAS
	§	
SHEHNIL ENTERPRISE LLC	§	
D/B/A SADDLEHORN MARKET	§	
	§	
TEXAS LOTTERY TICKET SALES	§	
AGENT LICENSE NO. 176023	§	LOTTERY COMMISSION

**MEMORANDUM OF AGREEMENT AND CONSENT ORDER**

The Texas Lottery Commission (Commission) and Shehnil Enterprise LLC d/b/a Saddlehorn Market (Saddlehorn Market) make the following Agreed Findings of Fact, Agreed Conclusions of Law and Memorandum of Agreement, and enter into this Consent Order.

**AGREED FINDINGS OF FACT**

1. Saddlehorn Market holds Texas Lottery Ticket Sales Agent License No. 176023.
2. Liaquat Miaji is a managing member of Saddlehorn Market, which is located at 801 W. Rice Street, Falfurrias, TX 78355.
3. On November 28, 2018, in the United States District Court, Southern District of Texas, in Case No. 4:16CR00170-006, Sayed Ali, managing member of Saddlehorn Market, was convicted of conspiracy to possess with intent to distribute a Schedule 1 controlled substance, a third-degree felony, and sentenced to fifty (50) months confinement in prison. The date of the offense was April 28, 2016. Ten years have not elapsed since the termination of the sentence, parole, mandatory supervision, or probation served for the sentence.

**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. Saddlehorn Market is obligated to follow the provisions of the State Lottery Act and Commission rules to maintain its Texas Lottery Ticket Sales Agent License.

3. Saddlehorn Market, by and through its managing member Sayed Ali, is subject to disciplinary action pursuant to Tex. Gov't Code §§ 466.152(a) and 466.155(a) and 16 Tex. Admin. Code §§ 401.152(b), 401.153(b)(1), and 401.158(a).

4. Tex. Gov't Code §466.152(a) states:

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

5. Tex. Gov't Code §466.155(a) states, in pertinent parts:

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

(1) is an individual who:

(A) has been convicted of a felony, criminal fraud, gambling or a gambling-related offense, or a misdemeanor involving moral turpitude, if less than 10 years has elapsed since the termination of the sentence, parole, mandatory supervision, or probation served for the offense.

(2) is not an individual, and an individual described in Subdivision (1):

(A) is an officer or director of the applicant or sales agent;

(B) holds more than 10 percent of the stock in the applicant or sales agent.

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

6. 16 Tex. Admin. Code §401.152(b) states, in pertinent part:

An applicant must disclose all criminal convictions for those individuals of whom an investigation is authorized under the Government Code, §466.201, and which are requested in the application.

7. 16 Tex. Admin. Code §401.153(b) states, in pertinent part:

The director shall deny an application for a license under this subchapter upon a finding that the applicant:

(1) has been convicted of a felony, criminal fraud, gambling or a gambling-related offense, or a misdemeanor involving moral turpitude, if less than 10 years has elapsed since the termination of the sentence, parole, mandatory supervision, or probation served for the offense.

8. 16 Tex. Admin. Code §401.158 states, in pertinent parts:

(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:

(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.

9. The Texas Lottery Ticket Sales Agent License of Saddlehorn Market is subject to suspension or revocation pursuant to Tex. Gov't Code §466.155(a)(5), as a result of Saddlehorn Market's violation of Tex. Gov't Code §§ 466.152(a) and 466.155(a) and 16 Tex. Admin. Code §§ 401.152(b), 401.153(b)(1), and 401.158(a).

### **MEMORANDUM OF AGREEMENT**

1. By signing this Memorandum of Agreement and Consent Order, Saddlehorn Market 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. Saddlehorn Market agrees and shall ensure that Sayed Ali will not be an officer, director, or owner of more than 10 percent of Saddlehorn Market; will not hold an equitable interest

of more than 10 percent in Saddlehorn Market; will not be a creditor who holds more than 10 percent of any of Saddlehorn Market's outstanding debts; will not be the owner or lessee of a business that Saddlehorn Market conducts or through which Saddlehorn Market will conduct a ticket sales agency; will not share in the profits, other than stock dividends, of Saddlehorn Market; and will not participate in managing the affairs of Saddlehorn Market.

4. Saddlehorn Market 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 Saddlehorn Market's Texas Lottery Ticket Sales Agent License, for any further violations of the State Lottery Act or Commission rules.

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

6. Saddlehorn Market 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 Saddlehorn Market has failed to comply with the terms of the Memorandum of Agreement and Consent Order, disciplinary action shall be taken against Saddlehorn Market, up to and including revocation of its Texas Lottery Ticket Sales Agent License.

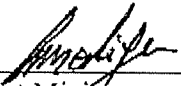
AGREED AS TO FORM AND SUBSTANCE:

Shehnil Enterprise LLC  
D/B/A Saddlehorn Market

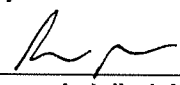
Texas Lottery Commission  
Lottery Operations Division

By:

By:

  
\_\_\_\_\_  
Liaquat Mia  
Managing Member

5-15-2019  
DATE

  
\_\_\_\_\_  
Ryan S. Mindell  
Director, Lottery Operations Division

5-17-19  
DATE

**Commission Order No. 19-0057**

**Date: JUNE 6, 2019**

**Case No. 2019-442**

<b>IN THE MATTER OF</b>	<b>§</b>	<b>BEFORE THE TEXAS</b>
	<b>§</b>	
<b>SHEHNIL ENTERPRISE LLC</b>	<b>§</b>	
<b>D/B/A SADDLEHORN MARKET</b>	<b>§</b>	
	<b>§</b>	
<b>TEXAS LOTTERY TICKET SALES</b>	<b>§</b>	
<b>AGENT LICENSE NO. 176023</b>	<b>§</b>	<b>LOTTERY COMMISSION</b>

**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 Shehnil Enterprise LLC d/b/a Saddlehorn Market's (Saddlehorn Market) Texas Lottery Ticket Sales Agent License, Saddlehorn Market shall ensure that Sayed Ali will not be an officer, director, or owner of more than 10 percent of Saddlehorn Market; will not hold an equitable interest of more than 10 percent in Saddlehorn Market; will not be a creditor who holds more than 10 percent of any of Saddlehorn Market's outstanding debts; will not be the owner or lessee of a business that Saddlehorn Market conducts or through which Saddlehorn Market will conduct a ticket sales agency; will not share in the profits, other than stock dividends, of Saddlehorn Market; and will not participate in managing the affairs of Saddlehorn Market.

**Commission Order No. 19-0057**

**Date: JUNE 6, 2019**

(2) 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 Saddlehorn Market has failed to comply with the terms of this Order, disciplinary action shall be taken against Saddlehorn Market, up to and including revocation of its Texas Lottery Ticket Sales Agent License.

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

Entered this 6<sup>TH</sup> day of JUNE 2019.

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J. WINSTON KRAUSE, CHAIRMAN

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MARK A. FRANZ, COMMISSIONER

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ROBERT RIVERA, COMMISSIONER



**Commission Order No. 19-0058**

**Date: JUNE 6, 2019**

**DOCKET NOS. 362-18-2320 and 362-18-2321**

<b>TEXAS LOTTERY COMMISSION</b>	§	<b>BEFORE THE TEXAS</b>
<b>Petitioner</b>	§	
	§	
<b>v.</b>	§	
	§	
<b>EVEREST ASSOCIATES LLC</b>	§	
<b>D/B/A QUICK STOP</b>	§	
<b>RETAILER LICENSE NO. 142389</b>	§	
	§	
<b>4405 PANTHER LLC</b>	§	
<b>D/B/A PANTHER QUICK STOP</b>	§	
<b>RETAILER LICENSE NO. 182838</b>	§	
<b>Respondents</b>	§	<b>LOTTERY COMMISSION</b>

**ORDER OF THE COMMISSION**

TO: Mr. Stephen Fenoglio  
*via fax at (512) 482-8095*

Mr. Favad Bajaria  
*via fax at (214) 888-3071*

4405 Panther LLC  
d/b/a Panther Quick Stop  
4418 Red Oak Trail  
Longview, TX 75604

Everest Associates LLC  
d/b/a Quick Stop  
1119 W. Marshall Ave.  
Longview, TX 75604

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

**Commission Order No. 19-0058**

**Date: JUNE 6, 2019**

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 Licenses of Everest Associates LLC d/b/a Quick Stop and of 4405 Panther LLC d/b/a Panther Quick Stop are hereby suspended for ninety (90) days.

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

Entered this 6<sup>TH</sup> day of JUNE 2019.

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J. WINSTON KRAUSE, CHAIRMAN

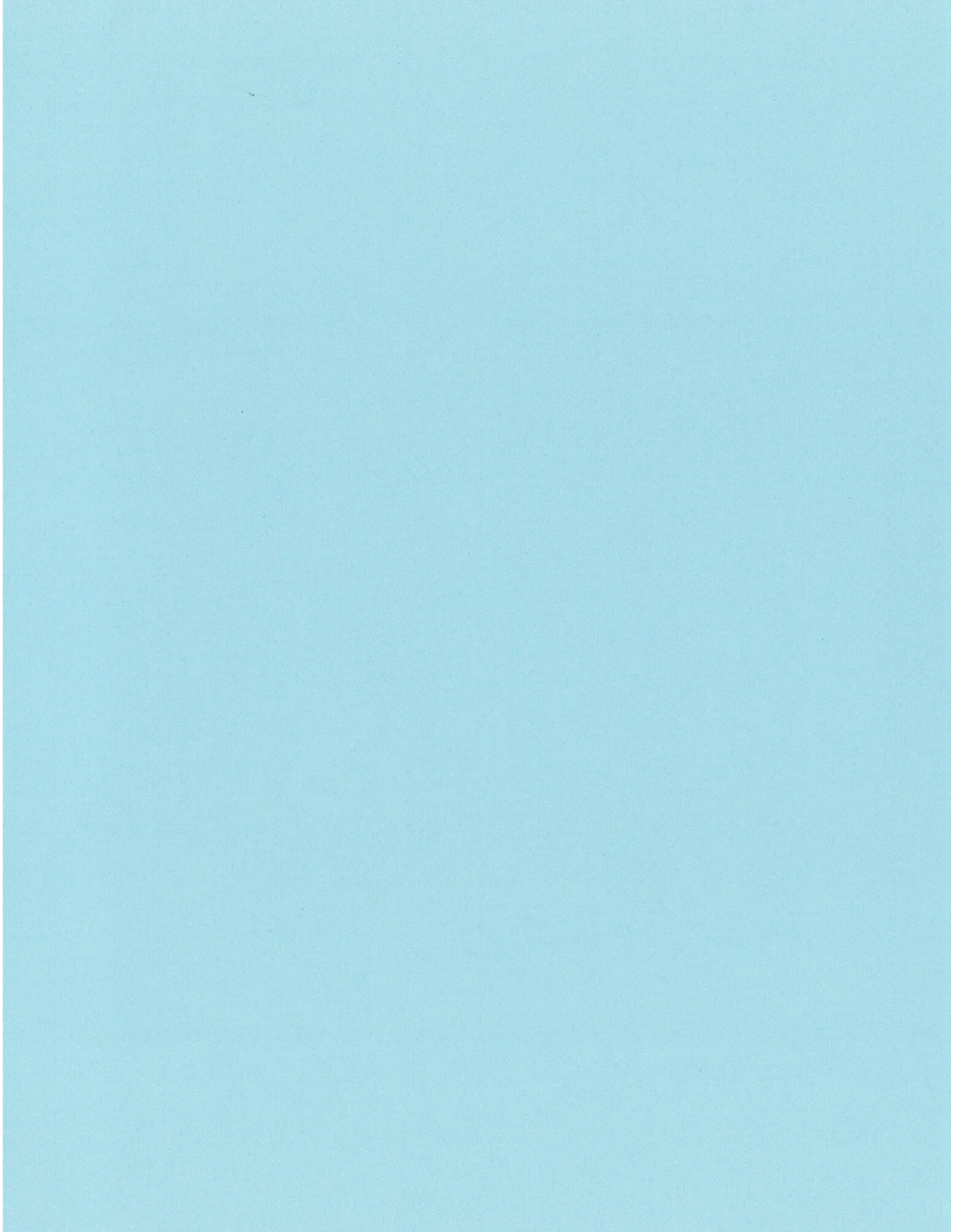
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MARK A. FRANZ, COMMISSIONER

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ROBERT RIVERA, COMMISSIONER





# State Office of Administrative Hearings



Lesli G. Ginn  
Chief Administrative Law Judge

January 7, 2019

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

VIA E-MAIL

**RE: Docket Nos. 362-18-2320 and 362-18-2321; Texas Lottery Commission v. Everest Associates, LLC, d/b/a Quick Stop; Texas Lottery Commission v. 4405 Panther, LLC, d/b/a Panther Quick Stop, License Nos. 142389 and 182838**

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](http://www.soah.state.tx.us)>.

Sincerely,

Rudy Calderon  
Administrative Law Judge

RC/sh

cc: Kristen Guthrie, Assistant General Counsel, Texas Lottery Commission, P.O. Box 16630, Austin, TX 78761-6630 - VIA E-MAIL  
Stephen Fenoglio, Attorney, 713 W. 14<sup>th</sup> Street, Austin, TX 78701-1707 -VIA REGULAR MAIL

**SOAH DOCKET NO. 362-18-2320**

<b>TEXAS LOTTERY COMMISSION,</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>Petitioner</b>	§	
<b>v.</b>	§	<b>OF</b>
	§	
<b>EVEREST ASSOCIATES, LLC D/B/A</b>	§	
<b>QUICK STOP,</b>	§	
<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**SOAH DOCKET NO. 362-18-2321**

<b>TEXAS LOTTERY COMMISSION,</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>Petitioner</b>	§	
<b>v.</b>	§	<b>OF</b>
	§	
<b>4405 PANTHER, LLC D/B/A PANTHER</b>	§	
<b>QUICK STOP,</b>	§	
<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

**I. INTRODUCTION**

The staff (Staff) of the Texas Lottery Commission (Commission) alleges that Mukesh C. Patolia, managing member and owner of Everest Associates LLC, d/b/a Quick Stop, Sales Agent License No. 142398 (Everest); and 4405 Panther LLC, d/b/a Panther Quick Stop, Sales Agent License No. 182838 (Panther) (collectively, Respondents) violated the State Lottery Act (Act)<sup>1</sup> and Commission Rules (Rules)<sup>2</sup> by unlawfully purchasing a customer's winning lottery ticket worth \$5,000 for \$3,750, therefore being compensated \$1,250. Staff also alleges

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<sup>1</sup> Tex. Gov't Code ch. 466.

<sup>2</sup> 16 Tex. Admin. Code ch. 401.

Respondents misrepresented to the Commission's Claim Center staff on an official Commission claim form that he lawfully purchased the prize-winning ticket and was the only person entitled to the prize. For these alleged violations, Staff suggests revocation of Respondents' licenses.

The Administrative Law Judge (ALJ) finds that Respondents did commit the alleged violations, however, the ALJ concludes that the Commission should impose a 90-day suspension of Respondents' licenses.

## II. JURISDICTION, NOTICE & PROCEDURAL HISTORY

There are no disputes concerning notice and jurisdiction. The findings of fact and conclusions of law address those matters.

On September 6, 2018, State Office of Administrative Hearings (SOAH) ALJ Rudy Calderon convened the hearing on the merits at SOAH in Austin, Texas. Kristen Guthrie, attorney, appeared and represented Staff. Stephen Fenoglio, attorney, appeared for Respondents. The hearing concluded that same day and the record closed on November 7, 2018.

## III. APPLICABLE LAW

Texas Government Code § 466.155(a) states:<sup>3</sup>

(a) After a hearing, . . . the commission shall suspend or revoke a license if the . . . commission . . . finds that the . . . sales agent:

. . .

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

. . .

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<sup>3</sup> Due to changes to the Government Code subsequent to the offense date, statutes cited are those in effect at the time of the offense.

- (c) At a hearing, [a] . . . sales agent must show by a preponderance of the evidence why the . . . the license [should not be] suspended or revoked.

Texas Government Code § 466.308(a) states:

- (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.
- (b) In this section, “claim” includes an attempt to claim, without regard to whether the attempt is successful.

In pertinent part, Texas Government 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.

And Texas Government Code §466.402(b) states:

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

Additionally, 16 Texas Administrative Code § 401.158(a) provides:

[T]he commission may suspend or revoke any 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;

- (34) 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.

Further, 16 Texas Administrative Code: § 401.366 states:

Each retailer agrees to operate in a manner consistent with the State Lottery Act, and 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.

The Commission imposes penalties, including suspensions and revocations, in accordance with 16 Texas Administrative Code § 401.160, which specifies factors to be considered and penalty ranges for various violations. At 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.<sup>4</sup>

#### IV. EVIDENCE

At the hearing Staff admitted 16 exhibits and presented the testimony of Mr. Carlos Salinas, an investigator with the Commission; Mr. David Veselka, Retail Services Manager; and Ms. Nancy Guerra, a Commission Retailer Services Specialist. Respondents offered three exhibits as well as the testimony of several witnesses including Mr. Mukesh Patolia (Mr. Patolia) and Ms. Gloria Rubio (Ms. Rubio).

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<sup>4</sup> Texas Gov't Code §466.155(c).



Respondents are licensed by the Commission as ticket sales agents to sell Texas lottery tickets at its stores located at 4418 Red Oak Trail, Longview, Texas (Panther) and 1119 W. Marshall Ave., Longview, Texas (Everest). Panther was originally licensed in April 2017, and Everest was originally licensed in April 2005.

In November 2016, Ms. Rubio purchased a \$20 Texas Lottery "Super Break The Bank" scratch ticket (No. 1779-0215137-016) at the Thriftee Food Store & Laundromat in Longview, Texas.<sup>5</sup> Ms. Rubio's scratch ticket was a \$5,000 prize winner. Later, on or about November 28, 2016, Ms. Rubio took her winning ticket to the Everest store where Mr. Patolia was working that day. Ms. Rubio inquired as to how and where to redeem her winning ticket. She was informed by Mr. Patolia that she would need to redeem her ticket at the Commission Claims Center in Tyler, Texas. During her testimony, she stated that she does not drive on highways for fear of large trucks and traffic and asked Mr. Patolia if he could redeem the ticket for her. She testified that she understood that taxes would most likely have to be paid on the winnings and Mr. Patolia agreed that this was most likely the case. Ms. Rubio and Mr. Patolia both testified that 25% was the most likely tax rate for the winnings. Ms. Rubio and Mr. Patolia agreed that Mr. Patolia would go to Tyler to redeem her ticket and that \$1,250 (25% of \$5,000) would be put towards the tax liability for the winnings. Mr. Patolia then gave Ms. Rubio \$3,750 and took possession of the ticket. No evidence was presented by Respondents to show taxes were paid for the redeemed lottery ticket.

On January 2, 2017, Mr. Patolia presented the ticket to the Tyler Claim Center for redemption. Prior to relinquishing the ticket, Rubio had written the address of the Thriftee Food Store & Laundromat, where she had purchased the ticket, on the back of the ticket. Subsequently, Mr. Patolia filled out a claim form at the Tyler office. The claim form Mr. Patolia signed states:

Under penalty of law, I declare that to the best of my knowledge and belief, the information entered above is correct and correctly identifies the person entitled to claim this prize; no other person is entitled to claim any part of this prize; and the recipient is not prohibited by law from purchasing a ticket or claiming, collecting

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<sup>5</sup> Pet. Ex. 7.

or receiving a lottery prize or share of a prize. I understand it is a violation of law for any person to intentionally or knowingly, claim or aid another in claiming a lottery prize, or a share of a prize, by means of fraud, deceit, or misrepresentation, or to intentionally or knowingly alter or forge a ticket.<sup>6</sup>

Upon examination, the Tyler office noticed that the handwriting on the back of the ticket and the claim form were different. While the lottery winnings were ultimately paid to Mr. Patolia, the discrepancy in handwriting led to an investigation.

On March 22, 2017, the Commission initiated an investigation. A Commission investigator, Carlos Salinas (Mr. Salinas), conducted the investigation. Mr. Salinas testified that he spoke with both Mr. Patolia and Ms. Rubio and that both had recounted the same story as to how Mr. Patolia came into possession of the ticket and the terms of the transaction. Mr. Salinas then recommended the investigation be closed due to insufficient evidence. However, Staff made the determination to proceed with the revocation of Respondents' licenses as a matter of public policy and contended that in similar contested cases, where a sales agent's owner has purchased the prize-winning ticket of another person, the Commission has consistently revoked that sales agent's license. Respondents argued that no such rule exists and that this policy equated to an unwritten rule that has not been communicated to the regulated community.

Additionally, Staff presented evidence and testimony that the Commission is required to deduct certain delinquencies (*i.e.*, delinquent tax amounts, delinquent child support, etc.) from a prize winner's lottery winnings.<sup>7</sup> So, if Ms. Rubio owed any money for those delinquencies, the amounts owed would have been deducted from the prize winnings. Mr. Patolia's actions prevented the Tyler Claim Center from checking if Ms. Rubio had any unpaid debts because by signing the claim form, he represented that he purchased the ticket and was the only person entitled to claim the prize.

During the hearing on the merits, testimony and exhibits were introduced concerning "pool play." However, there was no evidence presented by Respondents that Mr. Patolia and Ms. Rubio

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<sup>6</sup> Pet. Ex. 11.

<sup>7</sup> *Id.*; Tex. Gov't Code § 466.407.



were involved in a “pool play” arrangement, and during briefing Staff made it clear they were not seeking violations related to “pool play.”

## V. ANALYSIS

The ALJ finds that Respondents did commit the alleged violations, and for reasons discussed below, concludes that the Commission should suspend Respondents’ licenses for 90 days.

The facts in this case are undisputed. Ms. Rubio purchased the prize-winning ticket for \$20.<sup>8</sup> When she discovered the ticket was a winner, Ms. Rubio went to the Everest store and Mr. Patolia paid \$3,750 for Rubio’s ticket. Both Ms. Rubio and Mr. Patolia agree that the remaining \$1,250 would be held back by Mr. Patolia for the tax liability incurred. However, no evidence was presented at hearing that Mr. Patolia actually used the \$1,250 to pay the tax liability. Since Respondents could not show that the money was used for taxes, the \$1,250 Mr. Patolia kept should be considered compensation for redeeming Ms. Rubio’s ticket at the Tyler Claim Center. Therefore, Mr. Patolia violated section 466.310(a)(3) of the Act and 16 Texas Administrative Code § 401.158(a)(34)(C) by buying Ms. Rubio’s prize-winning ticket. The Act states, “A person commits an offense if the person: .... (3) offers, for compensation, to claim the prize of another person.”<sup>9</sup> In this case, Mr. Patolia and Ms. Rubio agreed that Mr. Patolia would redeem Ms. Rubio’s winning ticket. It was only after Mr. Patolia told Ms. Rubio he would satisfy the taxes and then paid her \$3,750, that Ms. Rubio transferred her right to claim her prize. Therefore, Mr. Patolia violated the Act and Commission rules because he offered to claim and then actually claimed the prize of another person for compensation.

Ms. Rubio was not a licensed lottery retailer. Accordingly, Mr. Patolia, as Respondents’ owner, further violated the Act by purchasing a prize-winning ticket from a person who was not a

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<sup>8</sup> Pet. Ex. 7.

<sup>9</sup> Tex. Gov’t Code § 466.310(a)(3).

licensed lottery retailer.<sup>10</sup> Here, Respondents' owner did exactly that: it is undisputed that Respondents' owner paid Ms. Rubio, who is not a licensed lottery retailer, for her \$5,000 prize-winning ticket.

Additionally, Mr. Patolia violated section 466.308(a)(1) of the Act and 16 Texas Administrative Code § 401.158(b)(32) by misrepresenting on an official claim form that he purchased a prize-winning ticket, which was actually purchased by another person. Specifically, section 466.308(a)(1) of the Act states, "A person commits an offense if the person intentionally or knowingly . . . claims a lottery prize or a share of a lottery prize by means of fraud, deceit, or misrepresentation." Misrepresenting that you purchased someone else's ticket is also a violation of 16 Texas Administrative Code § 401.158(b)(32), if a "licensee intentionally or knowingly claims a lottery prize or a share of a lottery prize by means of fraud, deceit, or misrepresentation . . . ."

It is undisputed that Ms. Rubio purchased her winning scratch ticket for \$20.<sup>11</sup> In fact, she wrote on the back of the ticket the address of the store where she bought the ticket. When Mr. Patolia cashed Ms. Rubio's ticket at the Tyler Claim Center, he submitted a signed Commission form misrepresenting that he purchased the ticket.<sup>12</sup> Mr. Patolia also signed a declaration that he understands it is a violation of the law to claim a ticket by misrepresentation. Despite this advisory, Mr. Patolia still misrepresented that he purchased the prize-winning ticket, and the Commission paid him the \$5,000 prize. In addition to this misrepresentation, Mr. Patolia also obtained the lottery prize by means of fraud by intentionally providing false information on a Commission claim form. Therefore, Mr. Patolia, as Respondents' owner, violated Texas Government Code § 466.308(a)(1) and 16 Texas Administrative Code § 401.158(b)(32).

Finally, Staff is seeking to revoke Respondents licenses and argues that as a matter of policy, licensees who are also owners are not entitled to the lesser punishment of suspension of

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<sup>10</sup> 16 Tex. Admin. Code § 401.158(a)(34)(D).

<sup>11</sup> Pet. Ex. 6.

<sup>12</sup> Pet. Ex. 11.

their license and only face the possibility of revocation for an offense. However, Staff presented no evidence that this policy has been communicated to the regulated community or is contained in any training manual, online resource, or rule. This amounts to an unwritten rule. The punishment range for licensees is:<sup>13</sup>

First Occurrence: 10 – 90-day Suspension to Revocation

Second Occurrence: 30 – 90-day Suspension to Revocation

Third Occurrence: Revocation

Since this was Respondents' first occurrence, the ALJ concludes that a suspension of Respondents' licenses for 90 days is the appropriate sanction.

## VI. FINDINGS OF FACT

1. Everest Associates LLC d/b/a Quick Stop (Everest) is licensed by the Texas Lottery Commission (Commission) as Ticket Sales Agent No. 142398 to sell Texas Lottery tickets at its store located at 1119 W. Marshall Ave., Longview, Texas.
2. 4405 Panther LLC d/b/a Panther Quick Stop (Panther) is licensed by the Commission as Ticket Sales Agent No. 182838 to sell Texas Lottery tickets at its store located at 4418 Red Oak Trail, Longview, Texas.
3. Everest was originally licensed by the Commission on April 15, 2005 and Panther was originally licensed on April 17, 2017.
4. Mukesh C. Patolia is the managing member of Everest and Panther.
5. In November of 2016, Gloria Rubio purchased a Texas Lottery scratch ticket, "Super Break The Bank" scratch ticket #1779-0215137-016 (Ticket). The Ticket was a winning ticket with a \$5000 prize.
6. On or about November 28, 2016, Ms. Rubio spoke to Mr. Patolia about the Ticket. Mr. Patolia told Ms. Rubio that he would pay \$3,750 for the Ticket, which is \$1,250 less than face value. Mr. Patolia claimed he would need 25% of the winnings for taxes.
7. After purchasing the Ticket, Mr. Patolia attempted to claim the prize at the Tyler Claim Center. Mr. Patolia submitted a claim form (Claim Number 20429777) in which he

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<sup>13</sup> Resp. Ex. 1, 16 Tex. Admin. Code § 401.160(g)(10).

represented that he (Mukesh C. Patolia) was the person entitled to claim the prize and that no other person is entitled to claim any part of the prize.


8. When processing the Ticket claim, the Claim Center noted the handwriting on the claim form and the handwriting on the back of the Ticket were different.
9. Thereafter, the Commission's Enforcement Division began an investigation into the circumstances of Claim Number 20429777 (Investigation). During the course of the Investigation, a Commission investigator interviewed Mr. Patolia and Ms. Rubio. The investigation confirmed the facts set forth in Findings of Fact 5, 6, 7, and 8.
10. On December 1, 2017, Staff mailed letters to Respondents, by first class and certified mail to their address of record, informing Respondents of Staff's conclusion that Respondents had violated Tex. Gov't Code §§ 466.308, 466.310(a) and 16 Tex. Admin. Code § 401.158(b)(32), (34), and (41).
11. On February 15, 2018, Staff mailed notices of hearing to Respondents, by first class and certified mail to their address of record, informing Respondents that:
  - a. Staff alleged that Respondents on or about November 28, 2016, purchased a \$5,000 winning Texas Lottery scratch ticket, "Super Break The Bank" scratch ticket #1779-0215137-016, from a customer for approximately \$3,750;
  - b. Staff had concluded that Respondents had violated Texas Government Code §§ 466.308, 466.310(a) and 16 Tex. Admin. Code § 401.158(b)(32), (34), and (41) based on the above; and
  - c. A contested hearing would be held by an Administrative Law Judge (ALJ) at State Office of Administrative Hearings (SOAH) on May 15, 2018.
12. On September 6, 2018, ALJ Rudy Calderon convened the hearing on the merits at SOAH in Austin, Texas. The hearing concluded that day and the record closed on November 7, 2018.
13. Kristen Guthrie, attorney, appeared at the hearing and represented Staff.
14. Stephen Fenoglio, attorney, appeared at the hearing and represented Respondents.

## VII. CONCLUSIONS OF LAW

1. The Commission is responsible for the Texas state lottery, including the licensing and regulation of ticket sales agents. Tex. Gov't Code ch. 466.
2. After a hearing, the Commission shall suspend or revoke a license if the Commission finds that a sales agent has violated chapter 466 of the Texas Government Code or a rule adopted under the chapter. Tex. Gov't Code § 466.155(a)(5).
3. SOAH has jurisdiction over all matters relating to the conduct of this proceeding, including the authority to issue a Proposal for Decision with proposed findings of fact and conclusions of law. Tex. Gov't Code ch. 2003.
4. Respondent received proper and timely notice of the hearing. Tex. Gov't Code §§ 2001.051-.052.
5. Respondent had the burden of proof by a preponderance of the evidence. Tex. Gov't Code § 466.155(c).
6. A person commits an offense if the person intentionally or knowingly claims a lottery prize or a share of a lottery prize by means of fraud, deceit, or misrepresentation. In this section, "claim" includes an attempt to claim, without regard to whether the attempt is successful. Tex. Gov't Code § 466.308(a)(1),(b).
7. A person commits an offense if the person induces another person to assign or transfer a right to claim a prize; or offers, for compensation, to claim the prize of another person. Tex. Gov't Code § 466.310(a).
8. The Commission may suspend or revoke a license if the licensee:
  - a. intentionally or knowingly claims a lottery prize or a share of a lottery prize by means of fraud, deceit, or misrepresentation;
  - b. induces another person to assign or transfer a right to claim a prize; initiates or accepts an offer of compensation from another person to claim a lottery prize; or purchases a lottery ticket from a person who is not a licensed lottery retailer; or
  - c. has violated a provision of the State Lottery Act, Government Code, Chapter 466 or a rule adopted under the State Lottery Act. 16 Tex. Admin. Code § 401.158(b)(31), (33), (40).
9. Based on the above Findings of Fact, Respondents violated Texas Government Code §§ 466.308(a)(1) and 466.310(a)(1),(3) and 16 Tex. Admin. Code § 401.158(b) (32), (34)(A),(C),(D), and (41).

10. The Commission penalty policy allows for a 10-90 day suspension to revocation for a first occurrence. 16 Tex. Admin. Code § 401.160(g)(1).
11. Based on the Findings of Fact and Conclusions of Law set out above, Respondents' Lottery Retail Sales Agent's licenses should be suspended for 90 days.

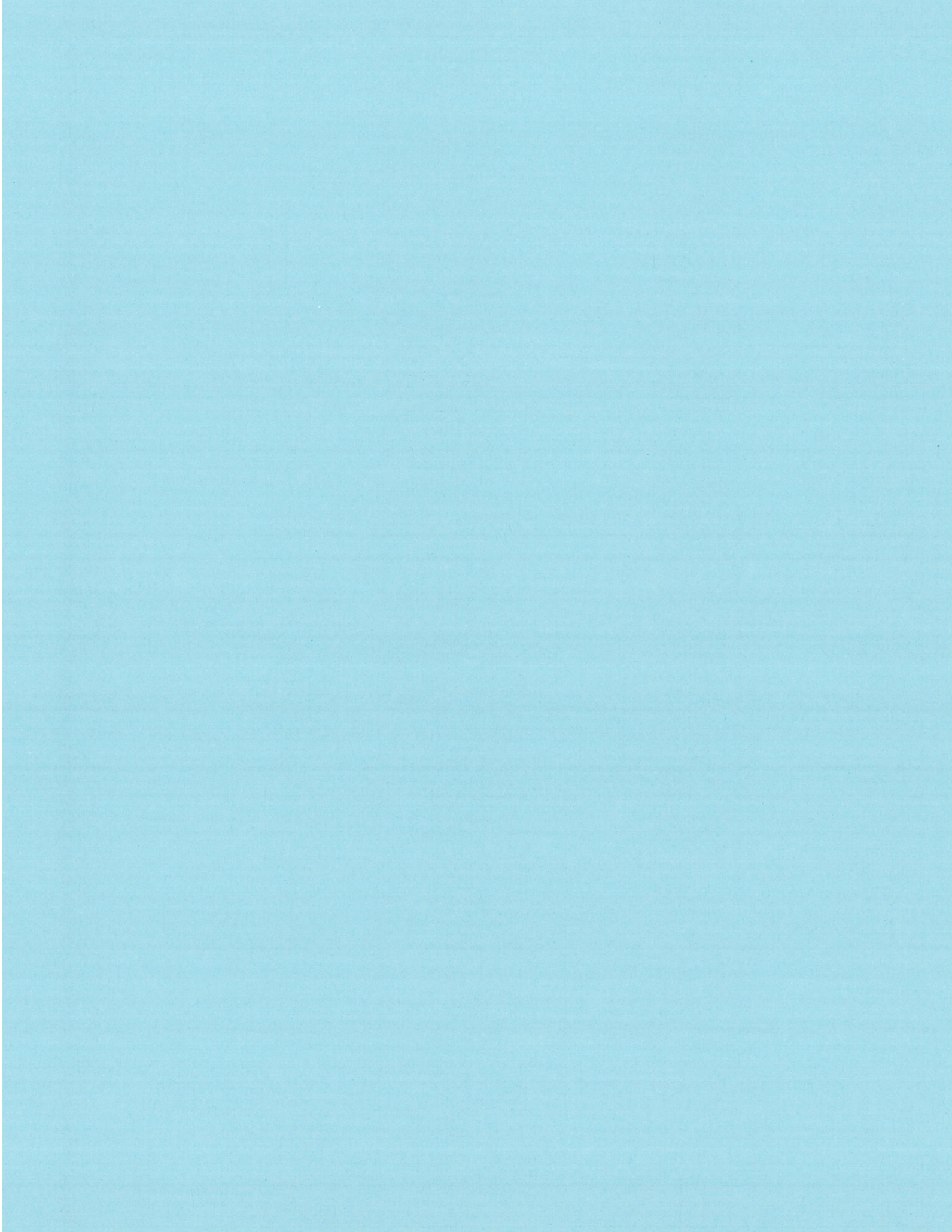
SIGNED January 7, 2019.



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RUDY CALDERON  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS





SOAH DOCKET NO. 362-18-2320.B

TEXAS LOTTERY COMMISSION	§	BEFORE THE STATE OFFICE
V.	§	
	§	OF
EVEREST ASSOCIATES, LLC	§	
D/B/A QUICK STOP	§	ADMINISTRATIVE HEARINGS

SOAH DOCKET NO. 362-18-2321

TEXAS LOTTERY COMMISSION	§	BEFORE THE STATE OFFICE
V.	§	
	§	OF
4405 PANTHER, LLC	§	
D/B/A PANTHER QUICK STOP	§	ADMINISTRATIVE HEARINGS

RESPONDENTS' EXCEPTIONS TO PROPOSAL FOR DECISION

TO THE HONORABLE STATE OFFICE OF ADMINISTRATIVE HEARINGS:

COMES NOW, Everest Associates, LLC d/b/a Quick Stop and 4405 Panther, LLC d/b/a Panther Quick Stop (collectively, "Respondent"), and files this its Exceptions to the Honorable Administrative Law Judge's (the "ALJ") Proposal for Decision ("PFD") and as grounds therefor would show as follows.

**Mr. Patolia Received No Compensation**

The ALJ is wrong in concluding that Mr. Patolia violated the Lottery Act by claiming a lottery prize for another person for compensation (ALJ's Conclusion of Law Nos. 7, 8, and 9).

Here is the defining paragraph in the Proposal for Decision:

The facts in this case are undisputed. Ms. Rubio purchased the prize-winning ticket for \$20. When she discovered the ticket was a winner, Ms. Rubio went to the Everest store and Mr. Patolia paid \$3,750 for Rubio's ticket. Both Ms. Rubio and Mr. Patolia agree that the remaining \$1,250 would be held back by Mr. Patolia for the tax liability incurred. However, no evidence was presented at hearing that Mr. Patolia actually used the \$1,250 to pay the tax liability. Since Respondents could not show that the money was used for taxes, the \$1,250 Mr.



Patolia kept should be considered compensation for redeeming Ms. Rubio's ticket at the Tyler Claim Center. Therefore, Mr. Patolia violated section 466.310(a)(3) of the Act and 16 Texas Administrative Code §401.158(a)(34)(C) by buying Ms. Rubio's prize-winning ticket. The Act states, "A person commits an offense if the person: ... (3) offers, for compensation, to claim the prize of another person." In this case, Mr. Patolia and Ms. Rubio agreed that Mr. Patolia would redeem Ms. Rubio's winning ticket. It was only after Mr. Patolia told Ms. Rubio he would satisfy the taxes and then paid her \$3,750, that Ms. Rubio transferred her right to claim her prize. Therefore, Mr. Patolia violated the Act and Commission rules because he offered to claim and then actually claimed the prize of another person for compensation.

PFD at p. 7.

A party satisfies its burden of proof as to a fact by presenting uncontradicted testimony of that fact. See *Green v. Alford*, 274 S.W.2d 5, 26 (Tex. App.--Houston [14th Dist.] 2008, pet. denied) (evidence that is not contradicted by the "great weight and preponderance of the evidence" is sufficient to satisfy burden of proof); *In re Carlisle*, 209 S.W.3d 93, 96 (Tex. 2006) (undisputed affidavit of incurred expenses was sufficient to overcome claim that affiant received "compensation"). The Commission was fully aware that Mr. Patolia's out-of-pocket expenses (specifically, his out-of-pocket tax expenditure) was his primary defense to the charge under 466.310(3) that he received "compensation" for redeeming the ticket. The Commission had the ability to seek evidence (if it existed) that those expenditures were not genuine. In the absence of any contrary evidence, Mr. Patolia's uncontradicted testimony is sufficient to support the fact that it cost him at least as much to redeem the ticket as he received -- in other words, he received only reimbursement, not "compensation". *Carlisle*, 209 S.W.3d at 96.

Here, Mr. Patolia was not paid for the time it took him to drive from Longview to Tyler, deal with the Commission employee, fill out the Commission required form, and return from Tyler to Longview. Mr. Patolia was also not compensated for the wear and tear on his automobile (it is 38 miles from Longview to Tyler) during the trip. Mr. Patolia only received

from Gloria Rubio the actual federal income taxes that he incurred in redeeming the winning \$5,000 lottery ticket. Had Ms. Rubio paid Mr. Patolia for his time, a different result would occur. In the present case, Mr. Patolia received no such compensation; accordingly, Mr. Patolia did not violate Texas Government Code Section 466.310(a)(3) or the applicable Commission rule provisions.

### **There Was No Fraud, Deceit, or Misrepresentation**

Mr. Patolia did not engage in any fraud, deceit, or misrepresentation in presenting Ms. Rubio's winning lottery ticket to the Commission. Mr. Patolia informed the Lottery Claims representative that he was presenting the ticket on behalf of Gloria Rubio. Tr. at p. 219. This occurred in January and the Commission did not pay the \$5,000 until AFTER it conducted an investigation; after the investigation was complete, the Commission paid Mr. Patolia \$5,000. The Commission did this knowing the facts; so one cannot conclude that Mr. Patolia ever engaged in any fraud, deceit, or misrepresentation. And the Commission has ONE form that it requires a lottery ticket claimant to present with the winning ticket that contains language that states the person is the only person eligible to claim the ticket; this form is required even if (as here) the person presenting the ticket tells the Commission personnel that he/she is part of a group who purchased the ticket (or is claiming a prize on behalf of another person).

During the hearing, the Commission made a half-hearted attempt to claim that Mr. Patolia engaged in fraud, deceit, or misrepresentation in signing this Commission claim form that states he is the claimant of the \$5,000 lottery prize.<sup>1</sup> Yet, if one believes the Commission that, by signing the claim form, Mr. Patolia engaged in fraud, deceit, or misrepresentation, then the Commission has systematically required every individual who claims a pool purchase prize to lie on this form. Two (2) Commission witnesses admitted that the exact same form that Mr. Patolia

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<sup>1</sup> Pet. Ex. 11.

signed is also required of a person who claims a prize for a pool or group purchase.<sup>2</sup> So, if one believes Mr. Patolia somehow misrepresented to the Commission that he was the only person entitled to the prize when he signed the Commission mandated form<sup>3</sup>, then the Commission is requiring EVERY person who claims a group/pool prize to lie and EVERY PERSON who does so is now “guilty” of fraud, deceit or misrepresentation. This is an absurd result – good for countries like Russia, perhaps. Mr. Patolia simply did not claim any lottery prize by means of fraud, deceit, or misrepresentation.

Likewise, Mr. Patolia did not violate the Commission rule 16 TEX. ADMIN. CODE §401.158(b)(33). The facts establish that Mr. Patolia did not:

- 1) induce Gloria Rubio or anyone else to assign or transfer a right to claim a prize;
- 2) initiate or accept an offer to sell the right to claim a prize;
- 3) initiate or accept an offer of compensation from another person to claim a lottery prize; or
- 4) purchase a lottery ticket from a person who is not a licensed lottery retailer.

First, it was Gloria Rubio who approached Mr. Patolia and requested him to present the lottery ticket.<sup>4</sup> There is simply no evidence that Mr. Patolia induced anyone to assign or transfer a right to claim a prize. Second, Mr. Patolia did not initiate or accept an offer to SELL the right to claim a prize. There was no sale when Mr. Patolia agreed to assist Ms. Rubio in claiming the \$5,000 lottery prize. Third, Mr. Patolia never initiated or accepted an offer of compensation. Instead, Mr. Patolia agreed to accept reimbursement of his tax liability. He only wanted to be made whole; his testimony was that he was in the twenty-five percent (25%) federal income tax

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<sup>2</sup> Tr. at pp. 51 and 87.

<sup>3</sup> Pet. Ex. 11.

<sup>4</sup> Tr. at p. 165.

bracket.<sup>5</sup> When Mr. Patolia turned in Ms. Rubio's ticket, he was subjected to a twenty-five percent (25%) tax liability; Ms. Rubio readily offered to make him whole.<sup>6</sup>

Here is an example to consider. When the Commission requires its investigator or another employee to make an out-of-town (or out-of-state) trip and the Commission employee pays for all or part of the travel costs (hotel, airfare, meals, etc.) then seeks reimbursement, is the Commission compensating the employee? Of course not. The Commission is making the employee whole. And, likewise, the Commission does not report to the Internal Revenue Service as income the payment the Commission makes to the employee to cover the Commission-required travel costs. Assume the total travel costs were \$1,000. Has the Commission "compensated" the employee by reimbursing the employee for his/her travel expenses? The only conclusion is no. The employee does not report the \$1,000 as compensation on his/her federal income tax return. Fourth, Mr. Patolia did not purchase a lottery ticket from Ms. Rubio<sup>7</sup>; he accommodated her.

Here is what Mr. Patolia testified to regarding his 25 percent tax bracket.

Q: And you disclosed that the federal taxes would have to be withheld?

A: Yes. I told her I have to pay the taxes and she know that, and she told me also that at that time.

Q: And what is your tax rate? Your federal income tax rate?

A: It's around 24 or 25. I have no clue at least it's about there -- amount -- that 24 or 25.

Q: Did you --

A: So I know it's 25, but I don't want to be locked down myself in there.

Tr. at p. 218.

Later, Mr. Patolia stated that his own tax rate is 25 percent. Tr. at pp. 226-227.

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<sup>5</sup> Tr. at p. 218.

<sup>6</sup> Tr. at p. 166.

<sup>7</sup> Tr. at p. 170.

So, the only evidence before the ALJ or the Commission is that Mr. Patolia’s federal income tax rate is 25 percent. \$5,000 at a 25 percent tax rate is \$1,250, which is exactly what both Ms. Rubio and Mr. Patolia agreed would be withheld. The ALJ is simply wrong in writing that “no evidence was presented at the hearing that Mr. Patolia actually used the \$1,250 to pay the [federal] tax liability.” PFD at p. 7. The Commission did not offer any evidence of Mr. Patolia’s tax rate.

Accordingly, the only evidence is that Mr. Patolia’s tax rate is 25 percent; there is NO evidence that he was compensated by Ms. Rubio or anyone in redeeming Ms. Rubio’s ticket at the Tyler Claim Center.

**Conclusion**

Mr. Patolia is the picture of a hard-working immigrant who works long hours to support his family and aged parents. He legally immigrated to this country, learned the language (although his English is far from perfect), saved his money, invested wisely, and works at least sixteen (16) hours a day.<sup>8</sup> Mr. Patolia is now a proud owner (or part owner) of two (2) convenience stores. He has never been sanctioned by any regulatory agency before this event.<sup>9</sup> His uncontroverted testimony is that his store revenues would decrease by approximately fifty percent (50%) if the Commission revokes his lottery retailer license.<sup>10</sup> The punishment does not in any way fit the crime because there is no crime.

WHEREFORE, PREMISES CONSIDERED, Respondents Everest Associates, LLC d/b/a Quick Stop and 4405 Panther, LLC d/b/a Panther Quick Stop requests that the Administrative Law Judge reverse Conclusion of Law Nos. 7, 8, and 9 to clarify that Respondents did not violate Texas Government Code §§466.308(a)(1), 466.310(a)(3) and 16 Texas Administrative Code

<sup>8</sup> Tr. at pp. 205 and 216-217.  
<sup>9</sup> Tr. at p. 127.  
<sup>10</sup> Tr. at p. 236.

§§401.158(b)(32), (34)(A), (C), (D), and (41) and for such other and further relief to which Respondent is justly entitled.

Respectfully submitted,

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STEPHEN FENOGLIO  
State Bar No. 06904600

*Attorney for Respondents  
Everest Associates, LLC d/b/a Quick Stop  
and 4405 Panther, LLC d/b/a Panther Quick  
Stop*

**CERTIFICATE OF SERVICE**

I do hereby certify that a true and correct copy of the foregoing Respondents' Exceptions to Proposal for Decision has been served on this the 22<sup>nd</sup> day of January 2019 in the manner described to the person(s) listed below:

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

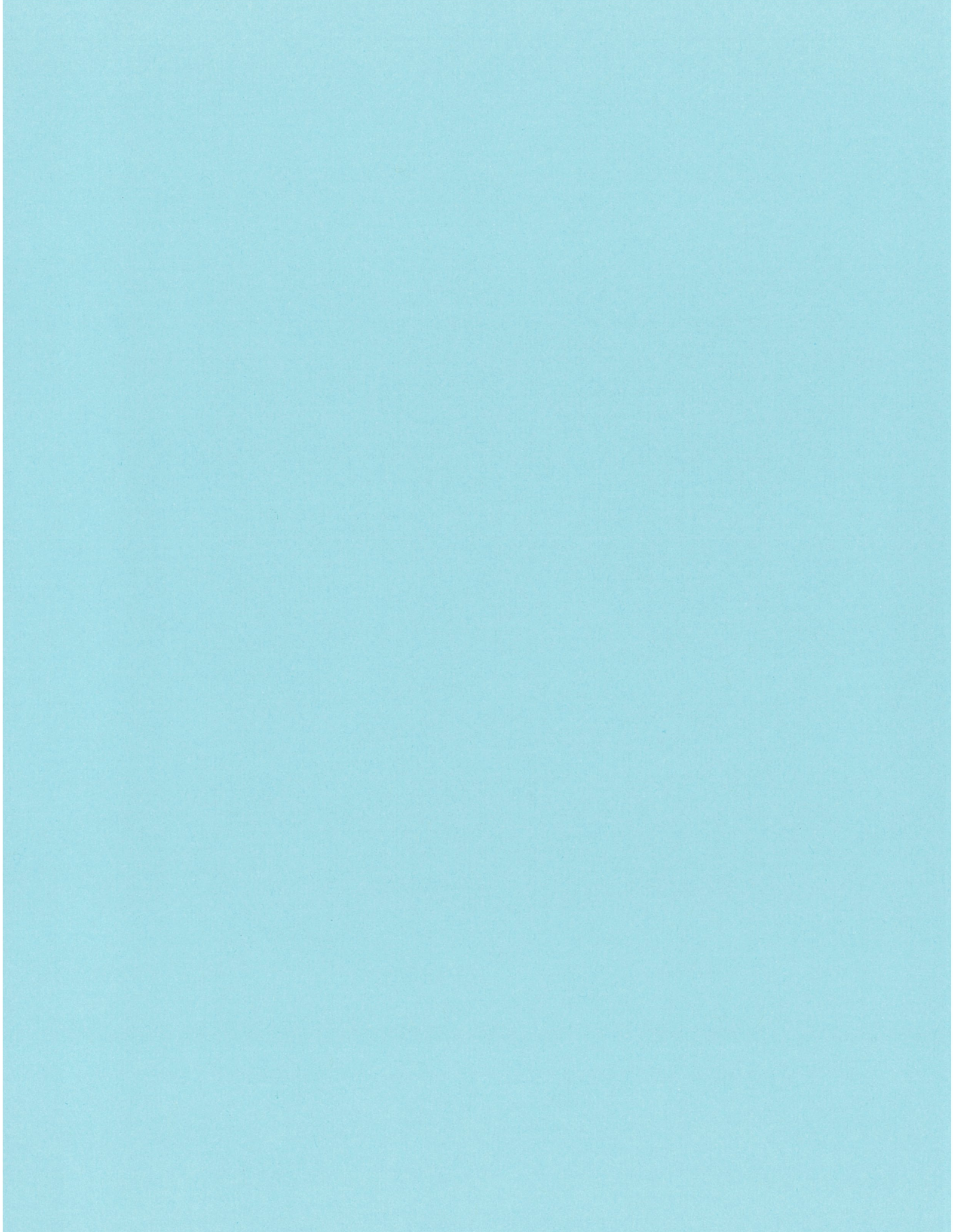
*Via Facsimile  
512.344.5189*

Favad R. Bajaria  
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Dallas, Texas 75234

*Via E-mail  
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/s/ Stephen Fenoglio  
STEPHEN FENOGLIO





**SOAH DOCKET NO. 362-18-2320**

<b>TEXAS LOTTERY COMMISSION</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>Petitioner</b>	§	
	§	
<b>v.</b>	§	<b>OF</b>
	§	
<b>EVEREST ASSOCIATES, LLC</b>	§	
<b>D/B/A QUICK STOP</b>	§	
<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**SOAH DOCKET NO. 362-18-2321**

<b>TEXAS LOTTERY COMMISSION</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>Petitioner</b>	§	
	§	
<b>v.</b>	§	<b>OF</b>
	§	
<b>4405 PANTHER, LLC</b>	§	
<b>D/B/A PANTHER QUICK STOP</b>	§	
<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**TEXAS LOTTERY COMMISSION’S REPLY TO RESPONDENTS’ EXCEPTIONS**

Petitioner, the Texas Lottery Commission staff (Commission), files this Reply to Respondents’ Exceptions to the Proposal for Decision (PFD) and asks the Honorable Administrative Law Judge (ALJ) to not change the PFD because Respondents’ Exceptions do not raise any new evidence or legal analysis.

**ARGUMENT**

**I. Respondents’ owner received compensation for his unlawful purchase of another person’s lottery prize.**

Just as they argued in their briefing, Respondents again contend that their owner, Mukesh Patolia (Mr. Patolia), received no compensation from the unlawful purchase of another person’s lottery prize. Specifically, Respondents claim that Mr. Patolia received only reimbursement and not compensation because his “uncontradicted testimony is sufficient to support the fact that it cost



him at least as much to redeem the ticket as he received . . . .”<sup>1</sup> Respondents, however, do not provide the “uncontradicted testimony” or a citation to the hearing transcript showing that purported fact. Also, Respondents again argue that Mr. Patolia should be credited for his time and the travel expenses he incurred claiming the lottery prize, but they do not provide how much he should be credited, nor any authority for their argument.

Moreover, as detailed in the Commission’s Reply Brief, “compensation” does not require profit, only remuneration or payment.<sup>2</sup> Mr. Patolia was compensated because he was paid to unlawfully claim the lottery prize of another person. At the hearing, Mr. Patolia only testified that he paid taxes in general and that he was unsure of his exact tax rate.<sup>3</sup> Mr. Patolia did not provide any evidence that he paid taxes on the prize or that the prize was reported on his tax return.<sup>4</sup> Mr. Patolia violated section 466.310(a)(3) of the Texas Government Code and 16 Texas Administrative Code §401.158(b)(34)(C) because he offered to claim and then actually claimed the lottery prize of another person for compensation. Therefore, the PFD is correct and should not be changed.

## **II. Respondents’ owner intentionally misrepresented that he purchased the prizewinning ticket on a Commission form.**

Respondents’ also reassert the same argument made in their initial brief that Mr. Patolia did not claim any lottery prize by means of fraud, deceit, or misrepresentation.<sup>5</sup> As detailed in the Commission’s briefs, Mr. Patolia submitted a signed Commission claim form misrepresenting that he purchased the prizewinning ticket, and he did this after he represented to the prizewinner that he would need 25% of the winnings for taxes.<sup>6</sup> Respondents nevertheless reassert that Mr. Patolia’s

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<sup>1</sup> Resp’ts’ Exceptions at 2.

<sup>2</sup> *See Compensation*, BLACK’S LAW DICTIONARY (10th ed. 2014); *see also Compensation*, MERRIAM-WEBSTER.COM, [www.merriam-webster.com/dictionary/compensation](http://www.merriam-webster.com/dictionary/compensation) (last visited Jan. 29, 2019); Pet’r’s Reply Br. at 5.

<sup>3</sup> Tr. at 218: 14–24 (“So I know it’s 25, but I don’t want to be locked down myself in there. I don’t know.”); Resp’ts’ Exceptions at 5.

<sup>4</sup> *Id.*

<sup>5</sup> Resp’ts’ Initial Br. at 7.

<sup>6</sup> Tr. at 169: 1–4.

misrepresentation on the claim form was not a misrepresentation. They argue that Mr. Patolia testified that he told a Commission representative—after he was questioned about the inconsistencies on the prizewinning ticket—that he was presenting the ticket on behalf of another person, Gloria Rubio (Ms. Rubio).<sup>7</sup> Mr. Patolia’s testimony, however, does not conform to the written statement that he submitted with his signed Commission claim form.<sup>8</sup> In Mr. Patolia’s written statement, he did not state that he was presenting the ticket on behalf of another person and he does not mention Ms. Rubio. Also, even though Ms. Rubio testified that she wrote information on the back of the prizewinning ticket, Mr. Patolia wrote in his statement that he wrote down the information on the back of the ticket.<sup>9</sup>

Regardless of the conflict between his testimony and his written statement, Mr. Patolia still misrepresented that he alone purchased the ticket on a Commission claim form. In fact, even if the Commission had not paid his claim due to the inconsistencies on the ticket, Mr. Patolia would have still violated the State Lottery Act, because “an attempt to claim” is still a “claim” under section 466.308 of the Texas Government Code. Accordingly, the PFD should not be changed.

**III. Respondents’ owner purchased a lottery ticket from a person that was not a licensed lottery retailer, and his purchase induced that person to assign or transfer a right to claim a prize.**

Respondents reassert the same argument made in their initial brief that Mr. Patolia did not violate the Commission rule<sup>10</sup> that prohibits licensees from: (1) purchasing a lottery ticket from a person that is not a licensed lottery retailer, and (2) prohibits inducing another person to assign or transfer a right to claim a prize.<sup>11</sup>

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<sup>7</sup> Resp’ts’ Exceptions at 2.

<sup>8</sup> Pet’r’s Ex. 11.

<sup>9</sup> *Id.*

<sup>10</sup> After the violations in this case, 16 Tex. Admin. Code §401.158 was amended and (b)(32), (34), and (41) were renumbered as (b)(31), (33), and (40). The provisions were only renumbered—the language did not change.

<sup>11</sup> Resp’ts’ Initial Br. at 7–8. Respondent also alleges that Mr. Patolia did not violate 16 Tex. Admin. Code §401.158(b)(33)(B), (C), which were previously numbered as (b)(34)(B), (C). The violation of 16 Tex. Admin. Code

As detailed in the Commission's Initial Brief, Respondents' owner did violate the Commission rule. Mr. Patolia's representations about taxes and his \$3,750 payment induced<sup>12</sup> Ms. Rubio to transfer her right to claim her \$5,000 prize.<sup>13</sup> Ms. Rubio only transferred<sup>14</sup> the right to claim her prize after Mr. Patolia told her that he would satisfy the taxes on the prize, and he paid her \$3,750. Additionally, as Respondents' owner, Mr. Patolia further violated the Commission rule by purchasing<sup>15</sup> a prizewinning ticket from a person who was not a licensed lottery retailer.<sup>16</sup> Because Respondents have not raised any new evidence or legal analysis, the PFD should not be changed.

#### CONCLUSION

For these reasons, the Commission respectfully asks the ALJ to not change the PFD.

Respectfully submitted,

/s/ Kristen Guthrie

Kristen Guthrie, Assistant General Counsel  
Texas Lottery Commission  
P.O. Box 16630  
Austin, TX 78761-6630  
Telephone: (512) 344-5475  
Facsimile: (512) 344-5189

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§401.158(b)(34)(B) is not at issue in this case. The violation of 16 Tex. Admin. Code §401.158(b)(34)(C) is addressed in section I of this reply.

<sup>12</sup> "Induce" means "to move by persuasion or influence . . . to call forth or bring about by influence or stimulation" or "EFFECT, CAUSE." *Induce*, MERRIAM-WEBSTER.COM, <https://www.merriam-webster.com/dictionary/induce> (last visited Jan. 29, 2019). *Induce* is not defined by Black's Law Dictionary.

<sup>13</sup> See Tex. Gov't Code §466.310(a)(1); 16 Tex. Admin. Code §401.158(b)(34)(A).

<sup>14</sup> "Transfer" means "1. To convey or remove from one place or one person to another; to pass or hand over from one to another, esp. to change over the possession or control of. 2. To sell or give." *Transfer*, BLACK'S LAW DICTIONARY (10th ed. 2014).

<sup>15</sup> "Purchase" is defined as "the act or an instance of buying." *Purchase*, BLACK'S LAW DICTIONARY (10th ed. 2014).

<sup>16</sup> 16 Tex. Admin. Code §401.158(b)(34)(D).

**CERTIFICATE OF SERVICE**

I certify that on February 6, 2019, a true and correct copy of the *Texas Lottery Commission's Reply to Respondents' Exceptions* was served on the following individual at the location and in the manner indicated below, pursuant to 1 Tex. Admin. Code §155.105 and Tex. R. Civ. P. 191.5.

/s/ Kristen Guthrie  
Kristen Guthrie, Assistant General Counsel

**Via Facsimile: (512) 322-2061 and email at: sarah.haines@soah.texas.gov**

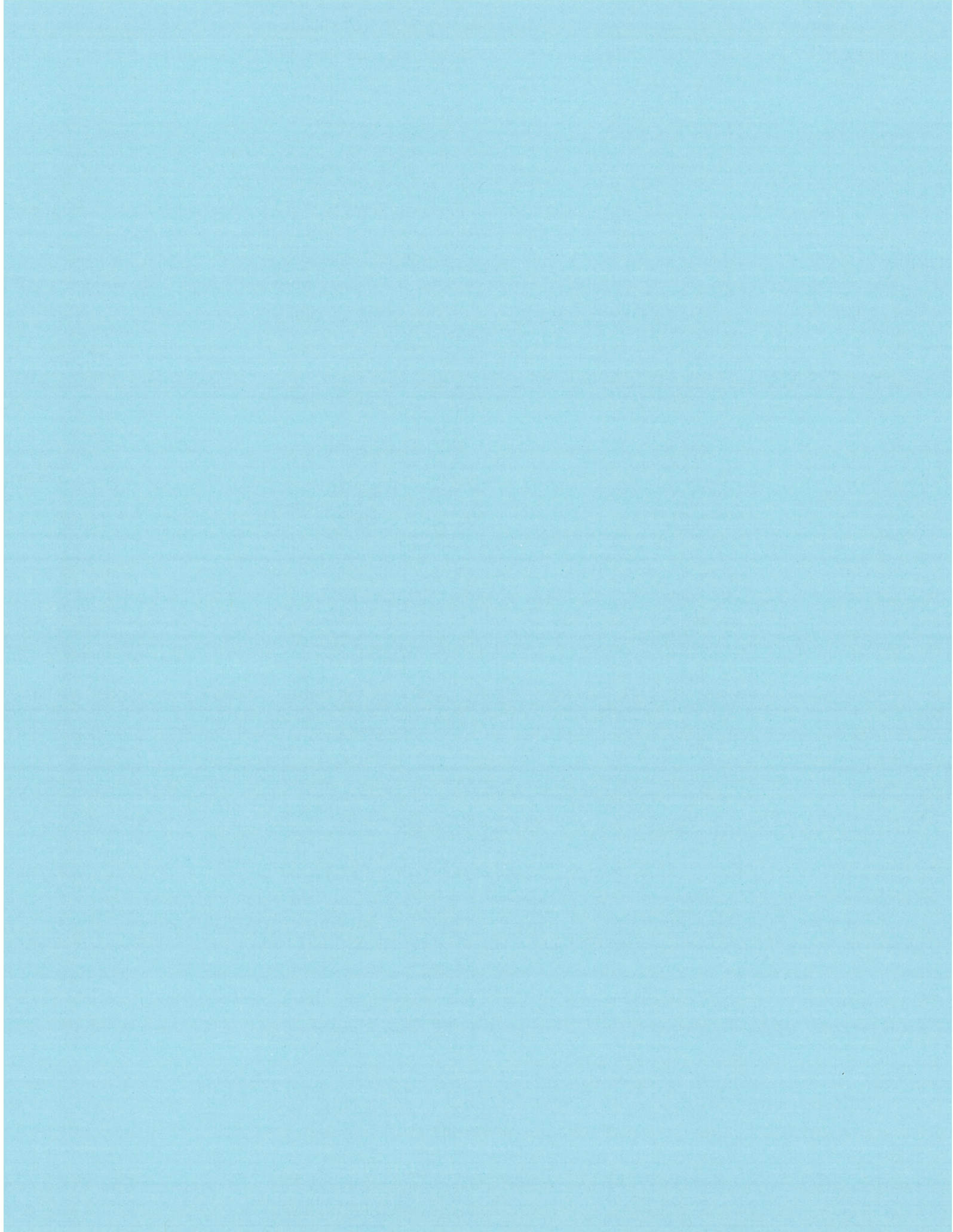
ALJ Rudy Calderon  
C/O Sarah Haines  
State Office of Administrative Hearings  
300 W. 15<sup>th</sup> St., Suite 504  
Austin, TX 78701

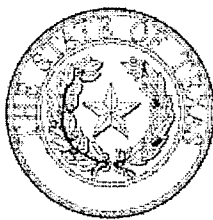
**Via Facsimile: (512) 482-8095**

Mr. Stephen Fenoglio  
713 W. 14<sup>th</sup> St.  
Austin, TX 78701

**Via Facsimile: (214) 888-3071**

Mr. Favad Bajaria  
Bajaria Law Firm  
3010 LBJ Freeway, Suite 1022  
Dallas, TX 75234





# State Office of Administrative Hearings

Kristofer Monson  
Chief Administrative Law Judge

May 6, 2019

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

VIA EMAIL

**RE: Docket No. 362-18-2320; Texas Lottery Commission v. Everest Associates, LLC D/B/A Quick Stop and 362-18-2321; Texas Lottery Commission v. 4405 Panther, LLC D/B/A Panther Quick Stop**

Dear Mr. Grief:

On January 7, 2019, I submitted to you my Proposal for Decision (PFD) in the above-referenced case and sent copies to the parties. Everest Associates, LLC D/B/A Quick Stop and 4405 Panther, LLC D/B/A Panther Quick Stop (collectively, Respondents) filed exceptions to the PFD, and the Texas Lottery Commission filed replies to those exceptions.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Rudy Calderon", with a long horizontal flourish extending to the right.

Rudy Calderon  
Administrative Law Judge

RC/sh

cc: Kristen Guthrie, Assistant General Counsel, Texas Lottery Commission, P.O. Box 16630, Austin, TX 78761-6630 - VIA EMAIL  
Stephen Fenoglio, Attorney, 713 W. 14<sup>th</sup> Street, Austin, TX 78701-1707 - VIA FACSIMILE (512-482-8095)

300 W. 15<sup>th</sup> Street, Suite 504, Austin, Texas 78701/P.O. Box 13025, Austin, Texas 78711-3025  
512.475.4993 (Main) 512.475.3445 (Docketing) 512.475.4994 (Fax)  
[www.soah.texas.gov](http://www.soah.texas.gov)



Commission Order No. 19-0059

Date: JUNE 6, 2019

DOCKET NO. 362-19-0857

TEXAS LOTTERY COMMISSION	§	BEFORE THE TEXAS
Petitioner	§	
	§	
V.	§	
	§	
STORY INVESTMENTS INC.	§	
D/B/A STEPHENS COUNTRY	§	
CORNER	§	
RETAILER LICENSE NO. 153066	§	
Respondent	§	LOTTERY COMMISSION

**ORDER DENYING REHEARING**

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

On April 11, 2019, the Texas Lottery Commission (Commission) entered a final order in the above-styled case. On May 1, Respondent timely filed a *Motion for Rehearing*, and on May 2 the Commission Executive Director issued an *Order Extending Time for Agency Action on Motion for Rehearing*. On June 6, 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. 19-0059**

**Date: JUNE 6, 2019**

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

Entered this 6<sup>TH</sup> day of JUNE 2019.

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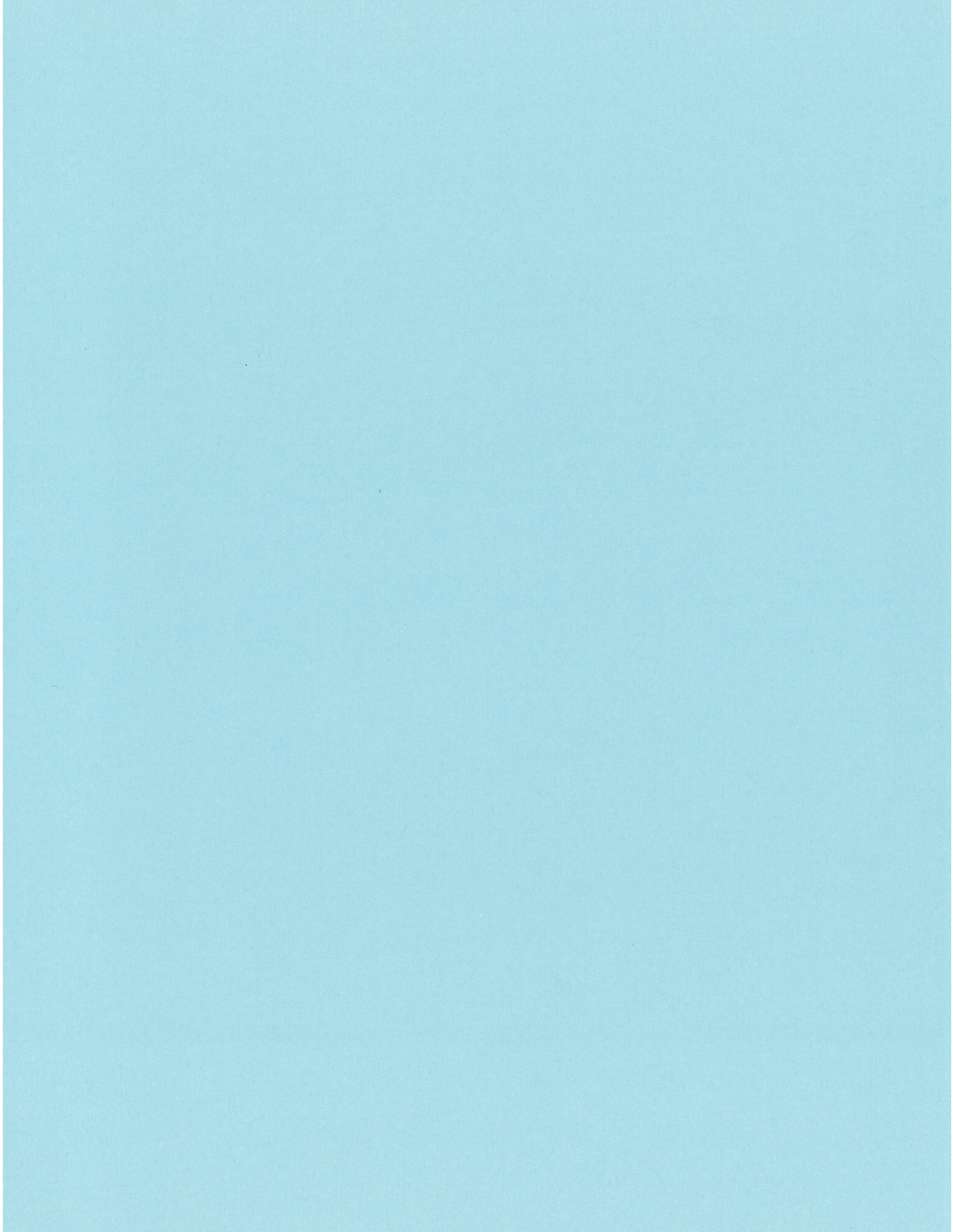
J. WINSTON KRAUSE, CHAIRMAN

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MARK A. FRANZ, COMMISSIONER

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ROBERT RIVERA, COMMISSIONER



Commissioners:  
J. Winston Krause,  
Chairman  
Robert Rivera



# TEXAS LOTTERY COMMISSION

Gary Grief, Executive Director

Michael P. Farrell, Charitable Bingo Operations Director

May 2, 2019

Mr. Chaudhry Muzaffar  
Story Investments Inc.  
d/b/a Stephens Country Corner  
404 N. Second St.  
Hico, TX 76457

*via email at [chaudhrymuzaffar@hotmail.com](mailto:chaudhrymuzaffar@hotmail.com)  
via 1<sup>st</sup> Class Mail*

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](mailto:kristen.guthrie@lottey.state.tx.us)*

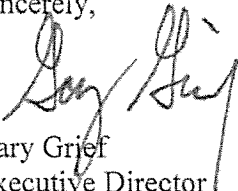
**RE: SOAH Docket No. 362-19-0857, Texas Lottery Commission v. Story Investments Inc.  
d/b/a Stephens Country Corner, Order Extending Time for Agency Action on Motion  
for Rehearing**

To the Parties:

On May 1, 2019, Story Investments Inc. d/b/a Stephens Country Corner (Respondent) filed with the Texas Lottery Commission (Commission) by email a Motion for Rehearing (Motion) in the above-referenced matter. If the Commission does not act on the Motion by June 5, 2019 (the 55th day after the Commission signed the April 11, 2019 Order adopting the State Office of Administrative Hearings Proposal for Decision), the Motion will be overruled by operation of law. The next scheduled meeting of the Commission is anticipated to be after June 5, 2019.

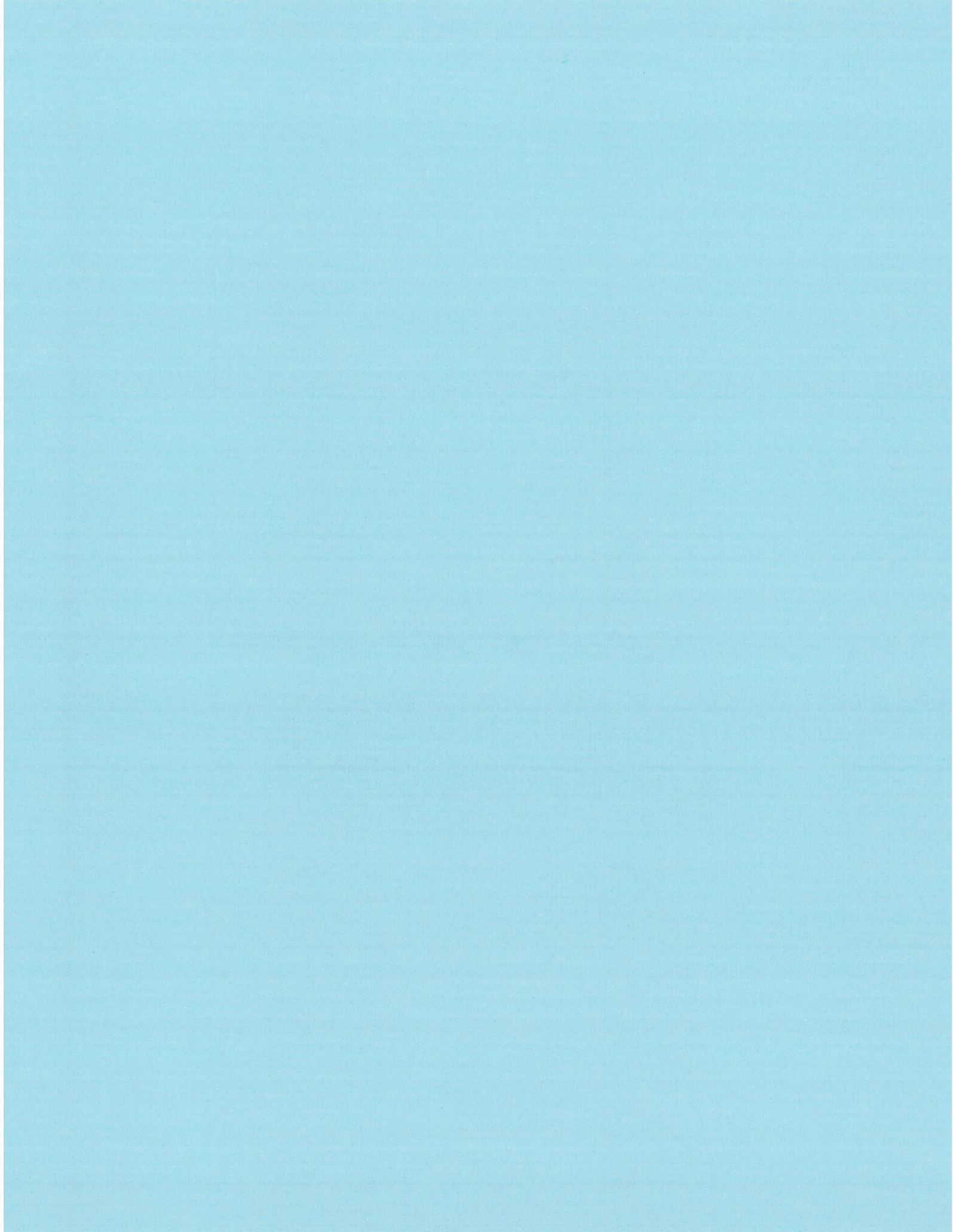
Therefore, pursuant to 16 Tex. Admin. Code §401.220, to allow the Commission sufficient time to act on the Motion, the deadline for the Commission to act is hereby extended for an additional 45 days, for a total of 100 days after April 11, 2019 (July 20, 2019).

Sincerely,

  
Gary Grief  
Executive Director

cc: State Office of Administrative Hearings (Docketing Division)





To,

**Texas Lottery Commission  
Attn: General Counsel  
P.O. Box 16630  
Austin, Texas 78761-6630**

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

**Dear Ma'am/Sir,**

I am writing you and re-appealing you regarding the **“ORDER OF THE COMMISSION – TEXAS LOTTERY COMMISSION V. STORY INVESTMENTS INC. D/B/A STEPHENS COUNTRY CORNER.**

I have presented myself and have explained the whole situation and my position to best of my knowledge in the first appeal and I have received a letter from your office dated April 18<sup>th</sup>, 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 a re-appeal against this decision because I feel that the Texas Lottery commission is not considering my situation and explanation as I have provided the whole situation in my previous appeal

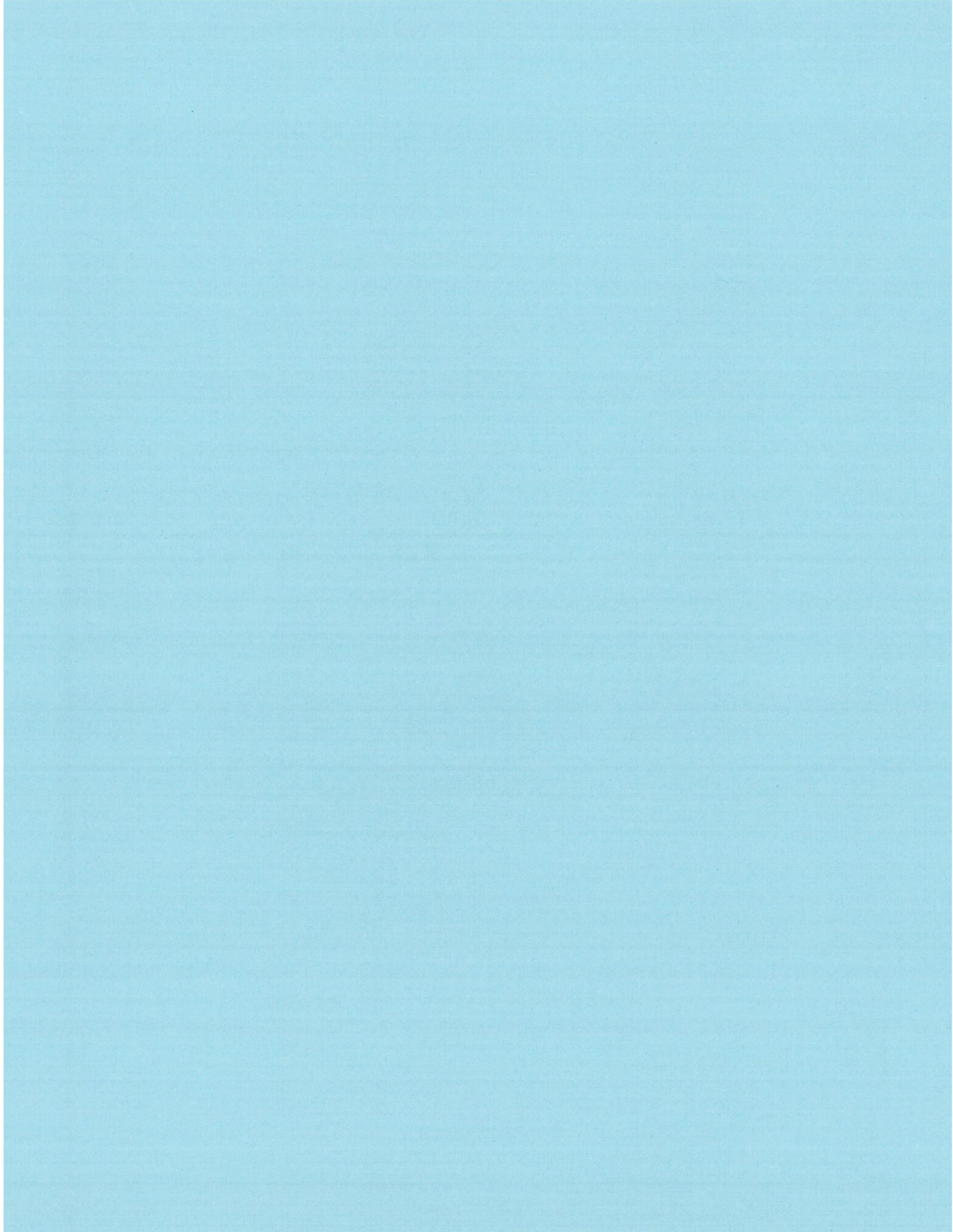
I would request you to please reconsider my situation and please do not suspend the Texas Lottery license issued to my business for 90-days as it will greatly affect the whole convenient store business if this suspension can be reduced to 30-days will be greatly appreciated.

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  
Date: 05/01/2019**





Commission Order No. 19-0049

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](mailto: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**

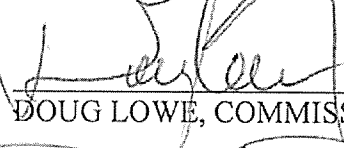
NOW, THEREFORE, IT IS ORDERED that the Texas Lottery Ticket Sales Agent License of Story Investments Inc. d/b/a Stephens Country Corner is hereby suspended for ninety (90) days.

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


Entered this 11<sup>TH</sup> day of APRIL 2019.



\_\_\_\_\_  
J. WINSTON KRAUSE, CHAIRMAN

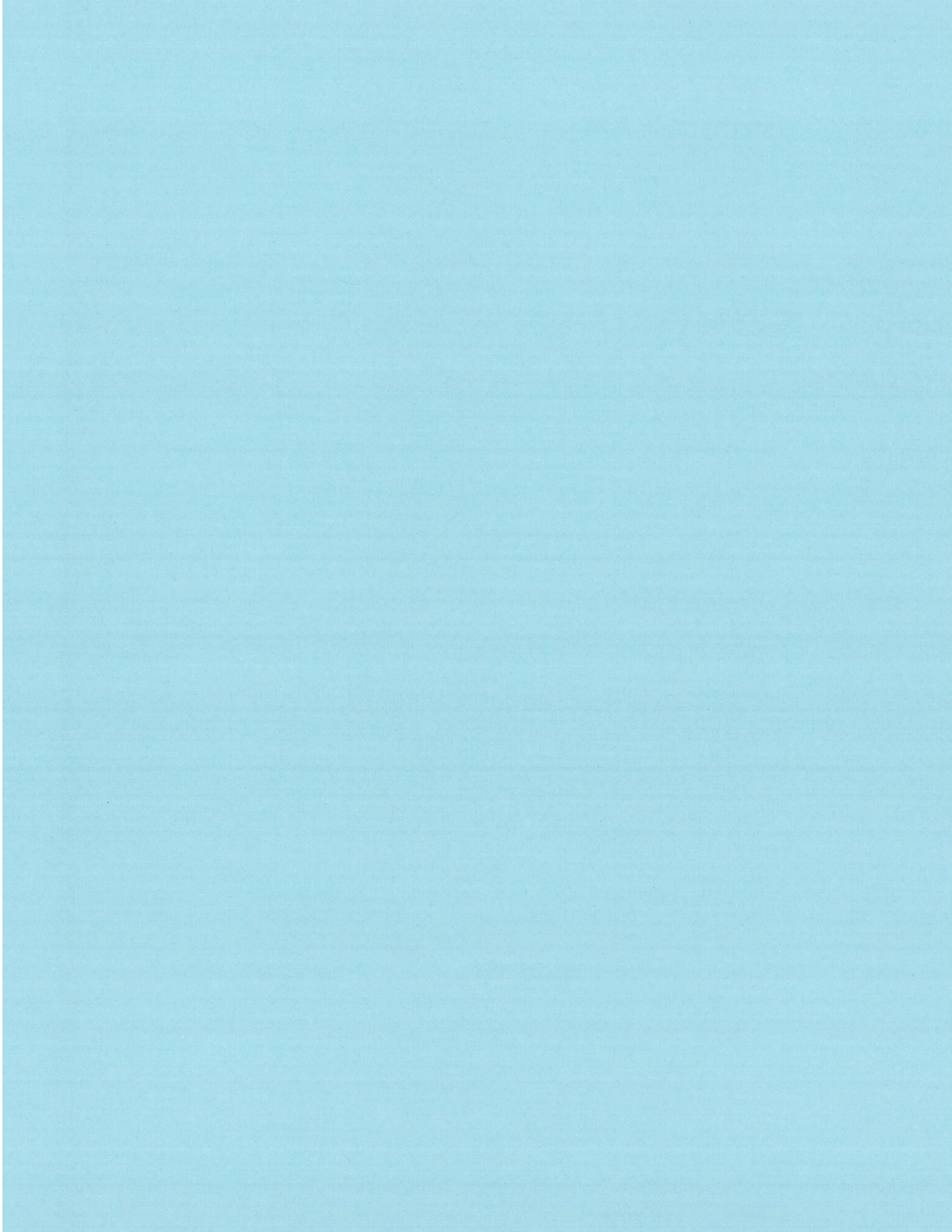


\_\_\_\_\_  
DOUG LOWE, COMMISSIONER



\_\_\_\_\_  
ROBERT RIVERA, COMMISSIONER





# State Office of Administrative Hearings



Lesli G. Ginn  
Chief Administrative Law Judge

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](http://www.soah.texas.gov).

Sincerely,

Shannon Kilgore  
Administrative Law Judge

SK/tt  
Enclosure

cc: Kristen Guthrie, Assistant General Counsel, Texas Lottery Commission, 611 E. 6<sup>th</sup>, 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

SOAH DOCKET NO. 362-19-0857

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.<sup>1</sup>

### 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,<sup>2</sup> 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.

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<sup>1</sup> Tex. Gov't Code § 466.155(c).

<sup>2</sup> 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,<sup>3</sup> and his reports concerning the investigation of Story are included in Staff Exhibit 5.<sup>4</sup> 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.

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<sup>3</sup> Tr. at 27-45.

<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

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<sup>5</sup> Tr. at 46-51.

<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup>

**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.<sup>9</sup> Story's license is subject to suspension or revocation.<sup>10</sup> Story did not

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<sup>7</sup> Tr. at 54-57.

<sup>8</sup> Staff Ex. 3 at 1.

<sup>9</sup> 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.

<sup>10</sup> 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.<sup>11</sup> 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.

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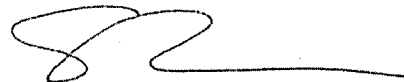
<sup>11</sup> Tex. Gov't Code § 466.155(c).

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

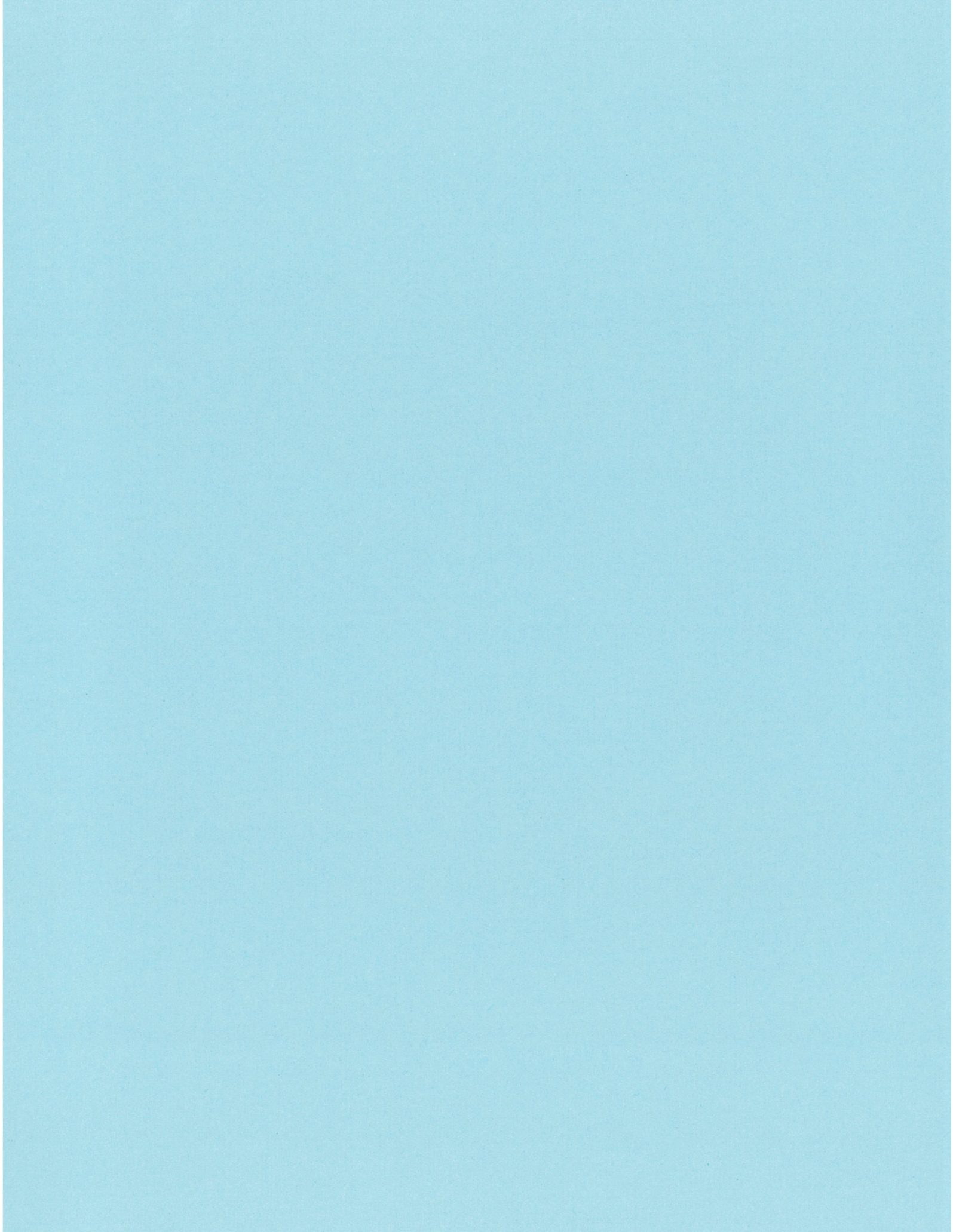
1. The Commission has jurisdiction over this matter pursuant to the State Lottery Act. Tex. Gov't Code § 466.155.
2. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a Proposal for Decision with proposed Findings of Fact and Conclusions of 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.



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SHANNON KILGORE  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS



To,

**Shannon Kilgore**  
**Administrative Law Judge**  
**State Office of Administrative Hearings**  
**300 W. 15<sup>th</sup> 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 23<sup>rd</sup>, 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 20<sup>th</sup>, 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

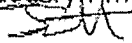
investigator Mr. Kozak, Assistant General Counsel Mrs. Kristen Guthrie and other team members have tried to force me to accept the guilt and they can reduce the suspension of license to 30-days but I argued why should I accept the blame when I am not involve at all with it and I have assured that they 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:

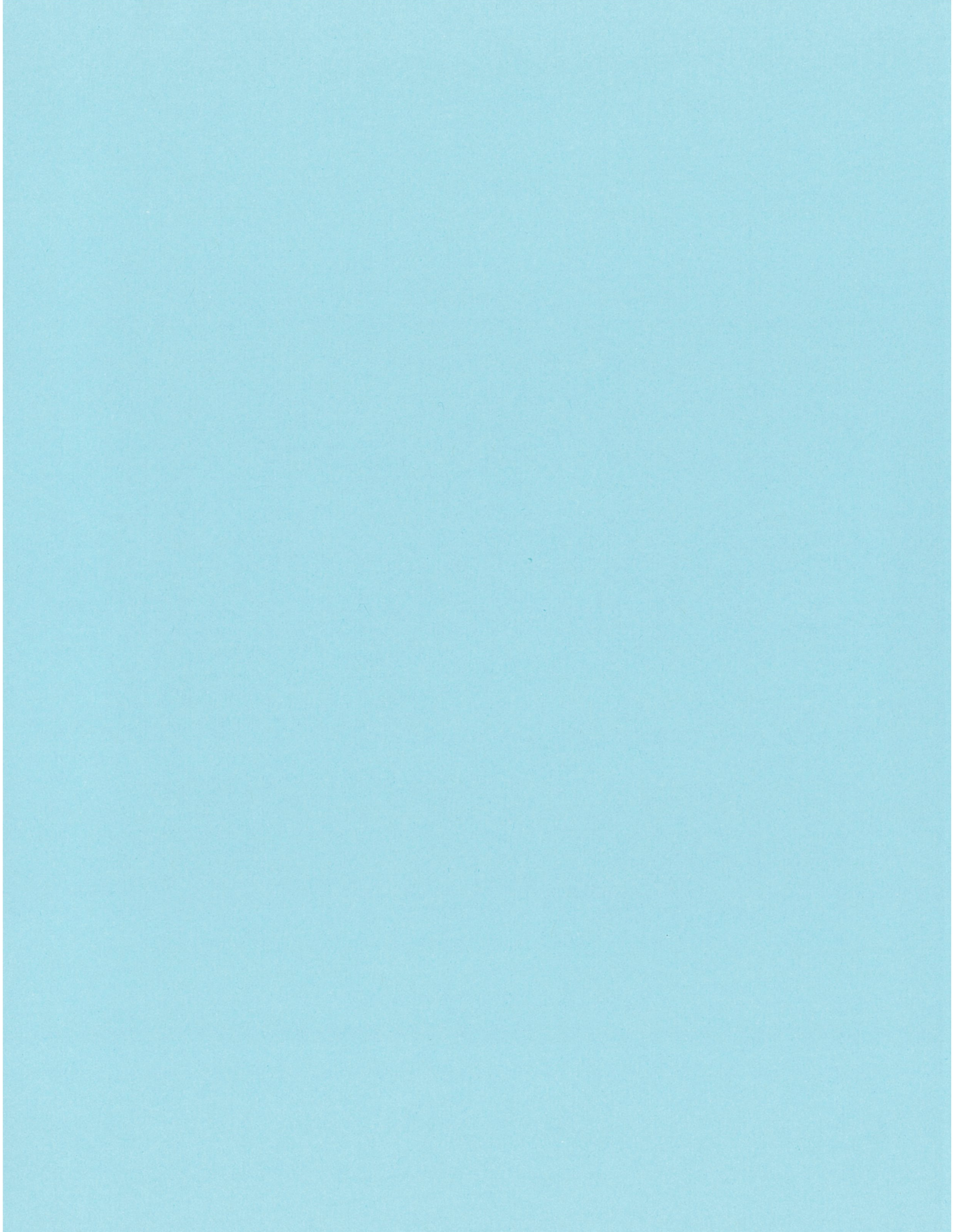
Thanks and Sincerely

Chaudhry, T/Muzaffar

  
Stephens Country Store (DBA)

817-734-1758





# 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.<sup>1</sup> 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.<sup>2</sup> 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.)

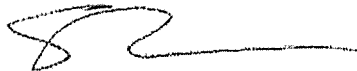
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<sup>1</sup> My assistant contacted Mr. Muzaffar on March 11, 2019, to tell him that the proper procedure is to formally file the document with the State Office of Administrative Hearings and copy the other party.

<sup>2</sup> 1 Tex. Admin. Code § 155.507(b)(1), (3).

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. 6<sup>th</sup>, 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





**Date: JUNE 6, 2019**

**DOCKET NO. 362-19-1517**

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

**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 6<sup>TH</sup> day of JUNE 2019.

Entered this 6<sup>TH</sup> day of JUNE 2019.

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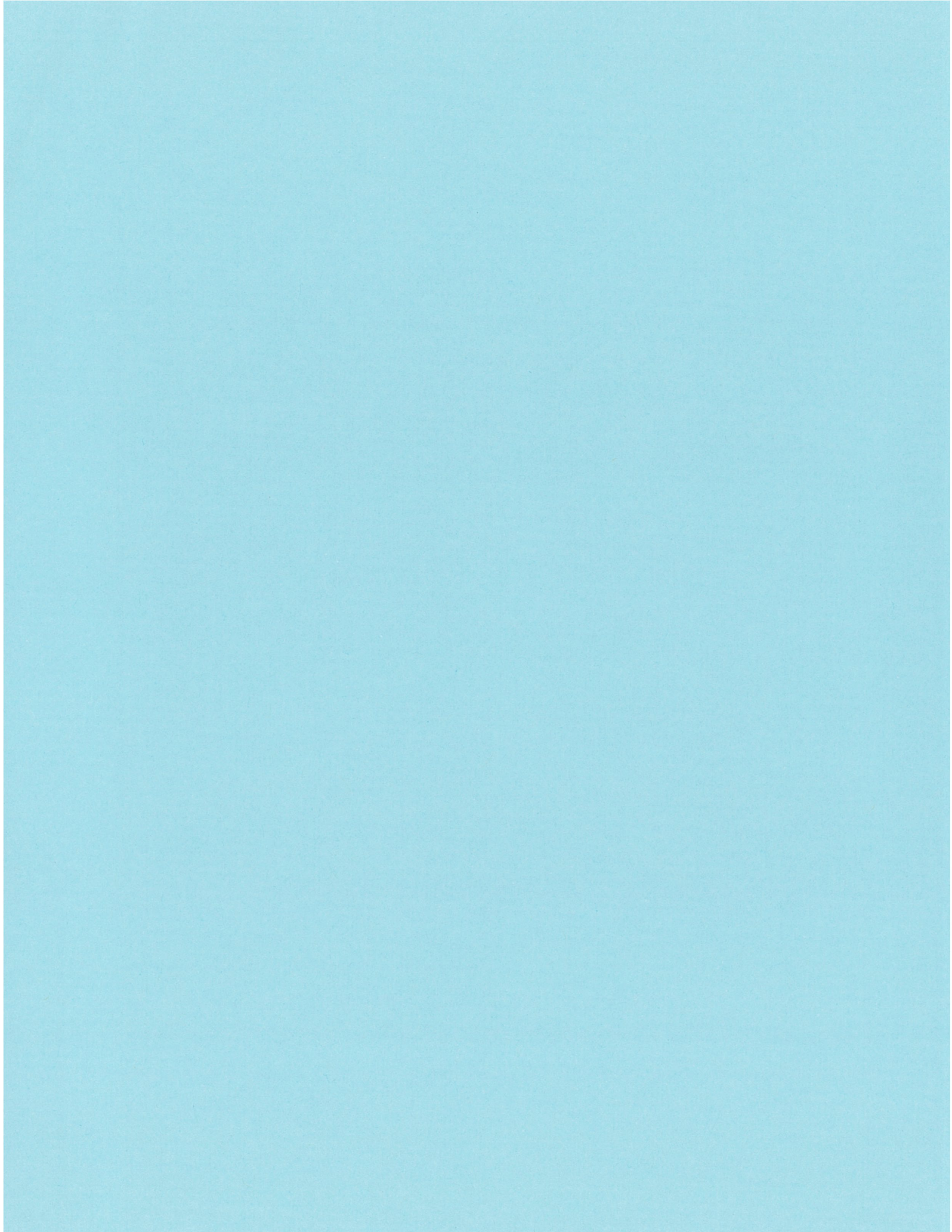
J. WINSTON KRAUSE, CHAIRMAN

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MARK A. FRANZ, COMMISSIONER

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ROBERT RIVERA, COMMISSIONER



# 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](http://www.soah.state.tx.us).

Sincerely,



Rebecca S. Smith  
Administrative Law Judge

RS/lc

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

SOAH DOCKET NO. 362-19-1517

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

**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.<sup>1</sup>

### 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

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<sup>1</sup> 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."<sup>2</sup>

#### **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

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<sup>2</sup> 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.<sup>3</sup>

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.<sup>4</sup>

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<sup>3</sup> 16 Texas Administrative Code § 401.158(b)(33)(C).

<sup>4</sup> 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.<sup>5</sup> Pinehurst did not demonstrate that the proposed 30-day suspension is unreasonable.<sup>6</sup> 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.

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

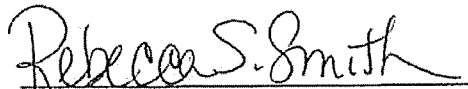
<sup>6</sup> Tex. Gov't Code § 466.155(c).

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