





# INTEROFFICE MEMO

*Gary Grief, Executive Director*

*Tom Hanson, Charitable Bingo Operations Director*

**To:** Robert G. Rivera, Chairman  
Cindy Fields, Commissioner  
Mark A. Franz, Commissioner  
Erik C. Saenz, Commissioner  
Jamey Steen, Commissioner

**From:** Bob Biard, General Counsel *RB*

**Date:** December 3, 2020

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

---

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



**Date: DECEMBER 3, 2020**

<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).



**Date: DECEMBER 3, 2020**

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. 21-0007**

**Date: DECEMBER 3, 2020**

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 3<sup>RD</sup> day DECEMBER 2020.

Entered this 3<sup>RD</sup> day of DECEMBER 2020.

\_\_\_\_\_  
ROBERT G. RIVERA, CHAIRMAN

\_\_\_\_\_  
CINDY FIELDS, COMMISSIONER

\_\_\_\_\_  
MARK A. FRANZ, COMMISSIONER

\_\_\_\_\_  
ERIK C. SAENZ, COMMISSIONER

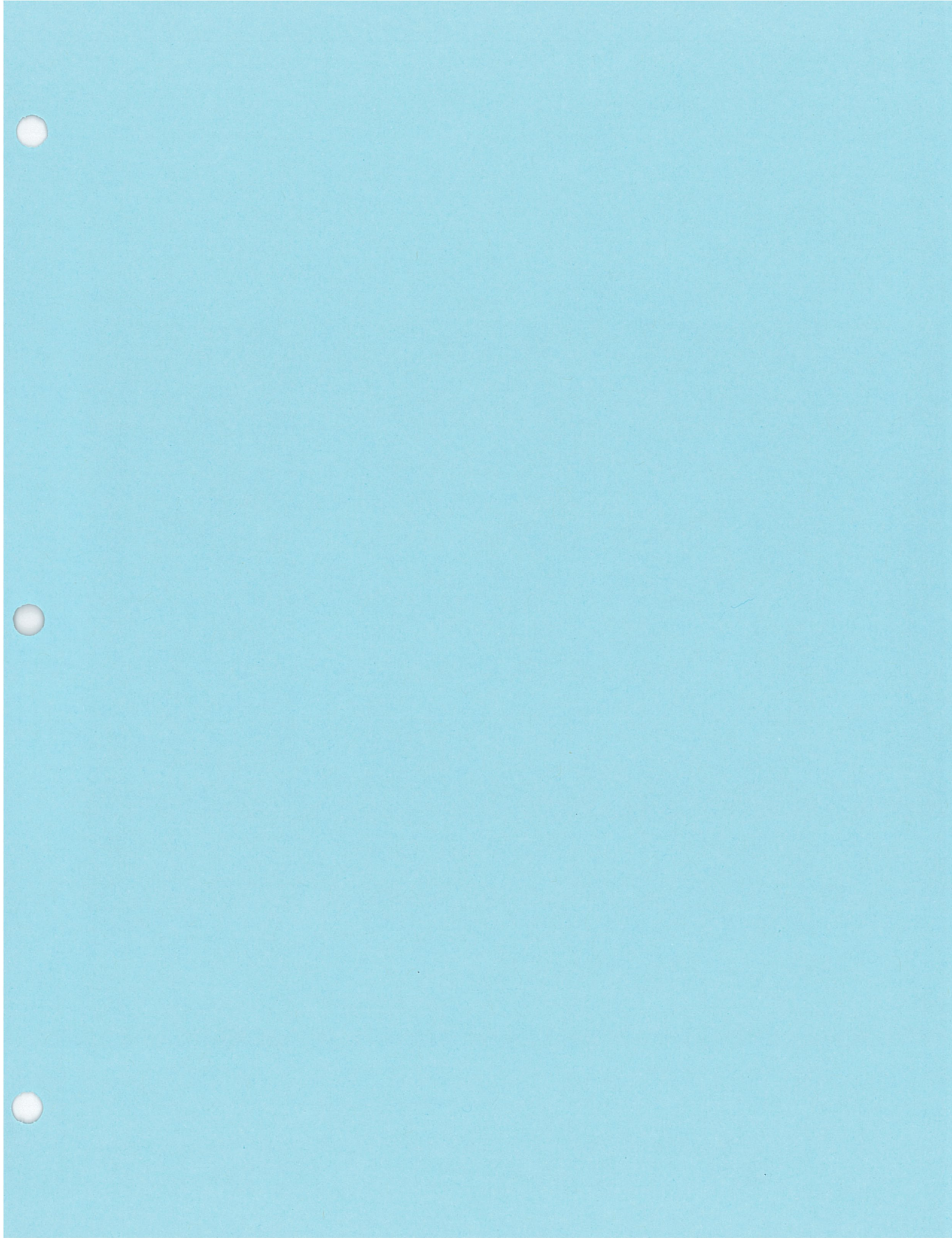
\_\_\_\_\_  
JAMES H. C. STEEN, COMMISSIONER

**Commission Order No. 21-0007**

**Date: DECEMBER 3, 2020**

**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.	362-20-4361	SNK Food Mart Inc. d/b/a Dona Maria Food Market	7731 Long Point 18 Houston, TX 77055	178164
B.	362-20-4494	Alia Enterprises Inc. d/b/a Shaver 66	3490 Preston Pasadena, TX 77505	128074
C.	362-21-0083	Abdul R. Noorani d/b/a Orfield Grocery & Deli	P.O. Box 642 Meridian, TX 76665	139754



ACCEPTED  
362-20-4361  
9/4/2020 11:30 AM  
STATE OFFICE OF  
ADMINISTRATIVE HEARINGS  
Jodi Brown, CLERK

SOAH DOCKET NO. 362-20-4361

FILED  
362-20-4361  
9/4/2020 11:10 AM  
STATE OFFICE OF  
ADMINISTRATIVE HEARINGS  
Jodi Brown, CLERK

<p><b>TEXAS LOTTERY COMMISSION,</b> <b>Petitioner</b></p> <p><b>v.</b></p> <p><b>SNK FOOD MART INC., DBA</b> <b>DONA MARIA FOOD MARKET,</b> <b>Respondent</b></p>	<p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p> <p>§</p>	<p><b>BEFORE THE STATE OFFICE</b></p> <p><b>OF</b></p> <p><b>ADMINISTRATIVE HEARINGS</b></p>
---	---	--

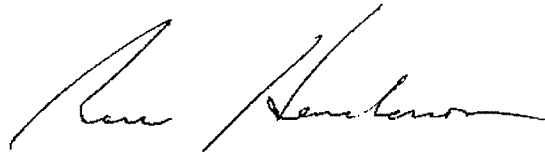
**ORDER NO. 1**  
**CONDITIONAL ORDER OF DEFAULT DISMISSAL AND REMAND**

This matter was set for hearing on September 3, 2020, before the undersigned Administrative Law Judge (ALJ). Kristen Guthrie appeared on behalf of the staff (Staff) of the Texas Lottery Commission (Commission). SNK Food Mart Inc. d/b/a Dona Maria Food Market (Respondent) did not appear and was not represented at the hearing. At the hearing, Staff submitted a motion to remand to the Commission. Upon receiving Staff's Exhibits (Attachments 1-3 to Staff's motion), showing proof of adequate notice to Respondent, the ALJ granted Staff's motion to remand to the Commission for informal disposition.<sup>1</sup>

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

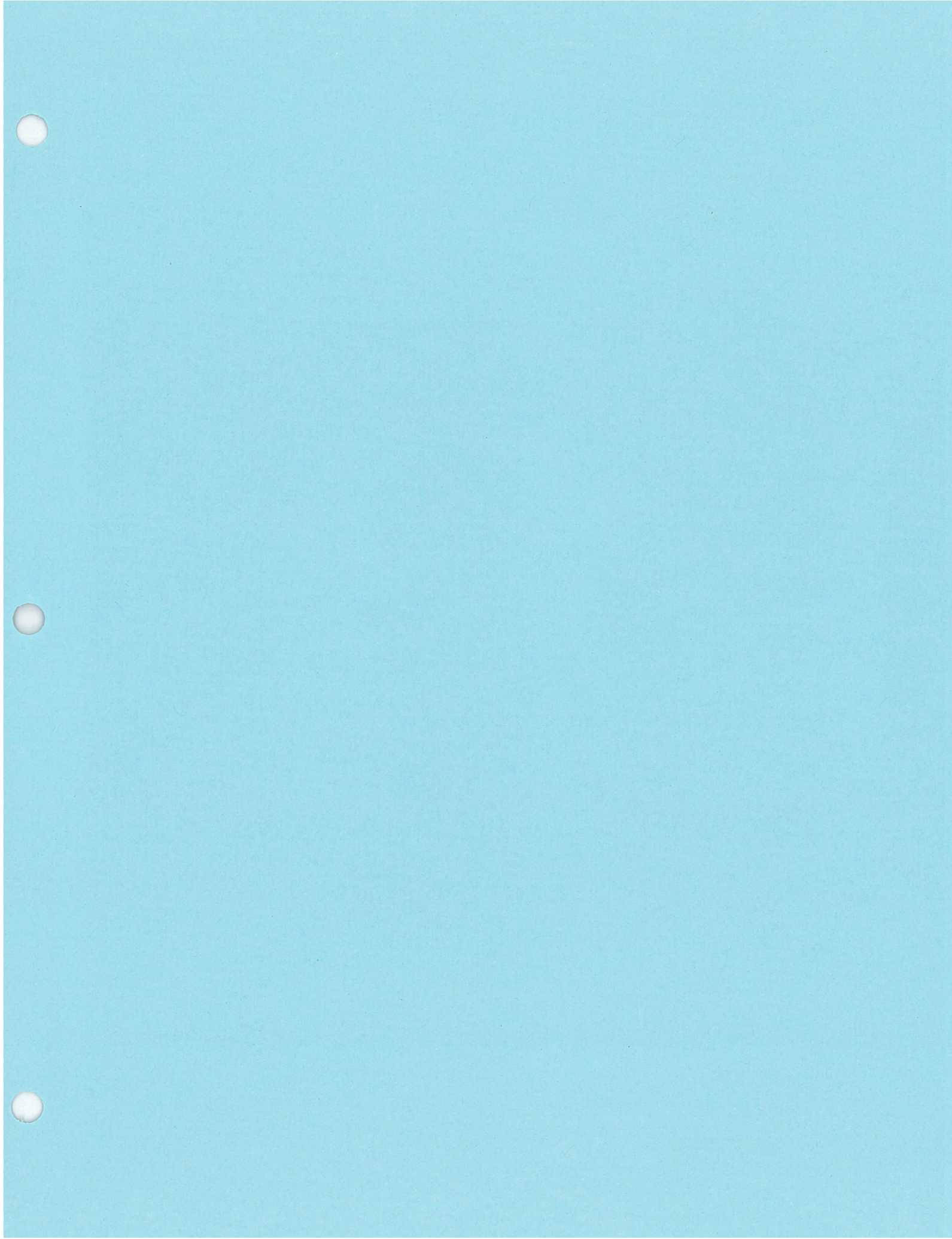
<sup>1</sup> 1 Tex. Admin. Code § 155.501(d)(1). The ALJ only reviewed the adequacy of the notice and not the sufficiency of Staff's factual allegations.

SIGNED September 4, 2020.

A handwritten signature in black ink, appearing to read "Ross Henderson", written over a horizontal line.

ROSS HENDERSON  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS





SOAH DOCKET NO. 362-20-4494

TEXAS LOTTERY COMMISSION,  
Petitioner

v.

ALIA ENTERPRISES INC., DBA  
SHAVER 66,  
Respondent

§  
§  
§  
§  
§  
§  
§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

ORDER NO. 1  
CONDITIONAL ORDER OF DEFAULT DISMISSAL AND REMAND

This matter was set for hearing on September 17, 2020, before the undersigned Administrative Law Judge (ALJ). Tyler Vance appeared on behalf of the staff (Staff) of the Texas Lottery Commission (Commission). Alia Enterprises Inc., dba Shaver 66(Respondent) did not appear and was not represented at the hearing. At the hearing, Staff submitted a motion to remand to the Commission. Upon receiving Staff's Exhibits (Attachments 1-3 to Staff's motion), showing proof of adequate notice to Respondent, the ALJ granted Staff's motion to remand to the Commission for informal disposition.<sup>1</sup>


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

---

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

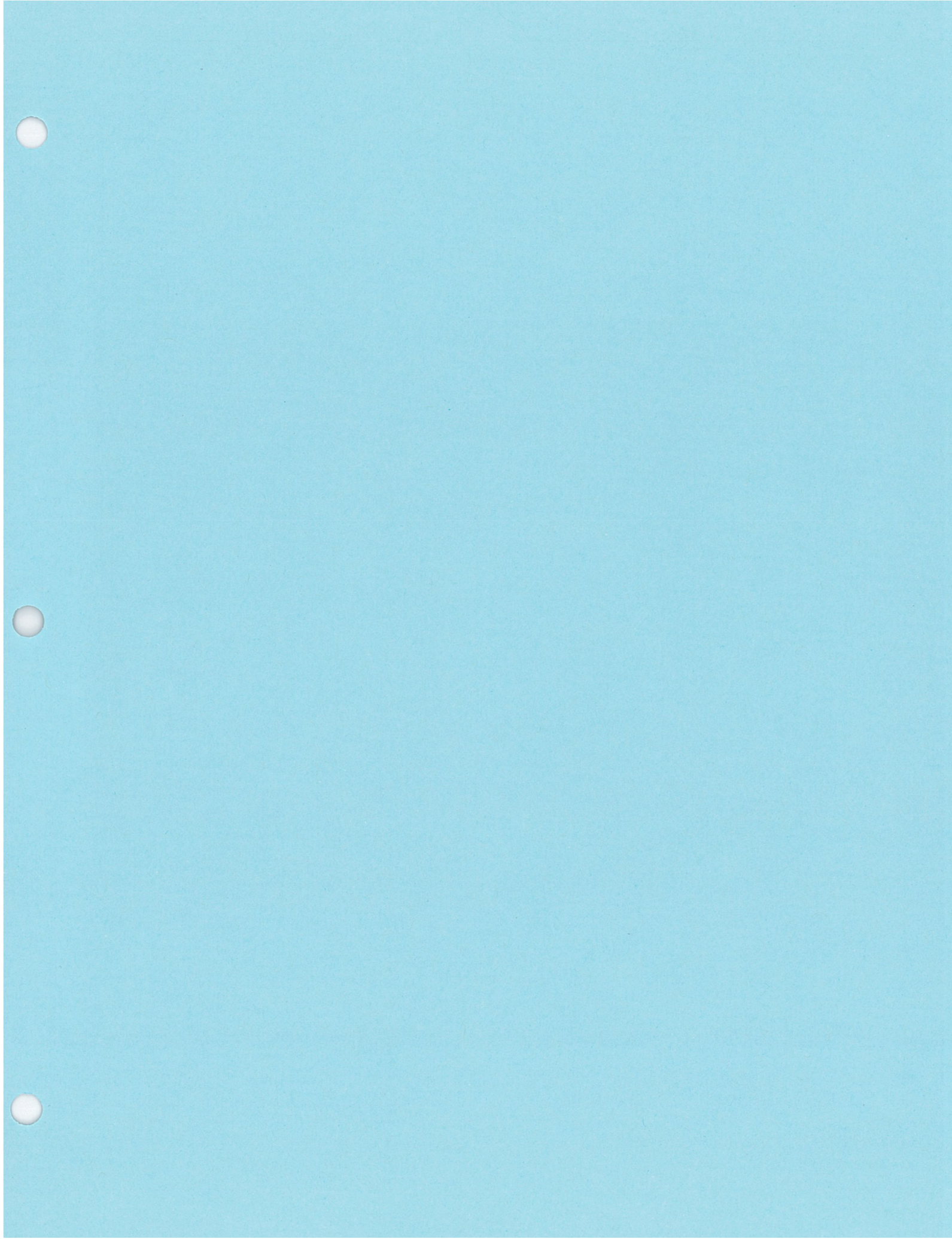


SIGNED October 6, 2020.



---

**RUDY CALDERON**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**



## SOAH DOCKET NO. 362-21-0093

TEXAS LOTTERY COMMISSION,  
Petitioner

v.

ABDUL R. NOORANI DBA ORFIELD  
GROCERY AND DELI,  
Respondent

§  
§  
§  
§  
§  
§  
§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

FILED  
362-21-0093  
10/16/2020 12:11 PM  
STATE OFFICE OF  
ADMINISTRATIVE HEARINGS  
Jodi Brown, CLERK

ACCEPTED  
362-21-0093  
10/16/2020 12:25 PM  
STATE OFFICE OF  
ADMINISTRATIVE HEARINGS  
Jodi Brown, CLERK


## ORDER NO. 1

## CONDITIONAL ORDER OF DEFAULT DISMISSAL AND REMAND

This matter was set for hearing on October 15, 2020, before the undersigned Administrative Law Judge (ALJ). Kristen Guthrie appeared on behalf of the staff (Staff) of the Texas Lottery Commission (Commission). Abdul R. Noorani d/b/a Orfield Grocery and Deli (Respondent) did not appear and was not represented at the hearing. At the hearing, Staff submitted a motion to remand to the Commission. Upon receiving Staff's Exhibits (Attachments 1-3 to Staff's motion), showing proof of adequate notice to Respondent, the ALJ granted Staff's motion to remand to the Commission for informal disposition.<sup>1</sup>

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

SIGNED October 16, 2020.

  
\_\_\_\_\_  
RUDY CALDERON  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

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



Date: DECEMBER 3, 2020

DOCKET NOS. 362-20-3500 and 362-20-3501

TEXAS LOTTERY COMMISSION	§	BEFORE THE TEXAS
<i>Petitioner</i>	§	
	§	
v.	§	
	§	
DINH T. CHAU	§	
D/B/A TIMES MARKET #105	§	
RETAILER LICENSE NO. 180969, and	§	
	§	
DINH T. CHAU	§	
D/B/A TIMES MARKET #102	§	
RETAILER NO. 180968	§	
<i>Respondents</i>	§	LOTTERY COMMISSION

**ORDER DENYING REHEARING**

To: Mr. Alex R. Hernandez, Jr.  
921 N. Chaparral Suite 100  
Corpus Christi, TX 78401  
*via fax at (361) 232-4975*

On October 1, 2020, the Texas Lottery Commission (Commission) entered a final order in the above-styled cases. On October 14, Dinh T. Chau d/b/a Times Market #105 and Times Market #102 (Respondents) sent Commission staff an email that staff treated as a *Motion for Rehearing*. On October 21, the Commission Executive Director issued an *Order Extending Time for Agency Action on Motion for Rehearing*. Thereafter, on October 23, Respondent's counsel filed a formal *Motion for Rehearing* with the State Office of Administrative Hearings, and Commission staff responded to that Motion on November 9. On December 3, during an open meeting in Austin, Texas, the Commission considered Respondent's *Motion for Rehearing*. After review and due consideration thereof:

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

**Commission Order No. 21-0008**

**Date: DECEMBER 3, 2020**

Passed and approved at the regular meeting of the Texas Lottery Commission in Austin, Texas, on the 3<sup>rd</sup> day of DECEMBER, 2020.

Entered this 3<sup>rd</sup> day of DECEMBER, 2020.

---

ROBERT G. RIVERA, CHAIRMAN

---

CINDY FIELDS, COMMISSIONER

---

MARK A. FRANZ, COMMISSIONER

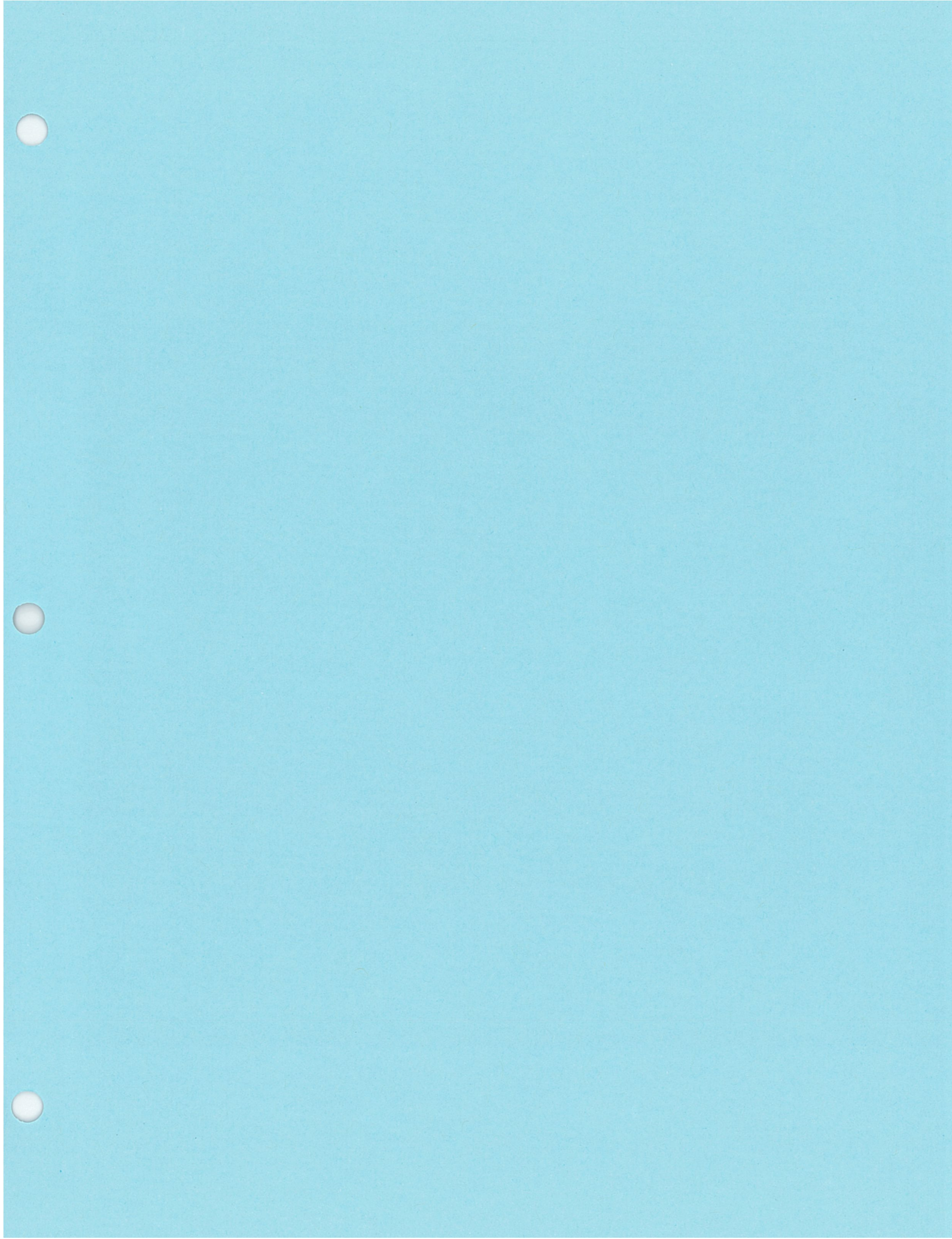
---

ERIK C. SAENZ, COMMISSIONER

---

JAMES H. C. STEEN, COMMISSIONER









**Commission Order No. 21-0005**

**Date: OCTOBER 1, 2020**

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 Dinh T. Chau d/b/a Times Market #105 and Dinh T. Chau d/b/a Times Market #102 are hereby revoked.

Passed and approved at the regular meeting of the Texas Lottery Commission in Austin, Texas, on the 1<sup>ST</sup> day of OCTOBER 2020.

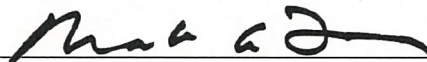
Entered this 1<sup>ST</sup> day of OCTOBER 2020.



ROBERT G. RIVERA, CHAIRMAN



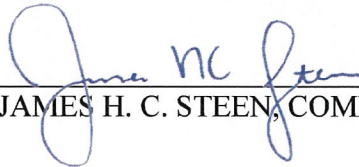
CINDY FIELDS, COMMISSIONER



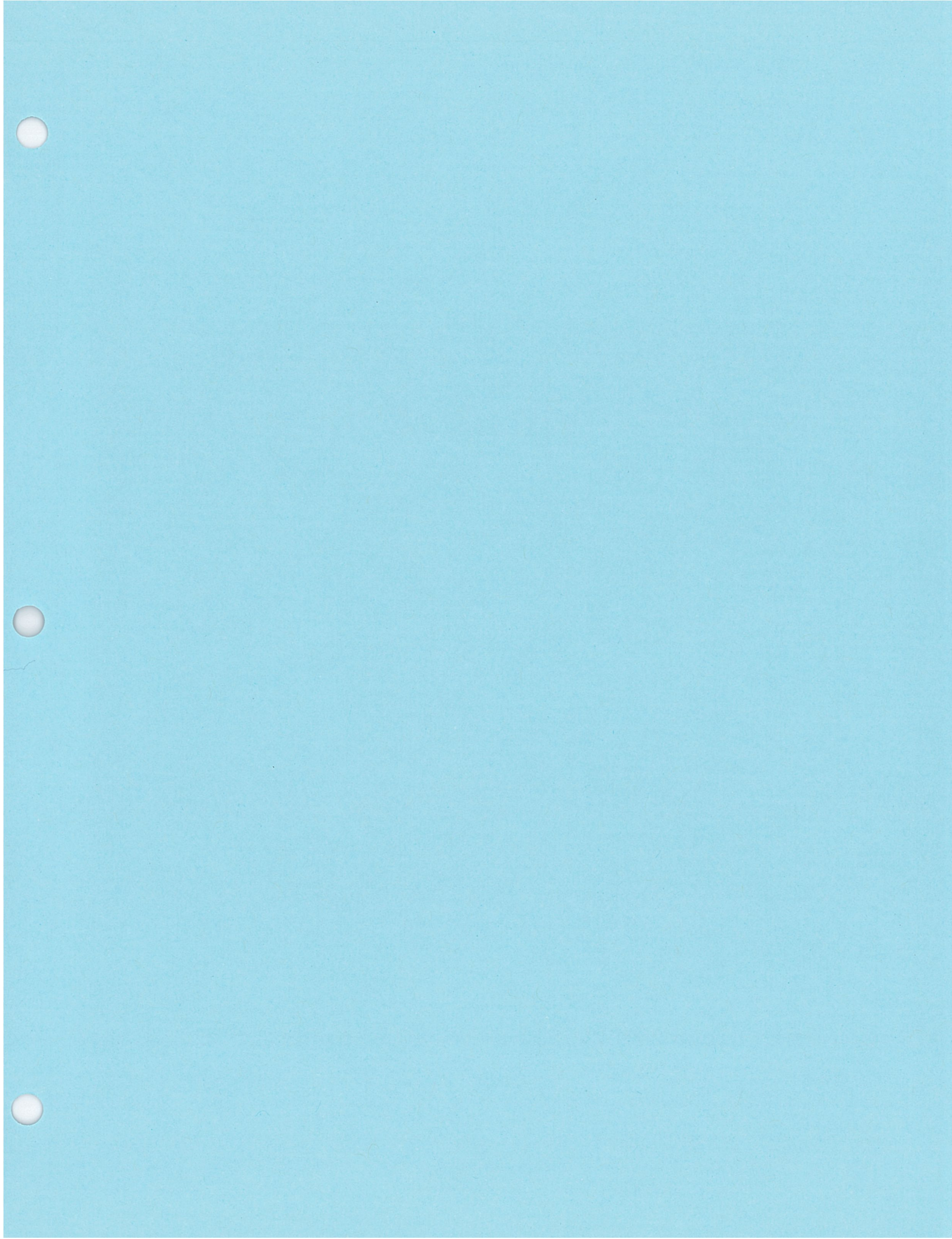
MARK A. FRANZ, COMMISSIONER



ERIK C. SAENZ, COMMISSIONER



JAMES H. C. STEEN, COMMISSIONER





Commissioners:  
Robert G. Rivera,  
Chairman  
Cindy Fields  
Mark A. Franz  
Erik C. Saenz  
Jamey Steen



# TEXAS LOTTERY COMMISSION

Gary Grief, Executive Director

Tom Hanson, Charitable Bingo Operations Director

November 9, 2020

Robert G. Rivera, Chairman  
Cindy Fields, Commissioner  
Mark A. Franz, Commissioner  
Erik C. Saenz, Commissioner  
Jamey Steen, Commissioner

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

**RE: SOAH Docket No. 362-20-3500, Texas Lottery Commission v. Dinh T. Chau d/b/a Times Market #105; and SOAH Docket No. 362-20-3501, Dinh T. Chau d/b/a Times Market #102**

Commissioners:

On September 1, 2020, the State Office of Administrative Hearings (SOAH) issued a Proposal for Decision (PFD) recommending revocation of the Lottery Retailer Licenses of Dinh T. Chau d/b/a Times Market #105 and Dinh T. Chau d/b/a Times Market #102 (collectively, "Respondent"). Respondent did not file exceptions to dispute the determinations and recommendations of the PFD, as provided by 1 Tex. Admin. Code §155.507(b). On October 1, 2020, the Texas Lottery Commission (Commission) issued a final order approving the PFD and revoking Respondent's licenses (Commission Order No. 21-0005).

On October 23, 2020, Respondent, by and through his attorney, filed a motion for rehearing (Motion). By failing to file exceptions, Respondent cannot now credibly protest the Commission's final order. *See Hufo Oils v. R.R. Comm'n of Tex.*, 717 S.W.2d 405, 409 (Tex. App.—Austin 1986, writ denied) ("Whether in a judicial or in an agency proceeding, a party should not be permitted to remain silent and lie in wait, taking a chance on the rendition of a favorable order, and being finally disappointed, then complain for the first time on motion for new trial or rehearing.").

Further, Respondent improperly filed the Motion with SOAH as opposed to filing with the Commission, as required by 16 Tex. Admin. Code §401.220. Nevertheless, Commission staff files this reply to Respondent's Motion. Respondent's Motion improperly refers to the SOAH Administrative Law Judge (ALJ) as the "Petitioner," when in fact, the ALJ conducted the hearing as authorized by 1 Tex. Admin. Code §155.153. Although Respondent's Motion identifies Finding of Fact No. 15 and Conclusion of Law No. 5, the Motion raises no relevant issues of law or fact that were not previously considered by the Commission.

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

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

txlottery.org • txbingo.org

Finding of Fact No. 15 states, "Respondent never sought additional training regarding the RCIP [Retailer Cash Incentive Program] program beyond that which was mandated." Respondent did not dispute this evidence presented at the hearing and fails to dispute specifics of this finding of fact in his Motion. Respondent merely asserts that he was not aware of the option to seek additional training. Respondent therefore failed to identify with particularity the error in this finding of fact.

Conclusion of Law No. 5 states, "Respondent's failure to heed numerous warnings regarding these violations, his unconvincing excuses for those violations, and his inability to properly oversee his employees demonstrate that his participation as a sales agent will detract from the integrity, security, honesty, and fairness of the operation of the lottery under Texas Government Code § 466.151(e)." In his Motion, Respondent admits, "Nowhere in [the ALJ's] ... Proposal did [the ALJ] ... show that Respondents' experience, character, and general fitness are such that the person's participation as a sales agent will not detract from the integrity, security, honesty, and fairness of the operation of the lottery." The PFD demonstrates that Respondent's experience, character, and general fitness will detract from the integrity, security, honesty, and fairness of the operation of the lottery. The ALJ specifically noted at page 9 of the PFD that Respondent's willful ignorance of the rules for the RCIP and other Commission regulations, along with more than twenty unheeded warnings to Respondent, demonstrated Respondent's lack of integrity.

Respondent also complains that the Commission's warnings were never received. However, Respondent does not identify any error in the Commission's delivery of the warnings. Respondent only makes a general argument that if the violations were known then Respondent would have corrected the errors. Respondent did not dispute the Commission's delivery of the warnings at the hearing, and Respondent's Motion does not dispute the evidence presented at hearing that the Commission mailed notices in accordance with the addresses on file with the Commission as provided by Respondent.

Given that Respondent's Motion fails to establish a legal or factual basis for the claimed errors, Respondent's request does not comply with the motion for rehearing requirements as set forth in Tex. Gov't Code §2001.146(g) and the Commission's rules at 16 Tex. Admin. Code §401.220.

Therefore, Commission staff respectfully requests that the Commission deny Respondent's motion for rehearing.

Sincerely,

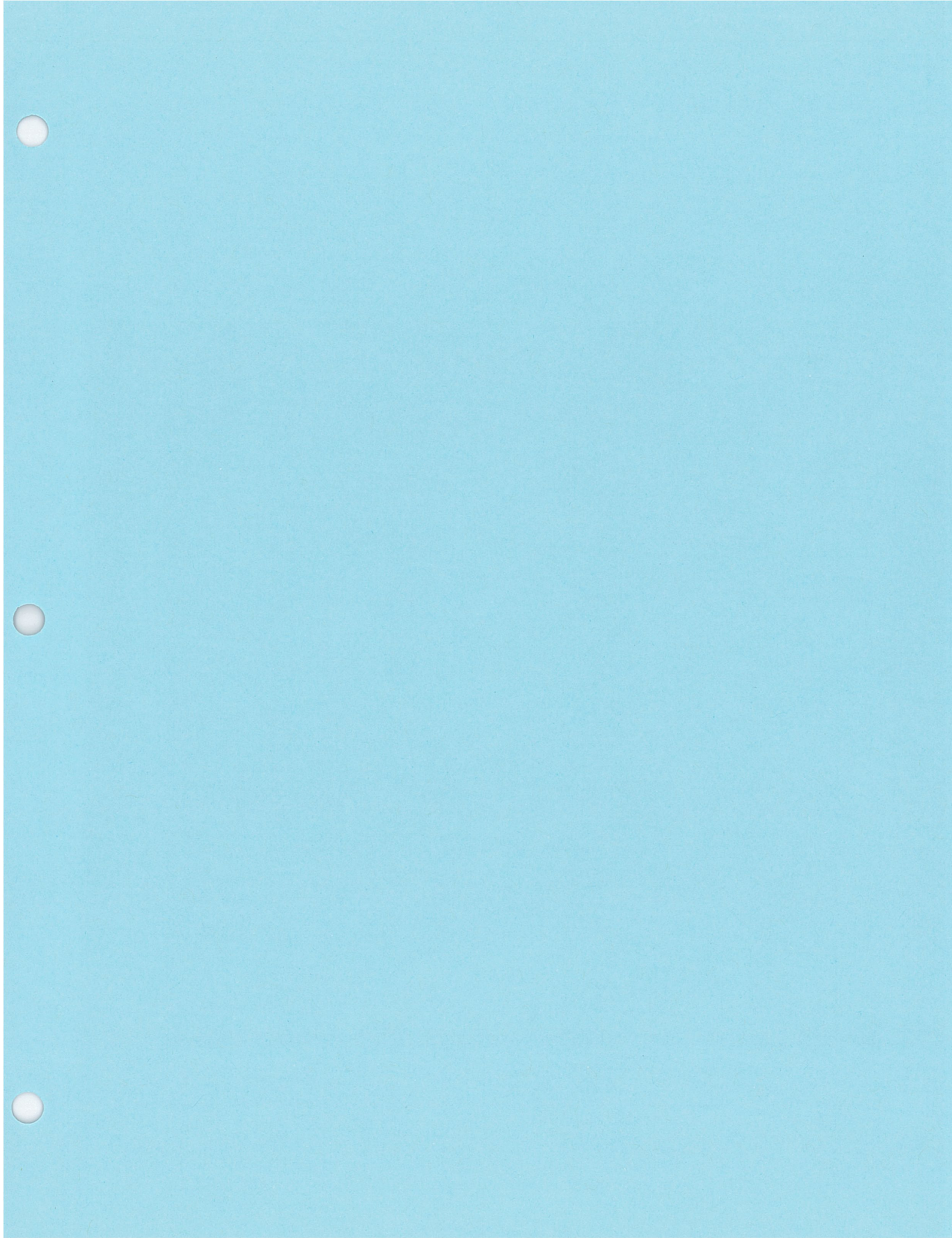
/s/ Kristen Guthrie  
KRISTEN GUTHRIE  
Assistant General Counsel

cc: State Office of Administrative Hearings *eFile*

Mr. Alex R. Hernandez Jr.  
921 N. Chaparral Suite 100  
Corpus Christi, TX 78401

*fax at (361) 232-4975*  
*alexhernandez@alexhernandeztriallaw.com*





ACCEPTED  
362-20-3500  
10/23/2020 3:09 PM  
STATE OFFICE OF  
ADMINISTRATIVE HEARINGS  
Jodi Brown, CLERK

## DOCKET NOS. 362-20-3500 and 362-20-3501

FILED  
362-20-3500  
10/23/2020 2:55 PM  
STATE OFFICE OF  
ADMINISTRATIVE HEARINGS  
Jodi Brown, CLERK

**TEXAS LOTTERY COMMISSION**  
*Petitioner*

§ **BEFORE THE TEXAS**

**V.**

**DINH T. CHAU D/B/A TIMES MARKET**  
**#105, TICKET SALES AGENT LICENSE**  
**NO. 180969**

**DINH T. CHAU D/B/A TIMES MARKET**  
**#102, TICKET SALES AGENT LICENSE**  
**NO. 180968**

*Respondents*

§ **LOTTERY COMMISSION**

**MOTION FOR REHEARING**

**COME NOW** Respondents, DINH T. CHAU D/B/A TIMES MARKET #105, TICKET SALES AGENT LICENSE NO. 180969 and DINH T. CHAU D/B/A TIMES MARKET #102, TICKET SALES AGENT LICENSE NO. 180968, collectively referred to as Movant or Respondent(s), and hereby move for a rehearing of the Proposal for Decision on which an Order of the Commission was signed on October 1, 2020 in the above-referenced case, and would show unto the Commission the following:

1. An Order of the Commission was signed on October 1, 2020 revoking the Texas Lottery Ticket Sales Agent Licenses of Movants. *See* Order of the Commission attached hereto as Exhibit A.
2. It has not been more than 25 days from the date of signature on said Order. *Id.*
3. Rule §401.220 of the Texas Administrative Code allows, in relevant part, that “A motion for rehearing may be filed by any party with the Commission by filing it with the Office of the General Counsel within 25 days of the date which the decision or order that is the subject of the motion is signed...The motion must identify with



particularity findings of fact or conclusions of law that are the subject of the complaint and any evidentiary or legal ruling claimed to be erroneous. The motion must also state the legal and factual basis for the claimed error. *See* Texas Administrative Code §401.220.

4. Movant identifies an error in Finding of Fact # 15 and Conclusions of Law #5, and provides the legal and factual basis for such identification as follows: Petitioner asserts that Movant never sought additional information or asked for educational materials concerning the RCIP program in its rules that were available to retail sales agents (*see* Proposal for Decision attached hereto as Exhibit B at p. 7, 8, 9, and 11). Petitioner also states that “Respondent...testified that he was not aware that [the actions giving rise to the alleged violations] were improper under the RCIP program (see Proposal at p. 8). Petitioner also states Respondent “contended that he never received the warnings...though he admitted that his employees *may* have received the warnings” of misconduct (*id.*). Movant asserts that he was not aware of the option to seek additional training under the RCIP program or via the Texas Lottery Commission to assist him with his lack of storage capacity and display cases (*id.*). Movant identifies an error in the ALJ’s finding that Movant never sought additional information or asked for educational materials because he was unaware of the number of allegations of misconduct and the degree to which he needed to seek additional training or guidance from the RCIP or Texas Lottery Commission due to not receiving a copy of each of the warnings (it should be noted Petitioner stated some of the written warnings “were delivered to Respondent’s wife or other employees” (*see* Proposal at p.8). Had Movant been personally presented with each written notice, he would have reached out to save

himself from losing the benefits of the RCIP program, and might have been able to find a resolution to assist him in properly storing and displaying his lottery tickets. He did not plead *willful* ignorance or malice, only ignorance and practical necessity, which does not detract from the integrity, security, honesty, and fairness of the operation of the lottery, and which could have been cured had Movant known how badly he needed to reach out for help.

5. Under this factual basis, Movant met his burden to show his licenses should not be revoked as it pertained to alleged failure to seek additional training. Additionally, had Movant been presented with each written notice of an alleged violation or instance of misconduct, Movant would have alerted to the need to properly oversee his employees and his alleged failure to do so does not meet the Petitioner's burden of proof that Movant's alleged behavior detracts from the integrity, security, honesty, and fairness of the operation of the lottery.
6. Lastly, Movant has been permanently banned from participation in the RCIP, and therefore the only burden Petitioner has to meet, and which Movant avers Petitioner did not meet, was that Respondents' licenses were able to be revoked under Texas Government Code § 466.151(e), which states "The director may issue a license to a person only if the director finds that the person's experience, character, and general fitness are such that the person's participation as a sales agent will not detract from the integrity, security, honesty, and fairness of the operation of the lottery". *See* Texas Government Code § 466.151(e). Nowhere in Petitioner's Proposal did Petitioner show that Respondents' *experience, character, and general fitness are such that the person's participation as a sales agent* will not detract from the integrity, security, honesty, and



fairness of the operation of the lottery; conversely, Petitioner wrote that Staff's argument that Respondent presents a danger to the integrity of the lottery was "a challenging one" and that it is "impossible to assess such qualities over the scope of a single hearing". *See* Proposal at p.9. Petitioner goes on to say "Indeed, as a whole, Respondent appears to be [sic] have experience, character, and general fitness as shown by his hard work and education as mechanical engineer, and his efforts to secure a better future for his family." *Id.* Combined with Respondent's ignorance as to the degree of training and assistance he needed from the RCIP program and the Texas Lottery Commission, Respondent's experience, character, and fitness are not a danger to the lottery; Respondent is no longer participating in the RCIP and now that Respondent is aware of the degree of assistance he needs to better represent the lottery, he can be rehabilitated via training and education, and can better supervise his employees in relation to ticket sales, storage, activation, and status.

WHEREAS, PREMISES CONSIDERED, Movant prays the Commission and ALJ will grant a rehearing of the motion on Petitioner's Proposal (proposed revocations) and grant all other and further relief to which Movant may be entitled.

Respectfully submitted,

By: /s/ Alex R. Hernandez, Jr.  
Alex R. Hernandez Jr.  
Texas Bar No. 24032411  
Email: [alexhernandez@alexhernandeztriallaw.com](mailto:alexhernandez@alexhernandeztriallaw.com)  
921 N. Chaparral Suite 100  
Corpus Christi, TX 78401  
Tel. (361) 792-3811  
Fax. (361) 232-4975

**CERTIFICATE OF SERVICE**

I certify that on October 23, 2020 a true and correct copy of this document was served on the Texas Lottery Commission, Attn: General Counsel, P.O. Box 16630, Austin, Texas 78761-6630 via regular and certified mail, return receipt #7018036000077727524 and to all other parties or counsel Via Efile Texas electronic service.

/s/ Alex R. Hernandez, Jr.  
Alex R. Hernandez Jr.





*Commissioners:*

Robert G. Rivera,  
*Chairman*  
Cindy Fields  
Mark A. Franz  
Erik C. Saenz  
Jamey Steen



# TEXAS LOTTERY COMMISSION

Gary Grief, *Executive Director*

Tom Hanson, *Charitable Bingo Operations Director*

October 21, 2020

Dinh T. Chau  
d/b/a Times Market #105  
312 E. Travis St.  
Port Lavaca, TX 77979

*via certified and regular mail*  
*via chaumanagement@yahoo.com*

Dinh T. Chau  
d/b/a Times Market #102  
107 Seadrift St.  
Port Lavaca, TX 77979

*via certified and regular mail*  
*via chaumanagement@yahoo.com*

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

*via kristen.guthrie@lottey.state.tx.us*

**RE: SOAH Docket No. 362-20-3500, Texas Lottery Commission v. Dinh T. Chau d/b/a Times Market #105; and SOAH Docket No. 362-20-3501, Dinh T. Chau d/b/a Times Market #102; Order Extending Time for Agency Action on Motion for Rehearing**

To the Parties:

On October 14, 2020, Dinh T. Chau d/b/a Times Market #105 and Dinh T. Chau d/b/a Times Market #102 (Respondents) filed with the Texas Lottery Commission (Commission) by email a Motion for Rehearing (Motion) in the above-referenced matters. If the Commission does not act on the Motion on or before November 25, 2020 (the 55th day after the date the Order adopting the State Office of Administrative Hearings Proposal for Decision was entered by the Commission on October 1, 2020), the Motion will be overruled by operation of law. The next regularly scheduled meeting of the Commission is anticipated to be after November 25, 2020.

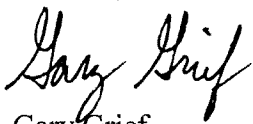
Therefore, pursuant to 16 Tex. Admin. Code §401.220, and to allow the Commission sufficient time to act on the Motion, the deadline for the Commission to act on Respondents' Motion is hereby extended for an additional 45 days, for a total of 100 days after October 1, 2020 (January 9, 2021).

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

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

txlottery.org • txbingo.org

Sincerely,

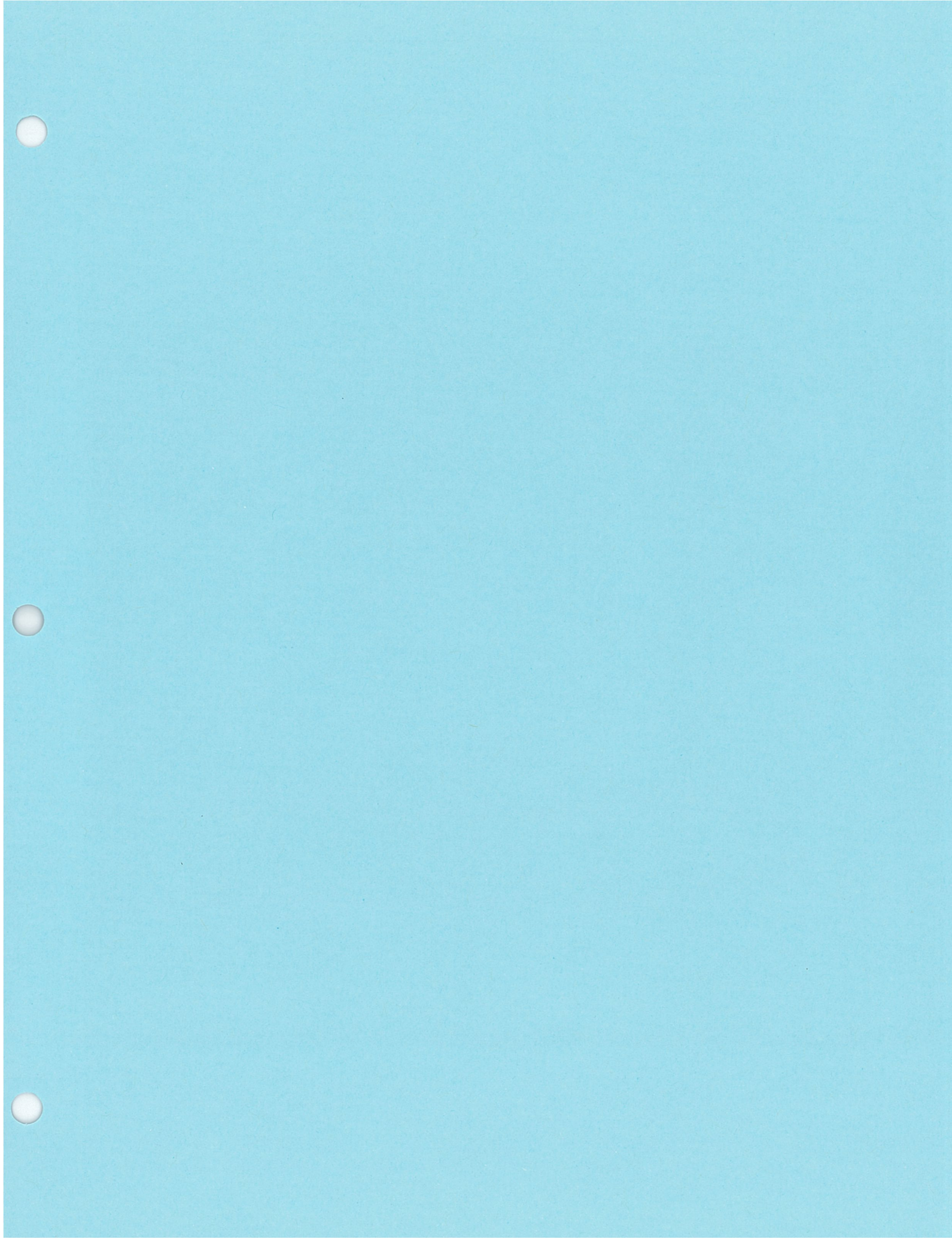
A handwritten signature in black ink, appearing to read "Gary Grief". The signature is written in a cursive, flowing style.

Gary Grief  
Executive Director

cc:

State Office of Administrative Hearings (Docketing Division)







## Carson, Dorota

---

**From:** Dinh Chau <chaumanagement@yahoo.com>  
**Sent:** Wednesday, October 14, 2020 7:11 AM  
**To:** Carson, Dorota  
**Cc:** Guthrie, Kristen  
**Subject:** Re: Times Market #102 and Times Market #105

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

Dear Ms Carson and Guthrie:

Please reconsider the cases for the following reasons:

1. My wife Diem Luong, who is managed the stores did buy many scratch off tickets and scratch many packs unfinished and keep hiding from me inside the safe box; however, she did managed the fund for Lotto so we had never have any issue about financially when the Lotto Commission withdraw the fund. She was bought many scratch off tickets with financial responsibilities but she did not know that keeping those un-scratch tickets too long is not right because the Lotto Commission had to buy them back of those tickets exceed the times limit of after activation.

2. The Sale representative had block the terminal Lotto since June 12, 2020 until September 17, 2020 that we can not ordered or received any tickets for more than 3 months losing a lot of revenue and of course commission sale. This action before the hearing can be consider as punishment for our wrong doing.

3 As you well know of we are all in the pandemic and many small businesses had fail and bankrupt; we use to had 3 stores with 10 employees since beginning of our business with Texas Lotto since 2002. This year beginning of Covid-19 we only had 1 employee with 2 stores so we had to work a lot of hours, but there is no revenue; therefore, please reconsider of NOT revolt our licence so we can survive this Global Pandemic. We promise it will not happen again and any other violate case.

Your reconsider of NOT revolt our licence is greatly appreciated of saving at least 2 small businesses for our country and we promise of absolutely not doing this again. This documentation can be use for future reference of our promising. Thank you.

Sincerely Yours,

Dinh Chau

On Friday, October 2, 2020, 07:46:40 AM CDT, Carson, Dorota <dorota.carson@lottery.state.tx.us> wrote:

Mr. Chau—

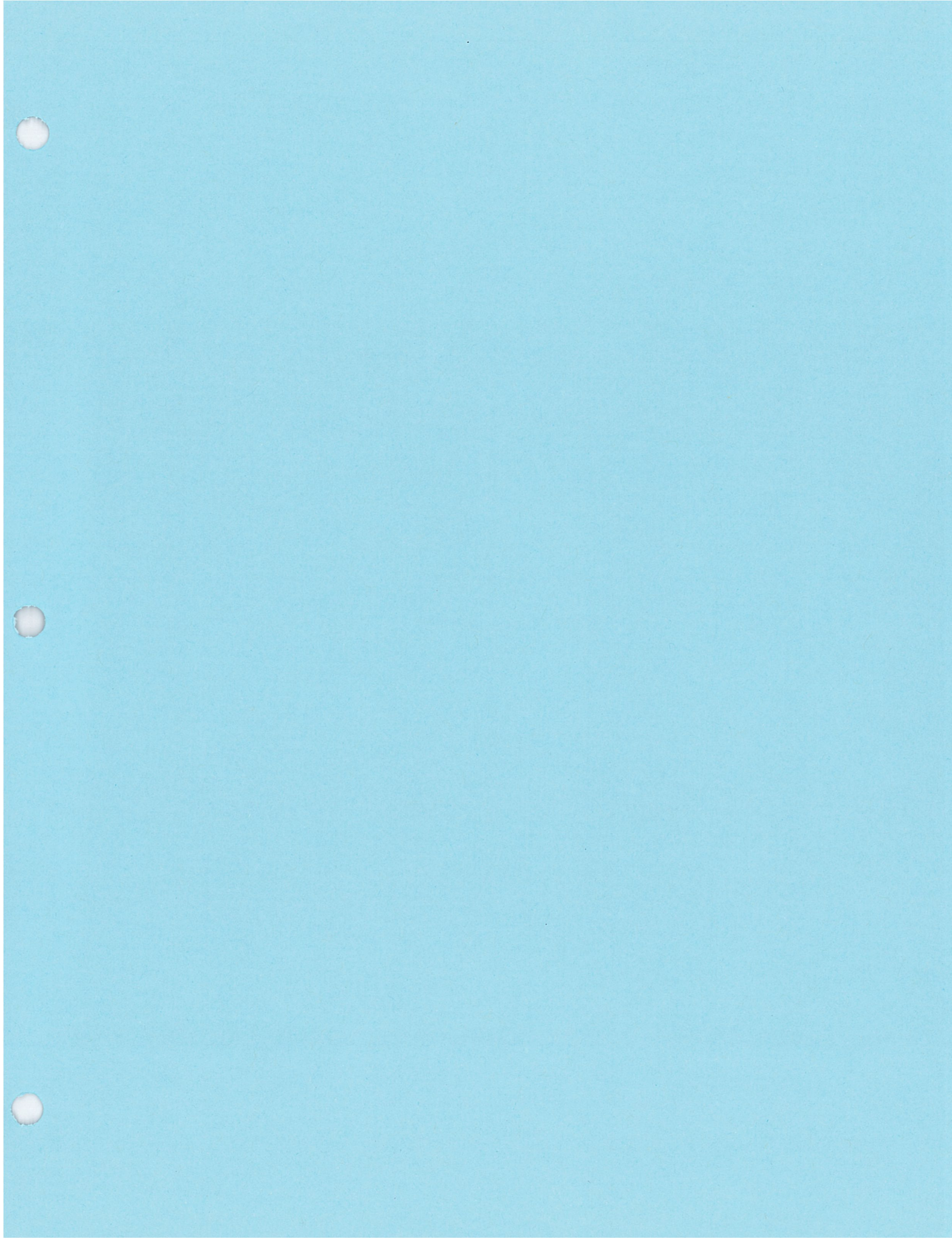
Please see the attached order that was approved/signed at the Commission meeting yesterday and let me know if you have any questions.



Thanks,  
Dorota









# State Office of Administrative Hearings

Kristofer Monson  
Chief Administrative Law Judge

September 1, 2020

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

**VIA E-FILE TEXAS**

**RE: Docket Nos. 362-20-3500 and 362-20-3501; Texas Lottery Commission v. Dinh T. Chau d/b/a Times Market #105 and #102**

Dear Mr. Grief:

Please find enclosed a Proposal for Decisions in these cases. 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 that can be found at [www.soah.texas.gov](http://www.soah.texas.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel Wiseman".

Daniel Wiseman  
Administrative Law Judge

DW/nm

cc: Kristen Guthrie, Assistant Gen. Counsel, Tex. Lottery Comm'n, 611 E. 6<sup>th</sup> St., Austin, TX 78701 - **VIA E-FILE TEXAS**  
Dinh T. Chau, d/b/a Times Market, 312 E. Travis St., Port Lavaca, TX 77979 - **VIA REGULAR MAIL**

**SOAH DOCKET NO. 362-20-3500**

TEXAS LOTTERY COMMISSION	§	BEFORE THE STATE OFFICE
	§	
v.	§	OF
	§	
DINH T. CHAU d/b/a TIMES MARKET	§	
# 105,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

**SOAH DOCKET NO. 362-20-3501**

TEXAS LOTTERY COMMISSION	§	BEFORE THE STATE OFFICE
	§	
v.	§	OF
	§	
DINH T. CHAU d/b/a TIMES MARKET	§	
# 102,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

These joined proceedings involve two retailer locations with the same owner and arise out of the same set of facts. The staff (Staff) of the Texas Lottery Commission (Commission or TLC) seeks to revoke the Lottery Sales Agent License Nos. 180968 and 180969 held by Dinh T. Chau d/b/a Times Market #105 and Times Market #102 (jointly, Respondent) on two primary bases: the allegedly repeated violations of the provisions governing the TLC's Retailer Cash Incentive Program (RCIP), and the claim that Respondent's character detracts from the integrity, security, honesty, and fairness of the lottery's operation, rendering him unfit for licensure. The Administrative Law Judge (ALJ) finds that Staff's request should be granted and Respondent's licenses Nos. 180968 and 180969 be revoked.

**I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY**

Jurisdiction and notice were not contested and are discussed only in the findings of fact and conclusions of law. ALJ Daniel Wiseman convened the telephonic hearing on July 2, 2020.



Kristen Guthrie, Assistant General Counsel, appeared on behalf of Staff. Respondent represented himself. The evidentiary record closed the same day.

## II. DISCUSSION

### A. Legal Standards

The Commission is authorized to take disciplinary action against a sales agent who has violated the State Lottery Act, found at Texas Government Code chapter 466, or the Commission's rules.<sup>1</sup> Among the Commission's disciplinary powers is the authority to revoke or suspend a license,<sup>2</sup> or to impose lesser sanctions, including the issuance of a warning letter or the imposition of administrative penalties.<sup>3</sup> Staff bears the burden of proof to show by a preponderance of the evidence that the alleged violations occurred, while, if the Staff has met that burden, the Respondent bears the burden of demonstrating why the licenses should not be revoked.<sup>4</sup>

In addition, the following provisions govern the outcome of this proceeding:

- Texas Government Code § 466.151(e), which states:  
The director may issue a license to a person only if the director finds that the person's experience, character, and general fitness are such that the person's participation as a sales agent will not detract from the integrity, security, honesty, and fairness of the operation of the lottery.
- Texas Government Code § 466.155(a)(5), which states in pertinent part:
  - (a) After a hearing, the director shall deny an application for a license or the [C]ommission shall suspend or revoke a license if the director or [C]ommission, as applicable, finds that the applicant or sales agent:

---

<sup>1</sup> The Commission's rules are located at 16 Texas Administrative Code (TAC) chapters 401 through 403.

<sup>2</sup> Tex. Gov't Code § 466.155(a).

<sup>3</sup> 16 TAC § 401.160.

<sup>4</sup> See 1 TAC § 155.427 (SOAH rule stating that after considering referring agency's provisions and policy, burden of proof is allocated according to various factors including which party is seeking to alter the status quo, the relative status of the parties, and whether a party would be required to prove a negative); Tex. Gov't Code § 466.155(c).

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

and

- 16 Texas Administrative Code § 401.158, which states, in pertinent parts:
  - (a) The [C]ommission may suspend or revoke any license issued under this subchapter if the [C]ommission 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 license, The [C]ommission shall inform the sales agent in writing of the decision to suspend or revoke a license for any of these reasons.
  - (b) Without limiting the [C]ommission'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 [C]ommission may also suspend or revoke a license for reasons including, but not limited to, any of the following:
    - ...
    - (4) licensee fails to follow instructions and procedures for the conduct of any particular lottery game, lottery special event or promotion;
      - ...
    - (8) licensee violates any directive or instruction issued by the director of the Lottery Operations Division;
    - (9) licensee violates any express term or condition of its license not specifically set forth in this subchapter.

## **B. Allegations**

First, Staff contends that Respondent violated numerous interrelated statutes, rules, and license provisions, including those listed above,<sup>5</sup> related to the handling of lottery tickets at the two retail sales locations in order to improperly maximize the cash incentive received under the RCIP.

---

<sup>5</sup> Staff also contends that Respondent violated the terms of the licenses themselves, along with other overlapping rules. The ALJ does not find it necessary to reach every allegation, as the violations described herein are based on the same conduct and are sufficient to support revocation. *See, e.g.*, Staff Exs. 2 and B (notices of hearing).



In short, Staff alleges that Respondent manipulated the RCIP incentive program by improperly “activating” or “settling” tickets at these locations,<sup>6</sup> which increased his RCIP payout while not actually offering them for sale to the public, thus undermining the RCIP’s goal of increasing ticket sales. In addition, Staff alleges that Respondent moved tickets allocated to one retail sales location to another in violation of the RCIP rules. Staff contends that despite repeated warnings these practices continued until Respondent was eventually barred from further participation in the RCIP.<sup>7</sup>

Second, Staff argues that this pattern of repeated violations demonstrates Respondent’s unfitness for licensure as a sales agent for the Commission. Under Texas Government Code § 466.151(e), only a person whose character will not detract from the integrity, security, honesty, and fairness of the operation of the lottery may hold a license. According to Staff, Respondent’s character detracts from these values such that his licenses must be revoked.

### **C. Evidence**

Staff offered a total of 15 exhibits,<sup>8</sup> all of which were admitted. In addition, Staff offered the testimony of Michelle Young, Retail Distribution and Special Projects Coordinator for the Commission. Respondent testified on his own behalf and offered no documentary evidence.

#### **1. Staff’s Evidence**

Ms. Young testified that the Commission first became concerned in December 2019 when it noticed irregularities in scratch ticket pack settlements and returns related to the RCIP at

---

<sup>6</sup> “Settled” or “activated” tickets typically cannot be returned to the Commission and usually indicate that they are actively being sold to the public.

<sup>7</sup> The record indicates that the RCIP is a recurring program and is identified by number relating to the year the particular RCIP was in effect. This distinction is not relevant to the analysis here. Respondent is currently disqualified from participating in all future RCIP programs.

<sup>8</sup> Staff Exhibits A-G relate to Docket No. 362-20-3500 (Times Market No. #105), and Staff Exhibits 1-8 relate to Docket No. 362-20-3501 (Times Market No. #102).

Respondent's retail locations, which she stated could indicate manipulation of the RCIP in order to increase Respondent's profits in violation of RCIP and Commission rules.<sup>9</sup> Ms. Young explained that the RCIP is a yearly program intended to increase ticket sales by incentivizing retailers with cash rewards for exceeding a sales target derived from prior years' ticket sales. According to Ms. Young, the Commission calculated retailers' sales using the number of "settled" or "activated" packs at the location. However, settling or activating packs is within the control of the retailer and is intended to but does not necessarily reflect that tickets have actually been sold. Moreover, she testified, the Commission will effectively issue refunds to retailers for settled or activated packs for which there have been few ticket sales. Thus, by activating or settling packs, a retailer could obtain cash incentives under the RCIP without actually selling many tickets, undermining the goal of the RCIP and depriving the state of the revenue generated from such sales.<sup>10</sup> The RCIP rules are published in flyers distributed to the retailers and note that the program is based on individual retail locations and that the Commission may disqualify retailers if irregularities in pack settlements are observed.<sup>11</sup>

Ms. Young testified that on December 6, 2019, a Commission vendor employee visited Times Market #105 and returned 26 partial packs of scratch tickets, most for the same game, that were in a settled status. She testified that some tickets had been sold from these packs, but the packs were not being offered for sale to the public at the time of the visit, which she stated indicated manipulation of packs in order to maximize the RCIP bonus. She further stated that the most recent Inventory Sales Summary Report from January 2, 2020, identified 250 packs in Times Market #105's inventory, including 105 packs in activated or settled status. However, Times Market #105 had only 59 scratch ticket facings—the slots where scratch tickets are displayed for sale to the public—again indicating manipulation of packs in order to maximize RCIP payments, according to Ms. Young.<sup>12</sup>

---

<sup>9</sup> See Tr. at 26:35 *et seq.* (Young Direct).

<sup>10</sup> See Tr. at 26:50 *et seq.*; *id.* at 31:00 *et seq.*

<sup>11</sup> Staff Exs. 6 & F.

<sup>12</sup> See Tr. at 27:00 *et seq.*

In addition, Ms. Young testified that, as set out in Staff Exhibits 6 and F, the Commission's Inventory Sales Summary Report (dated January 2, 2020) identified 250 packs in Times Market #105's inventory, including 105 packs in activated or settled status. However, Times Market #105 had only 59 scratch ticket facings, indicating possible manipulation of packs in order to maximize RCIP payments.

Also on December 6, 2019, a Commission vendor employee visited Times Market #102, Ms. Young testified. As with the other location, numerous packs were inactivated or settled status (in this case 155) but Times Market #102 had only 60 facings, again indicating to Ms. Young that Respondent manipulated the number of packs activated or settled in order to maximize RCIP payments.<sup>13</sup> She further testified that the January 2, 2020 Inventory Sales Summary Report mentioned above identified 324 packs in Times Market #102's inventory, including 155 packs in activated or settled status. However, Times Market #102 had only 60 scratch ticket facings, indicating, according to Ms. Young, possible manipulation of packs sold in order to maximize RCIP payments.

Ms. Young also testified that, regarding the documentary evidence showing pack returns for retailers, Respondent had a disproportionate number of activated and returned packs compared to Respondent's actual sales and sales capacity.<sup>14</sup> Ultimately, according to Ms. Young, the evidence shows that Respondent received \$196,870 in credit under the 2019 RCIP.<sup>15</sup>

Further, Ms. Young testified that because the RCIP sales target is specific to a single retail location, it is subject to manipulation if a retailer moves tickets allocated to one location for sale at another, artificially lowering the ticket sales at one location (resulting in a lower sales target the next year) and inflating the sales at the other location (resulting in a larger cash incentive for that year).

---

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 42:00; Staff Exs. 6 & F.

<sup>15</sup> Tr. at 44:00; Staff Exs. 6 & F.

Ms. Young testified that in 2016 representatives from the Commission's vendor sales staff observed Respondent or his employees transferring scratch ticket game packs from one retail location to another and issued warnings that this practice was not permissible under RCIP and Commission rules.<sup>16</sup> Nevertheless, Ms. Young testified, Respondent or his employees were observed again transferring tickets from one location to another on additional occasions in 2016. Ms. Young testified that Respondent was disqualified from the next year's RCIP program as a result, and the Commission issued warning letters concerning compliance with the RCIP program.<sup>17</sup>

Ms. Young noted that misconduct took place at both of Respondent's locations, and continued despite repeated written warnings from Staff, some of which were delivered to Respondent's wife or other employees. Ms. Young testified that Respondent was warned over twenty times concerning his noncompliance.<sup>18</sup>

On March 4, 2020, Ms. Young testified that the Commission permanently disqualified Respondent from participating in the RCIP, and on May 14, 2020, initiated revocation proceedings.<sup>19</sup> Ms. Young stated that revocation was appropriate in this instance because of the importance of maintaining the integrity of the lottery as an important source of revenue for the state. She explained that Respondent's alleged violations undermined the integrity of the lottery and resulted in lost revenue for the state, and by not offering tickets for sale also potentially deprived lottery players of winning tickets. Moreover, Ms. Young testified that Respondent had never sought additional information or asked for educational materials concerning the RCIP program in its rules that were available to retail sales agents.<sup>20</sup>

---

<sup>16</sup> See, e.g., Staff Ex. F.

<sup>17</sup> See also Staff Exs. 3 & C; 4 & D.

<sup>18</sup> See Staff Ex. F at Bates 151.

<sup>19</sup> Staff Exs. E & 5.

<sup>20</sup> See Tr. at 62:00 *et seq.*; 64:22.

She argued that even though Respondent is now excluded from the RCIP, his character renders him unfit for licensure under Texas Government Code § 466.151(e) because Respondent's past practices demonstrate that he cannot be trusted with future lottery programs.<sup>21</sup>

## **2. Respondent's Evidence**

Respondent testified on his own behalf.<sup>22</sup> Respondent did not deny the actions giving rise to the alleged violations but testified that he was not aware that these actions were improper under the RCIP program. He contended that he never received the warnings testified to by Ms. Young and documented in Staff's evidence, though he admitted that his employees may have received the warnings. He generally acknowledged that as license holder, he is ultimately responsible for compliance. He stated that he is a hard-working man who immigrated to this country and is striving to take advantage of the economic opportunities here. He noted that even his teenage daughter contributes to the upkeep of the stores. In addition, he cited lack of storage capacity at the locations as the reason for the transfer of tickets from one location to another. In sum, with respect to the alleged violations, Respondent pleaded ignorance and practical necessity. However, on cross-examination Respondent admitted that he never sought any additional training available from the Commission and, again, acknowledged ultimate responsibility as license holder.

## **D. Parties' Arguments and ALJ's Analysis**

### **1. Did Respondent Violate the RCIP Rules and Related Regulations?**

Staff demonstrated by a preponderance of the evidence that Respondent violated the RCIP and Commission rules, including manipulating packs in violation of 16 TAC §§ 401.158(b)(4), (8), (9); and 401.366.

---

<sup>21</sup> Moreover, the evidence showed that the Commission has sanctioned Respondent for violations related to the use of lottery tickets in connection with eight-liners. As that matter is apparently still subject to appeal, the ALJ did not base his decision on that violation, which related only to one of the retail locations.

<sup>22</sup> See Tr. at 74:10 *et seq.* (Chau Direct and Cross).



His testimony that he was unaware that his actions were improper is not credible—as he is a highly educated person, a mechanical engineer—nor is his alleged ignorance of the rules. Respondent failed to explain how he could remain ignorant of the rules after the many warnings he and his employees received regarding his violations, as set out in the record. Respondent also admitted that he transferred tickets between locations, in violation of 16 TAC §§ 401.158(b)(4) and (8). The ALJ finds that the preponderance of the evidence shows that Respondent violated the rules of the RCIP, and thus Texas Government Code § 466.155(a)’s prohibition on rule violations, and 16 TAC §§ 401.158(b)(4), (8), and (9).

**2. Does Respondent Have the Experience, Character, and General Fitness Required by Texas Government Code § 466.151(e)?**

Staff’s argument that—notwithstanding his exclusion from the RCIP, Respondent still presents a danger to the security and integrity of the lottery due to his lack of experience, character, and general fitness under Texas Government Code § 466.151(e)—is a challenging one. It is impossible to assess such qualities over the scope of a single hearing. Indeed, as a whole, Respondent appears to have experience, character, and general fitness as shown by his hard work and education as mechanical engineer, and his efforts to secure a better future for his family. But the statute is limited to the narrow question of what the evidence shows and how it pertains to the specific issue of Respondent’s ability to properly represent the lottery. Respondent’s—at best—willful ignorance of the rules of the RCIP and other Commission regulations and his failure to acknowledge any wrongdoing constitute sufficient evidence that he does not meet the standard set out in § 466.151(e). The evidence that over twenty warnings were insufficient to ensure compliance from Respondent demonstrate that it is unlikely he will abide by the rules in the future, especially given his lack of control over his limited staff and his demonstrated inability to properly oversee his employees’ compliance. Respondent offered no plan or course of action that would suggest similar violations would not occur in another lottery program. For those reasons, the ALJ finds that Texas Government Code § 466.151(e) may be used as a basis for revocation of Respondent’s licenses.

For the reasons stated above, the ALJ finds that the preponderant evidence demonstrates that Respondent committed the violations described above and that Respondent failed to show why the licenses should not be revoked. Accordingly, the ALJ recommends that the Lottery Sales Agent licenses held by Respondent be revoked, and in support of this recommendation makes the following findings of fact and conclusions of law.

### III. FINDINGS OF FACT

1. Dinh T. Chau d/b/a Times Market #105 and Times Market #102 (jointly, Respondent) holds Texas Lottery Sales Agent License Nos. 180968 and 180969 issued by the Texas Lottery Commission (Commission).
2. In 2016, Commission vendor sales staff notified Respondent or his employees that engaging in selling scratch ticket game packs at a location other than the location where the packs were assigned and activated, in order to maximize his bonus under the Commission's Retail Cash Incentive Program (RCIP), was in violation of 16 Texas Administrative Code § 401.158(b)(4) and (8).
3. The RCIP is a yearly program intended to increase ticket sales by incentivizing retailers with cash rewards for exceeding a sales target derived from prior years' ticket sales.
4. The RCIP rules prohibit irregularities in settlements and the transfer of tickets allocated to one retail location to another, which would result in skewed sales figures and sales targets under the RCIP.
5. In 2016, representatives from the Commission's vendor sales staff observed Respondent or his employees transferring scratch ticket game packs from one retail location to another and issued warnings that this practice was not permissible under RCIP and Commission rules.
6. After Respondent or his employees were again observed transferring tickets between retail sales locations, on November 23, 2016, the Commission issued to Respondent a Notice of Disqualification from the following year's RCIP.
7. On November 30, 2016, the Commission issued warning letters to Respondent regarding RCIP eligibility requirements.
8. On December 4, 2019, the Commission identified irregularities in scratch ticket game pack settlements and returns at Respondent's retail locations, indicating possible manipulation of packs in order to maximize the RCIP.


9. Because the awards are calculated based on ticket settlements, which are within the control of the retailer, rather than ticket sales, the RCIP is subject to manipulation if a retailer settles ticket packs without offering them for sale.
10. On December 6, 2019, a Commission vendor employee visited Times Market #105 and returned 26 partial packs of scratch tickets, most for the same game, that were in a settled status. Some tickets had been sold from these packs, but they were not being offered for sale to the public at the time of the visit, indicating possible manipulation of packs in order to maximize the RCIP bonus.
11. The Commission's Inventory Sales Summary Report (dated January 2, 2020) identified 250 packs in Times Market #105's inventory, including 105 packs in activated or settled status. However, Times Market #105 had only 59 scratch ticket facings, indicating possible manipulation of packs in order to maximize RCIP payments.
12. On December 6, 2019, a Commission vendor employee visited Times Market #102 and returned 26 partial packs of scratch tickets, most for the same game, that were in a settled status. Some tickets had been sold from these packs, but they were not being offered for sale to the public at the time of the visit, indicating possible manipulation of packs in order to maximize the RCIP bonus.
13. The Commission's Inventory Sales Summary Report from January 2, 2020, identified 324 packs in Times Market #102's inventory, including 155 packs in activated or settled status. However, Times Market #102 had only 60 scratch ticket facings, indicating possible manipulation of packs sold in order to maximize RCIP payments.
14. Respondent or his employees should have been aware that such conduct violated Commission and RCIP rules.
15. Respondent never sought additional training regarding the RCIP program beyond that which was mandated.
16. On March 4, 2020, Commission Staff (Staff) initiated proceedings to revoke the licenses held by Respondent.
17. On May 14, 2020, Staff mailed to Respondent notices of hearing on the proposed revocations. The notice of hearing contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted or an attachment that incorporates by reference the factual matters asserted in the complaint or petition filed with the state agency.

18. Administrative Law Judge (ALJ) Daniel Wiseman convened a telephonic hearing on July 2, 2020. Kristen Guthrie, Assistant General Counsel, appeared on behalf of Staff. Respondent represented himself. The evidentiary record closed the same day.

#### IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter. Tex. Gov't Code § 466.155.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a Proposal for Decision with Findings of Fact and Conclusions of Law, as provided by Texas Government Code ch. 2003. Tex. Gov't Code § 466.155(b-1).
3. Timely and adequate notice of the hearing was provided in accordance with Texas Government Code chapters 466 and 2001.
4. Staff demonstrated by a preponderance of the evidence that Respondent violated 16 Texas Administrative Code §§ 401.158(b)(4), (8), and (9) by failing to follow instructions and procedures for the conduct of any particular lottery game, lottery special event or promotion by activating or settling tickets without offering them for sale and by transferring tickets between retail sales locations.
5. Respondent's failure to heed numerous warnings regarding these violations, his unconvincing excuses for those violations, and his inability to properly oversee his employees demonstrate that his participation as a sales agent will detract from the integrity, security, honesty, and fairness of the operation of the lottery under Texas Government Code § 466.151(e).
6. Respondent did not meet his burden to show that his licenses should not be revoked. Tex. Gov't Code § 466.155(c).
7. Texas Government Code § 466.155(a)(5) allows the Commission to revoke Respondent's licensure as a sales agent because he has violated that chapter of the Government Code or a rule adopted thereunder.
8. The lottery sales agent's licenses held by Respondent should be revoked.

**SIGNED September 1, 2020.**

  
\_\_\_\_\_  
DANIEL WISEMAN  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS





**Commission Order No. 21-0009**

**Date: DECEMBER 3, 2020**

**Case Nos. 2020-338 and 2020-339**

<b>IN THE MATTER OF</b>	<b>§</b>	<b>BEFORE THE TEXAS</b>
	<b>§</b>	
<b>PARK CITIES LIONS CLUB AND</b>	<b>§</b>	
<b>ELKS LODGE 2552 DESOTO REDBIRD</b>	<b>§</b>	<b>LOTTERY COMMISSION</b>

**MEMORANDUM OF AGREEMENT AND CONSENT ORDER**

The Charitable Bingo Operations Division (Division) of the Texas Lottery Commission (Commission), Park Cities Lions Club, and Elks Lodge 2552 Desoto Redbird (collectively, “Organizations”) make the following Agreed Findings of Fact, Agreed Conclusions of Law, and Memorandum of Agreement, and enter into the following Consent Order.

**AGREED FINDINGS OF FACT**

1. The Organizations are the sole members of Bingo Bills Unit Trust (Unit), a bingo accounting unit subject to Tex. Occ. Code §§ 2001.431–.439. Each Organization is licensed by the Commission to conduct bingo under the following taxpayer numbers: Park Cities Lions Club – 17506989908; and Elks Lodge 2552 Desoto Redbird – 17516920307.

2. The Organizations lease bingo premises at Bingo Bills hall located at 3235 Great Trinity Forest Way, Dallas, TX 75216 for the purpose of conducting charitable bingo.

3. The Division conducted a compliance audit of the Unit and the Organizations to determine if proceeds from charitable bingo were used for authorized purposes. The period under review was October 1, 2018 to December 31, 2018.

4. On February 6, 2019, the Division mailed to the Unit a Records Request form listing records necessary to conduct the review, and the Internal Control Questionnaire. The records were requested to substantiate the revenues and expenses claimed by the Unit on their

quarterly report submitted for the fourth quarter of 2018 (October 1 through December 31, 2019). The Division requested these same records by email on February 7, 2019. Additionally, a Division auditor requested the same records via email on March 26 and 28, April 15, and May 2, 13, and 21, 2019. On May 3 and 20, 2020, the auditor made phone calls to Ms. Linda McMullen, the bingo chairperson for Park Cities Lions Club, and Ms. Lisa Golden, the bingo chairperson for Elks Lodge 2552 Desoto Redbird, to discuss the requested records. Neither Ms. McMullen nor Ms. Golden responded timely to the phone calls. On April 4 and May 29, 2019, the Division sent each Organization final demand letters with a deadline to provide all outstanding requested records within seven days. The Division did not receive the requested records from the Unit prior to completion of the audit fieldwork.

5. The Division determined that the Unit failed to maintain records to substantiate a total of \$36,432.00 in audited bingo expenses. The Unit did not timely provide requested records, such as invoices and receipts, for any expenses except employee expenses. Because the Unit failed to timely provide supporting documentation in response to records requests, the Division is unable to determine whether the identified expenses are reasonable or necessary, as required by law.

#### **AGREED CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over this matter pursuant to Tex. Occ. Code ch. 2001 (Bingo Enabling Act), and 16 Tex. Admin. Code ch. 402.

2. The Organizations are required to follow the Bingo Enabling Act and the Commission rules to maintain their respective licenses.

3. Tex. Occ. Code §2001.433 states:

A licensed authorized organization that uses unit accounting is subject to the other provisions of this chapter to the extent the provisions are applicable and are not inconsistent with this subchapter.

4. Tex. Occ. Code §2001.505(b) states:

A license holder shall maintain records to substantiate the contents of each report.

5. Tex. Occ. Code §2001.554(a) states, in pertinent part:

A person commits an offense and the person's license is subject to revocation under this chapter if the person:

...  
(5) violates this chapter or a term of a license issued under this chapter.

6. Tex. Occ. Code §2001.560(c) states:

The commission or a person authorized in writing by the commission may examine the books, papers, records, equipment, and place of business of a license holder and may investigate the character of the license holder's business to verify the accuracy of a return, statement, or report made, or, if no return is made by the license holder, to ascertain and determine the amount required to be paid.

7. Tex. Occ. Code §2001.601 states:

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

8. Tex. Occ. Code §2001.602(a) states:

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

9. Tex. Gov't Code §2001.056 states, in pertinent part:

Unless precluded by law, an informal disposition may be made of a contested case by:

...  
(2) agreed settlement.

10. 16 Tex. Admin. Code §402.500 states:

(a) Licensees shall retain for four years all information and records required to be maintained by the Bingo Enabling Act (Texas Occupations Code, Chapter 2001) or the Charitable Bingo Administrative rules.

(b) Unless otherwise prescribed by the Commission rule, a licensee may maintain information in a form determined by the licensee as long as that form includes the



information required by the Bingo Enabling Act and the Charitable Bingo Administrative Rules.

(c) Upon request by the Commission, a licensee shall provide any information required to be maintained by the Bingo Enabling Act and the Charitable Bingo Administrative Rules. Except in cases of emergency, the Commission shall provide reasonable advance notice of the specific information and records needed and the time and location at which they must be made available.

(d) An organization that conducts bingo in more than one location must record each occasion separately and include for each occasion the municipality and country where the occasion was held, the total amount of prizes awarded, and the prize fees to be distributed to the state and the local governments where the occasion was held, if applicable.

11. 16 Tex. Admin. Code §402.505 states, in pertinent parts:

...

(d) Allocation of expense--The licensed authorized organization may pay only its proportional share of any shared expenses.

...

(3) The licensed authorized organization must maintain documentation to support its portion of the shared expense, including the basis upon which the expense was allocated among the benefiting activities.

(e) The licensed authorized organization is responsible for maintaining documentation to substantiate the permissibility of expenses incurred for the conduct; administration and operation of bingo. Detailed records, including receipts or copies of invoices that fully document and substantiate the bingo expenses must be complete, true, and accurate, and be maintained for 4 years.

12. 16 Tex. Admin. Code §402.506 states, in pertinent parts:

(a) The licensed authorized organization or unit shall maintain records to substantiate bingo expenses. Bank statements, cancelled checks and cancelled check images may not be adequate to substantiate bingo expenses.

...

(g) All disbursement records must be complete, accurate, legible, and maintained for four (4) years by the licensed authorized organization.

13. Each Organization's license to conduct bingo is subject to suspension or revocation pursuant to Tex. Occ. Code §2001.554(a), because of the Unit's violations of Tex. Occ. Code §2001.505(b) and 16 Tex. Admin. Code §402.500(c).

## **MEMORANDUM OF AGREEMENT**

1. By signing this Memorandum of Agreement, the Organizations agree to its terms, acknowledge understanding them, and waive their right to all procedural requirements for the entry of the Order consistent with the terms of this Memorandum of Agreement, including but not limited to the 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. The Organizations agree to pay an administrative penalty in the amount of \$2,500 per Organization, for a total of \$5,000, within thirty (30) days from the effective date of this Memorandum of Agreement and Consent Order.

4. The Organizations agree 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 any of them by the Commission. This Memorandum of Agreement and Consent Order, and the Agreed Findings of Fact and Agreed Conclusions of Law, shall not, however, form the basis for, nor be used as, evidence against the Organizations in a future license renewal application, absent other alleged violations.

5. The Organizations agree that if, after a formal hearing on the sole issue of compliance with this Memorandum of Agreement and Consent Order, it is found that the Organizations have failed to comply with the terms of this Memorandum of Agreement and Consent Order, the Commission may seek any and all authorized remedies, including license revocation.

AGREED AS TO FORM AND SUBSTANCE:

Park Cities Lions Club

By: Linda McMullen  
Linda McMullen, Bingo Chairperson

Date: Oct 22, 2020

Elks Lodge 2552 Desoto Redbird

By: Lisa Golden  
Lisa Golden, Bingo Chairperson

Date: October 22, 2020

Texas Lottery Commission  
Charitable Bingo Operations Division

By: Thomas Hanson  
Thomas Hanson, Director

Date: October 28, 2020

**Commission Order No. 21-0009**

**Date: DECEMBER 3, 2020**

**Case Nos. 2020-338 and 2020-339**

<b>IN THE MATTER OF</b>	<b>§</b>	<b>BEFORE THE TEXAS</b>
	<b>§</b>	
<b>PARK CITIES LIONS CLUB AND</b>	<b>§</b>	
<b>ELKS LODGE 2552 DESOTO REDBIRD</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, Agreed 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 Park Cities Lions Club and Elks Lodge 2552 Desoto Redbird (collectively, "Organizations"), the members of Bingo Bills Unit Trust, shall each pay an administrative penalty in the amount of \$2,500, for a total of \$5,000, within thirty (30) days from the date this Consent Order is signed.

(2) IT IS FURTHER ORDERED by the Commission that if, after a formal hearing on the sole issue of compliance with this Consent Order, it is found that Organizations have failed to comply with the terms of this Consent Order, the Commission may seek any and all authorized remedies, including revocation of the Organizations' respective licenses.



**Commission Order No. 21-0009**

**Date: DECEMBER 3, 2020**

Passed and approved at the regular meeting of the Texas Lottery Commission in Austin,  
Texas, on the 3<sup>RD</sup> day of DECEMBER, 2020.

Entered this 3<sup>RD</sup> day of DECEMBER, 2020.

\_\_\_\_\_  
ROBERT G. RIVERA, CHAIRMAN

\_\_\_\_\_  
CINDY FIELDS, COMMISSIONER

\_\_\_\_\_  
MARK A. FRANZ, COMMISSIONER

\_\_\_\_\_  
ERIK C. SAENZ, COMMISSIONER

\_\_\_\_\_  
JAMES H. C. STEEN, COMMISSIONER