




INTEROFFICE MEMO

Gary Grief, Executive Director

LaDonna Castañuela, 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 

Date: February 10, 2022

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: FEBRUARY 10, 2022

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

ORDER OF THE COMMISSION

During an open meeting in Austin, Texas, the Texas Lottery Commission (Commission) heard the license revocation cases listed on Attachment A hereto, in which the Texas Lottery Ticket Sales Agent (Respondent) in each referenced case did not appear at the scheduled hearing before the State Office of Administrative Hearings (SOAH) to respond to the allegations set forth in the Commission's notice of hearing.

I. Findings of Fact

1. Timely and adequate notice of the hearings in the referenced cases before SOAH was provided to each Respondent, pursuant to Tex. Gov't Code §§ 2001.051 and 2001.052, and 1 Tex. Admin. Code §§ 155.401 and 155.501(b). Each notice of hearing included a disclosure in at least 12-point, bold-face type, that the factual allegations listed in the notice could be deemed admitted, and the relief sought in the notice of hearing might be granted by default against the party that fails to appear at hearing.

2. After timely and adequate notice was given in each case, each case was heard by a SOAH Administrative Law Judge (ALJ). In each case, the Respondent did not appear at the hearing.

3. The Commission, by and through its attorney of record, filed a motion in each case requesting the ALJ issue a conditional order of default dismissal and remand 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)-(e).

Date: FEBRUARY 10, 2022

4. The ALJ 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 the 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 (State Lottery Act) and 16 Tex. Admin. Code Chapter 401 (Commission Rules).

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. 22-0016

Date: FEBRUARY 10, 2022

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 10TH day of FEBRUARY, 2022.

Entered this 10TH day of FEBRUARY, 2022.

ROBERT G. RIVERA, CHAIRMAN

CINDY FIELDS, COMMISSIONER

MARK A. FRANZ, COMMISSIONER

ERIK C. SAENZ, COMMISSIONER

JAMES H. C. STEEN, COMMISSIONER

Commission Order No. 22-0016

Date: FEBRUARY 10, 2022

ATTACHMENT A

TAB NO.	SOAH DOCKET NO.	TICKET SALES AGENT NAME	TICKET SALES AGENT ADDRESS	LOTTERY LICENSE NO.
A.	362-22-0618	Five Star Trading LLC d/b/a Quick Corner Store	24814 Kuykendahl Rd., Ste. 100 Tomball, TX 77375	186265
B.	362-22-0851	Golden Grup LLC d/b/a Fina Food Mart	3512 Bonnie View Rd. Dallas, TX 75216	189385

FILED
362-22-0618
12/17/2021 4:19 PM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Giselle Quintero, CLERK

SOAH DOCKET NO. 362-22-0618

ACCEPTED
362-22-0618
12/17/2021 4:31:44 pm
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Giselle Quintero, CLERK

**IN THE MATTER OF
THE REVOCATION OF LOTTERY
SALES AGENT LICENSE HELD BY
FIVE STAR TRADING LLC d/b/a
QUICK CORNER STORE**

§
§
§
§
§

**BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS**

**ORDER NO. 1
ORDER OF DEFAULT DISMISSAL**

On December 9, 2021, the undersigned Administrative Law Judge (ALJ) convened a hearing on the merits in this matter. Attorney Tyler Vance appeared for the staff (Staff) of the Texas Lottery Commission (Commission). Five Star Trading LLC d/b/a Quick Corner Store (Respondent) did not appear and was not represented at the hearing. Staff Exhibits 1-3 were admitted showing proof of adequate notice to Respondent.¹ Upon establishing adequate notice, Staff moved for a default dismissal. Staff's motion is **GRANTED**, and the factual allegations detailed in the Notice of Hearing and the documents incorporated within that notice are deemed admitted.²

Respondent may file a motion to set aside the default within 15 days of the date of this order.³ The motion must show good cause for resetting a hearing or show that the interests of justice require setting aside the default. If Respondent does not file a timely motion to set aside, or if the ALJ finds that a filed motion should be denied, the contested case will be remanded to the Commission for informal disposition on a default basis in accordance with the Administrative Procedure Act.⁴

SIGNED December 17, 2021.

**PRATIBHA J. SHENOY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

¹ 1 Tex. Admin. Code § 155.501(b), as amended effective November 29, 2020.

² 1 Tex. Admin. Code § 155.501(d)(1), as amended effective November 29, 2020.

³ 1 Tex. Admin. Code § 155.501(e), as amended effective November 29, 2020.

⁴ Tex. Gov't Code § 2001.056.

FILED
362-22-0851
1/5/2022 11:01 AM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Giselle Quintero, CLERK

SOAH DOCKET NO. 362-22-0851

ACCEPTED
362-22-0851
1/5/2022 12:03:40 pm
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Giselle Quintero, CLERK

IN THE MATTER OF
THE REVOCATION OF
LOTTERY SALES AGENT LICENSE
HELD BY GOLDEN GRUP LLC d/b/a
FINA FOOD MART

§
§
§
§
§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

ORDER NO. 2
ORDER OF DEFAULT DISMISSAL

On December 29, 2021, the undersigned Administrative Law Judge (ALJ) convened a hearing on the merits in this matter. Attorney Tyler Vance appeared for the staff (Staff) of the Texas Lottery Commission (Commission). Golden Grup LLC d/b/a Fina Food Mart (Respondent) did not appear and was not represented at the hearing. Staff Exhibits 1-3 were admitted showing proof of adequate notice to Respondent.¹ Upon establishing adequate notice, Staff moved for a default dismissal. Staff's motion is **GRANTED**, and the factual allegations detailed in the Notice of Hearing and the documents incorporated within that notice are deemed admitted.²

Respondent may file a motion to set aside the default within 15 days of the date of this order.³ The motion must show good cause for resetting a hearing or show that the interests of justice require setting aside the default. If Respondent does not file a timely motion to set aside, or if the ALJ finds that a filed motion should be denied, the contested case will be remanded to the Commission for informal disposition on a default basis in accordance with the Administrative Procedure Act.⁴

SIGNED January 5, 2022.


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

¹ 1 Tex. Admin. Code § 155.501(b), as amended effective November 29, 2020.

² 1 Tex. Admin. Code § 155.501(d)(1), as amended effective November 29, 2020.

³ 1 Tex. Admin. Code § 155.501(e), as amended effective November 29, 2020.

⁴ Tex. Gov't Code § 2001.056.

Commission Order No. 22-0017

Date: FEBRUARY 10, 2022

Case No. 2021-747

IN THE MATTER OF	§	BEFORE THE TEXAS
	§	
KUTOB LLC	§	
D/B/A ARP FOOD STORE	§	
	§	
TEXAS LOTTERY TICKET SALES	§	
AGENT LICENSE NO. 146747	§	LOTTERY COMMISSION

MEMORANDUM OF AGREEMENT AND CONSENT ORDER

The Texas Lottery Commission (Commission) and Kutob LLC d/b/a Arp Food Store (Arp Food Store) 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. Arp Food Store holds Texas Lottery Ticket Sales Agent License No. 146747.
2. Amir Kutob is the chief executive officer of Arp Food Store, which is located at 111 S. Main St., Arp, TX 75750.
3. On July 22, 2020, at the Tyler Claim Center, Saeb Kutob, an Arp Food Store employee, claimed a Texas Lottery scratch ticket prize valued at \$1,000. Based on an internal review, the Commission initiated an investigation into this claim.
4. On January 8, 2020, Saeb Kutob admitted to a Commission investigator that he purchased the scratch ticket from a store customer for \$900.

AGREED CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Tex. Gov't Code ch. 466 (State Lottery Act) and 16 Tex. Admin. Code ch. 401 (Commission rules).

2. Arp Food Store 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. Tex. Gov't Code §466.155(a) states, in pertinent part:

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.

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

A person commits an offense if the person:

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

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

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

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

...

(33) licensee:

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

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

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

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

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

9. 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).

10. 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.).

11. 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 within the Commission's implied authority and is reasonably necessary to fulfill the Commission's express duty to exercise strict control and supervision over the lottery.

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

MEMORANDUM OF AGREEMENT

1. By signing this Memorandum of Agreement, Arp Food Store 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 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. Arp Food Store agrees that, as a result of its violation of Tex. Gov't Code §§ 466.310(a) and 466.402(b) and 16 Tex. Admin. Code §§ 401.158(b)(33), 401.360 and 401.366, its Ticket Sales Agent License will be suspended for a period of 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, Arp Food Store 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, Arp Food Store 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 Arp Food Store's Ticket Sales Agent License is posted.

5. Arp Food Store 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 Arp Food Store's Ticket Sales Agent License, for any further violations of the State Lottery Act or Commission rules.

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

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


8. Arp Food Store 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 Arp Food Store will be charged for tickets sold on or before that date. Arp Food Store 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:

Kutob LLC
d/b/a Arp Food Store

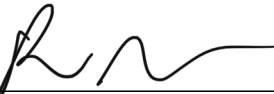
Texas Lottery Commission
Lottery Operations Division

By:



Amir Kutob
Chief Executive Officer

By:



Ryan S. Mindell
Director

10/27/21

DATE

11-19-21

DATE

Commission Order No. 22-0017

Date: FEBRUARY 10, 2022

Case No. 2021-747

IN THE MATTER OF	§	BEFORE THE TEXAS
	§	
KUTOB LLC	§	
D/B/A ARP FOOD STORE	§	
	§	
TEXAS LOTTERY TICKET SALES	§	
AGENT LICENSE NO. 146747	§	LOTTERY COMMISSION

CONSENT ORDER

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

(1) IT IS ORDERED by the Commission that, in lieu of revocation of the Texas Lottery Ticket Sales Agent License of Kutob LLC d/b/a Arp Food Store (Arp Food Store), 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, Arp Food Store 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, Arp Food Store 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 Arp Food Store's Texas Lottery Ticket Sales Agent License is posted.

Commission Order No. 22-0017

Date: FEBRUARY 10, 2022

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

(4) IT IS FURTHER ORDERED by the Commission that Arp Food Store 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 Arp Food Store will be charged for the tickets sold on or before that date. Arp Food Store 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. 22-0017

Date: FEBRUARY 10, 2022

Passed and approved at the regular meeting of the Texas Lottery Commission in Austin,
Texas, on the 10TH day of FEBRUARY, 2022.

Entered this 10TH day of FEBRUARY, 2022.

ROBERT G. RIVERA, CHAIRMAN

CINDY FIELDS, COMMISSIONER

MARK A. FRANZ, COMMISSIONER

ERIK C. SAENZ, COMMISSIONER

JAMES H. C. STEEN, COMMISSIONER

Commission Order No. 22-0018

Date: FEBRUARY 10, 2022

Case No. 2022-21

IN THE MATTER OF	§	BEFORE THE TEXAS
	§	
TR BUSINESS LLC	§	
D/B/A CIRCLE S GROCERY	§	
	§	
TEXAS LOTTERY TICKET SALES	§	
AGENT LICENSE NO. 174452	§	LOTTERY COMMISSION

MEMORANDUM OF AGREEMENT AND CONSENT ORDER

The Texas Lottery Commission (Commission) and TR Business LLC d/b/a Circle S Grocery (Circle S Grocery) 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. Circle S Grocery holds Texas Lottery Ticket Sales Agent License No. 174452.
2. Riyaz Maknojia is the managing member of Circle S Grocery, which is located at 29910 Dobbin Hufsmith Rd., Magnolia, TX 77354.
3. On March 4, 2021, Samirbhai Umatiya, a Circle S Grocery employee, presented for payment to the Houston Claim Center a Texas Lottery scratch ticket with a prize valued at \$700. Based on an internal review, the Commission initiated an investigation into this claim.
4. On April 19, 2021, Mr. Maknojia told a Commission investigator that his employee, Mr. Umatiya, admitted to Mr. Maknojia that Mr. Umatiya purchased the ticket from a store customer.

AGREED CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Tex. Gov't Code ch. 466 (State Lottery Act) and 16 Tex. Admin. Code ch. 401 (Commission rules).

2. Circle S Grocery 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. Tex. Gov't Code §466.155(a) states, in pertinent part:

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.

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

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

(1) claims a lottery prize or a share of a lottery prize by means of fraud, deceit, or misrepresentation; or

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

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

A person commits an offense if the person:

(1) induces another person to assign or transfer a right to claim a prize;

(2) offers for sale the right to claim a prize; or

(3) offers, for compensation, to claim the prize of another person.

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

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

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

...

(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, for anything of value, a lottery ticket from a person who is not a licensed lottery retailer.

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

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

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

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

10. 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).

11. 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.).

12. 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 within the Commission's implied authority and is reasonably necessary to fulfill the Commission's express duty to exercise strict control and supervision over the lottery.

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

MEMORANDUM OF AGREEMENT

1. By signing this Memorandum of Agreement, Circle S Grocery 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 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. Circle S Grocery agrees that, as a result of its violation of Tex. Gov't Code §§ 466.308(a), 466.310(a), and 466.402(b) and 16 Tex. Admin. Code §§ 401.158(b)(31) and (33), 401.360 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, Circle S Grocery 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, Circle S Grocery 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 Circle S Grocery's Ticket Sales Agent License is posted.

5. Circle S Grocery 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 Circle S Grocery's Ticket Sales Agent License, for any further violations of the State Lottery Act or Commission rules.

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

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

8. Circle S Grocery 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 Circle S Grocery will be charged for tickets sold on or before that date. Circle S Grocery 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:

TR Business LLC
d/b/a Circle S Grocery

Texas Lottery Commission
Lottery Operations Division

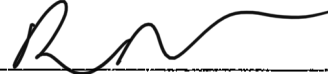
By:



Riyaz Maknojia
Managing Member

12/16/2021
DATE

By:



Ryan S. Mindell
Director

12-16-21
DATE

Commission Order No. 22-0018

Date: FEBRUARY 10, 2022

Case No. 2022-21

IN THE MATTER OF	§	BEFORE THE TEXAS
	§	
TR BUSINESS LLC	§	
D/B/A CIRCLE S GROCERY	§	
	§	
TEXAS LOTTERY TICKET SALES	§	
AGENT LICENSE NO. 174452	§	LOTTERY COMMISSION

CONSENT ORDER

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

(1) IT IS ORDERED by the Commission that, in lieu of revocation of the Texas Lottery Ticket Sales Agent License of TR Business LLC d/b/a Circle S Grocery (Circle S Grocery), 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, Circle S Grocery 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, Circle S Grocery 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 Circle S Grocery's Texas Lottery Ticket Sales Agent License is posted.

Commission Order No. 22-0018

Date: FEBRUARY 10, 2022

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

(4) IT IS FURTHER ORDERED by the Commission that Circle S Grocery 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 Circle S Grocery will be charged for the tickets sold on or before that date. Circle S Grocery 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. 22-0018

Date: FEBRUARY 10, 2022

Passed and approved at the regular meeting of the Texas Lottery Commission in Austin,
Texas, on the 10TH day of FEBRUARY, 2022.

Entered this 10TH day of FEBRUARY, 2022.

ROBERT G. RIVERA, CHAIRMAN

CINDY FIELDS, COMMISSIONER

MARK A. FRANZ, COMMISSIONER

ERIK C. SAENZ, COMMISSIONER

JAMES H. C. STEEN, COMMISSIONER

Commission Order No. 22-0019

Date: FEBRUARY 10, 2022

Case No. 2022-24

IN THE MATTER OF	§	BEFORE THE TEXAS
	§	
SUNSUNNY INC.	§	
D/B/A SAMMY FOOD MART	§	
	§	
TEXAS LOTTERY TICKET SALES	§	
AGENT LICENSE NO. 185383	§	LOTTERY COMMISSION

MEMORANDUM OF AGREEMENT AND CONSENT ORDER

The Texas Lottery Commission (Commission) and Sunsunny Inc. d/b/a Sammy Food Mart (Sammy Food Mart) 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. Sammy Food Mart holds Texas Lottery Ticket Sales Agent License No. 185383.
2. Sunil Shrestha is the president of Sammy Food Mart, which is located at 2018 Paisley Drive, Arlington, TX 76015.
3. On April 27, 2021, a Commission investigator conducted a follow-up compliance visit at Sammy Food Mart.¹ The Commission investigator observed a sign posted at Sammy Food Mart that said, “Lotto/Lottery Debit Card Limit \$20.00 only. NO credit card cash only.” A Sammy Food Mart clerk also informed the Commission investigator that Sammy Food Mart requires a minimum \$20 amount for debit card purchases of only lottery tickets.

AGREED CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Tex. Gov’t Code ch.

¹ On June 10, 2021, the Commission suspended Sammy Food Mart’s Texas Lottery Ticket Sales Agent License for a period of ten (10) days for assessing a \$.50 fee for each lottery ticket purchase with a debit card.

466 (State Lottery Act) and 16 Tex. Admin. Code ch. 401 (Commission rules).

2. Sammy Food Mart 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. Tex. Gov't Code §466.155(a) states, in pertinent part:

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.

4. 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:

...

(23) licensee charges a fee for lottery ticket purchases using a debit card and/or requires a minimum dollar amount for debit card purchases of only lottery tickets.

5. 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 from the Texas Lottery.

6. The Texas Lottery Ticket Sales Agent License of Sammy Food Mart is subject to suspension or revocation pursuant to Tex. Gov't Code §§ 466.155(a)(5), as a result of Sammy Food Mart's violation of 16 Tex. Admin. Code §§ 401.158(b)(23) and 401.366.

MEMORANDUM OF AGREEMENT

1. By signing this Memorandum of Agreement, Sammy Food Mart 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 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. Sammy Food Mart agrees that, as a result of its violation of 16 Tex. Admin. Code §§ 401.158(b)(23) and 401.366, its Ticket Sales Agent License will be suspended for a period of ten (10) 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, Sammy Food Mart 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, Sammy Food Mart 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 Sammy Food Mart's Ticket Sales Agent License is posted.

5. Sammy Food Mart 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 Sammy Food Mart's Ticket Sales Agent License, for any further violations of the State Lottery Act or Commission rules.

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

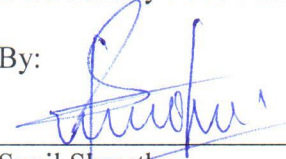
7. Sammy Food Mart agrees that if, after a formal hearing on the sole issue of compliance with the Memorandum of Agreement and Consent Order, it is found that Sammy Food Mart has failed to comply with the terms of the Memorandum of Agreement and Consent Order, disciplinary action shall be taken against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

8. Sammy Food Mart 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 Sammy Food Mart will be charged for tickets sold on or before that date. Sammy Food Mart 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:

Sunsunny Inc.
d/b/a Sammy Food Mart


By:

 1-11-22

Sunil Shrestha DATE
President

Texas Lottery Commission
Lottery Operations Division

By:

 1/20/2022

Ryan S. Mindell DATE
Director

Commission Order No. 22-0019

Date: FEBRUARY 10, 2022

Case No. 2022-24

IN THE MATTER OF	§	BEFORE THE TEXAS
	§	
SUNSUNNY INC.	§	
D/B/A SAMMY FOOD MART	§	
	§	
TEXAS LOTTERY TICKET SALES	§	
AGENT LICENSE NO. 185383	§	LOTTERY COMMISSION

CONSENT ORDER

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

(1) IT IS ORDERED by the Commission that, in lieu of revocation of the Texas Lottery Ticket Sales Agent License of Sunsunny Inc. d/b/a Sammy Food Mart (Sammy Food Mart), the license is suspended for a period of ten (10) 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, Sammy Food Mart 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, Sammy Food Mart 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 Sammy Food Mart's Texas Lottery Ticket Sales Agent License is posted.

Commission Order No. 22-0019

Date: FEBRUARY 10, 2022

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

(4) IT IS FURTHER ORDERED by the Commission that Sammy Food Mart 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 Sammy Food Mart will be charged for the tickets sold on or before that date. Sammy Food Mart 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. 22-0019

Date: FEBRUARY 10, 2022

Passed and approved at the regular meeting of the Texas Lottery Commission in Austin,
Texas, on the 10TH day of FEBRUARY, 2022.

Entered this 10TH day of FEBRUARY, 2022.

ROBERT G. RIVERA, CHAIRMAN

CINDY FIELDS, COMMISSIONER

MARK A. FRANZ, COMMISSIONER

ERIK C. SAENZ, COMMISSIONER

JAMES H. C. STEEN, COMMISSIONER

Commission Order No. 22-0020

Date: FEBRUARY 10, 2022

Case No. 2022-68

IN THE MATTER OF	§	BEFORE THE TEXAS
	§	
AFTAN ENTERPRISES INC.	§	
D/B/A SKYTOP FOOD MART	§	
	§	
TEXAS LOTTERY TICKET SALES	§	
AGENT LICENSE NO. 183962	§	LOTTERY COMMISSION

MEMORANDUM OF AGREEMENT AND CONSENT ORDER

The Texas Lottery Commission (Commission) and Aftan Enterprises Inc. d/b/a Skytop Food Mart (Skytop Food Mart) 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. Skytop Food Mart holds Texas Lottery Ticket Sales Agent License No. 183962.
2. Nadirali Bardoi is the president of Skytop Food Mart, which is located at 8511 Starcrest Dr., San Antonio, TX 78217.
3. On March 15, 2021, at the San Antonio Claim Center, Mr. Bardoi claimed a Texas Lottery scratch ticket with a prize value of \$1,000. Based on internal review, the Commission initiated an investigation into the claim.
4. On July 26, 2021, Mr. Bardoi admitted to a Commission investigator that he purchased the scratch ticket from a store customer.

AGREED CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Tex. Gov't Code ch. 466 (State Lottery Act) and 16 Tex. Admin. Code ch. 401 (Commission rules).

2. Skytop Food Mart 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. Tex. Gov't Code §466.155(a) states, in pertinent part:

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.

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

A person commits an offense if the person:

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

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

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

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

...

(33) licensee:

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

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

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

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

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

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

MEMORANDUM OF AGREEMENT

1. By signing this Memorandum of Agreement, Skytop Food Mart 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 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. Skytop Food Mart agrees that, as a result of its violation of Tex. Gov't Code §§ 466.310(a) and 466.402(b) and 16 Tex. Admin. Code §§ 401.158(b)(33), 401.360, and 401.366, its Ticket Sales Agent License will be suspended for a period of ninety (90) consecutive days. The suspension period will begin within seven (7) days from the date this Memorandum of Agreement and Consent Order is signed by the Commission. During the period of suspension, Skytop Food Mart 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, Skytop Food Mart 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 Skytop Food Mart's Ticket Sales Agent License is posted.

5. Skytop Food Mart 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 Skytop Food Mart's Ticket Sales Agent License, for any further violations of the State Lottery Act or Commission rules.

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

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

8. Skytop Food Mart 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 Skytop Food Mart will be charged for tickets sold on or before that date. Skytop Food Mart 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:

Aftan Enterprises Inc.
d/b/a Skytop Food Mart

Texas Lottery Commission
Lottery Operations Division

By:

Nadiralali Bardoi 1-4-22

Nadiralali Bardoi
President

DATE

By:

[Signature] 1-5-22

Ryan S. Mindell
Director

DATE

Commission Order No. 22-0020

Date: FEBRUARY 10, 2022

Case No. 2022-68

IN THE MATTER OF	§	BEFORE THE TEXAS
	§	
AFTAN ENTERPRISES INC.	§	
D/B/A SKYTOP FOOD MART	§	
	§	
TEXAS LOTTERY TICKET SALES	§	
AGENT LICENSE NO. 183962	§	LOTTERY COMMISSION

CONSENT ORDER

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

(1) IT IS ORDERED by the Commission that, in lieu of revocation of the Texas Lottery Ticket Sales Agent License of Aftan Enterprises Inc. d/b/a Skytop Food Mart (Skytop Food Mart), the license is suspended for a period of ninety (90) consecutive days. The suspension period will begin within seven (7) days from the date this Consent Order is signed by the Commission. During the period of suspension, Skytop Food Mart 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, Skytop Food Mart 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 Skytop Food Mart's Texas Lottery Ticket Sales Agent License is posted.

Commission Order No. 22-0020

Date: FEBRUARY 10, 2022

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

(4) IT IS FURTHER ORDERED by the Commission that Skytop Food Mart 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 Skytop Food Mart will be charged for the tickets sold on or before that date. Skytop Food Mart 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. 22-0020

Date: FEBRUARY 10, 2022

Passed and approved at the regular meeting of the Texas Lottery Commission in Austin,
Texas, on the 10TH day of FEBRUARY, 2022.

Entered this 10TH day of FEBRUARY, 2022.

ROBERT G. RIVERA, CHAIRMAN

CINDY FIELDS, COMMISSIONER

MARK A. FRANZ, COMMISSIONER

ERIK C. SAENZ, COMMISSIONER

JAMES H. C. STEEN, COMMISSIONER

Commission Order No. 22-0021

Date: FEBRUARY 10, 2022

Case No. 2021-770

IN THE MATTER OF	§	BEFORE THE TEXAS
	§	
	§	
JOSEPH M. DOWNS	§	
TAXPAYER NO. 18336299542	§	LOTTERY COMMISSION

MEMORANDUM OF AGREEMENT AND CONSENT ORDER

The Charitable Bingo Operations Division (Division) of the Texas Lottery Commission (Commission) and Joseph M. Downs 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. Joseph M. Downs is licensed by the Commission as a bingo manufacturer under taxpayer number 18336299542.
2. Joseph M. Downs is the sole owner of Joseph M. Downs, located at 5150 Bonnie Ruth Dr., Trusville, AL 35173.
3. Joseph M. Downs provided to the Commission the address of 10615 Perrin-Beitel Rd., Ste. 502, San Antonio, TX 78217 for its registered agent for service in the state of Texas.
4. Joseph M. Downs failed to timely file the Division's FORMID 109 – Bingo Manufacturer/Distributor Quarterly Report form for the following quarters: third quarter of 2019, fourth quarter of 2019, second quarter of 2020, third quarter of 2020, first quarter of 2021, and the second quarter of 2021. Quarterly reports for manufacturers are due on or before the last day of the month following the end of the quarter.
5. Joseph M. Downs failed to maintain a valid address for its registered agent for service in the state of Texas, as required by Tex. Occ. Code §2001.203(b)(4). Specifically, the

Commission sent correspondence to the address on file including, but not limited to, letters dated September 9, 2021, that was returned as undeliverable.

6. Joseph M. Downs asserts that it had maintained a physical office at 10615 Perrin-Beitel Rd., Ste. 502, San Antonio, TX 78217, and that it is not the only tenant that experienced difficulties with mail delivery at this address.

7. From on or about June 1, 2020, until on or about November 17, 2021, Joseph M. Downs failed to maintain a cash bond or a bond in the amount of \$10,000 issued by a surety company, as required by Tex. Occ. Code §2001.204.

8. Joseph M. Downs failed to remain in good standing with the Secretary of State, as required by Tex. Occ. Code §2001.102(b)(11).

AGREED CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Tex. Occ. Code ch. 2001 (Bingo Enabling Act), Tex. Gov't Code ch. 467, and 16 Tex. Admin. Code ch. 402 (Charitable Bingo administrative rules).

2. Joseph M. Downs is required to follow the Bingo Enabling and Act and the Charitable Bingo administrative rules to maintain its license.

3. Tex. Occ. Code §2001.102 states, in pertinent part:

(a) An applicant for a license to conduct bingo must file with the commission an application on a form prescribed by the commission.

(b) The application must include:

...

(11) verification of the applicant organization's good standing with the secretary of state if the organization is organized under the law of this state.

4. Tex. Occ. Code §2001.203 states, in pertinent part:

(a) An applicant for a manufacturer's license must file with the commission an application on a form prescribed by the commission.

(b) The application must include:

...

(4) if the applicant is a foreign corporation or other foreign legal entity, the name, business name and address, and address of its registered agent for service in this state.

5. Tex. Occ. Code §2001.204 states:

(a) An applicant for a manufacturer's license must give the commission a cash bond or a bond in the amount of \$10,000 issued by a surety company chartered or authorized to do business in this state.

(b) The bond must provide for forfeiture to the state on the manufacturer's failure to comply with this chapter or a commission rule or on suspension or revocation of the manufacturer's license.

6. Tex. Occ. Code §2001.312 states:

A person is not eligible for a license or a license renewal unless all required reports and requested information have been filed under this chapter.

7. Tex. Occ. Code §2001.353(a) states:

After a hearing, the commission may suspend, revoke, or refuse to renew a license or registration issued under this chapter for:

- (1) failure to comply with this chapter or a commission rule; or
- (2) a reason that would allow or require the commission to refuse to issue or renew a license or registration of the same class.

8. 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.

9. 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.

10. 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.

11. 16 Tex. Admin. Code §402.600(f) states, in pertinent part:

(1) A manufacturer or distributor shall file a report on a form prescribed by the Commission or in an electronic format prescribed by the Commission, reflecting each sale or lease of bingo equipment, and the total sales of cards, sheets, pads and instant bingo to a person or organization in this state or for use in this state.

(2) The report and supplements shall be filed with regard to each calendar quarter and is due on or before the last day of the month following the end of the quarter.

...

(4) The Commission will deny a renewal application or revoke a license of a manufacturer or distributor where the licensee has failed to timely file with the Commission the required reports or supplements three times within four consecutive quarters.

(5) Failure to file a required report or supplement by the due date may result in an administrative penalty.

12. Joseph M. Downs' manufacturer's license is subject to suspension or revocation pursuant to Tex. Occ. Code §2001.554(a), as a result of Joseph M. Down's violations of Tex. Occ. Code §§ 2001.102(b)(11), 2001.203(b)(4) and 2001.204 and 16 Tex. Admin. Code §402.600(f).

MEMORANDUM OF AGREEMENT

1. By signing this Memorandum of Agreement, Joseph M. Downs agrees to its terms, acknowledges understanding them, and waives its right to all procedural requirements for the entry of the Consent Order (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. Joseph M. Downs agrees to pay a \$1,000 administrative penalty within thirty (30) days of the effective date of this Order.

4. Joseph M. Downs agrees to provide a letter issued by the Texas Secretary of State verifying that Joseph M. Downs is in good standing with the Texas Secretary of State within ten (10) days of the effective date of this Order.

5. For one (1) year following the effective date of this Order, Joseph M. Downs agrees:

a. to timely and accurately file all quarterly reports and all supplements, as required by the Bingo Enabling Act and the Charitable Bingo Administrative Rules;

b. to maintain a valid address for its registered agent for service in the state of Texas, and to notify the Division of any changes to its address within ten (10) days of the change; and

c. to continuously maintain a \$10,000 bond as required by the Bingo Enabling Act and the Charitable Bingo administrative rules.

6. Joseph M. Downs agrees that, if it fails to comply with any requirement of this Memorandum of Agreement and Consent Order, then, upon notice by the Division, Joseph M. Downs will surrender its manufacturer's license within ten (10) days.

7. If Joseph M. Downs is required to surrender its license pursuant to the above paragraph 5 and fails to do so within ten (10) days of being notified by the Division, Joseph M. Downs consents to immediate revocation of its manufacturer's license without further notice or hearing.

8. Joseph M. Downs 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 revocation of its manufacturer's license, for any further violations of the Bingo Enabling Act and/or the Charitable Bingo administrative rules.

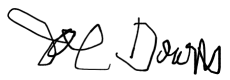
9. Joseph M. Downs acknowledges and agrees that this Memorandum of Agreement and Consent Order, and the Agreed Findings of Fact and Agreed Conclusions of Law contained herein, may be admitted in any future administrative action initiated against Joseph M. Downs by the Commission. This Memorandum of Agreement and Consent Order shall not, however, form

the basis for, nor be used as, evidence against Joseph M. Downs in any future renewal applications absent other alleged violations.

10. Joseph M. Downs agrees that if, after a formal hearing on the sole issue of compliance with this Memorandum of Agreement and Consent Order, it is found that Joseph M. Downs has failed to comply with the terms of the Memorandum of Agreement and Consent Order, disciplinary action shall be taken against Joseph M. Downs, up to and including revocation of its manufacturer's license.

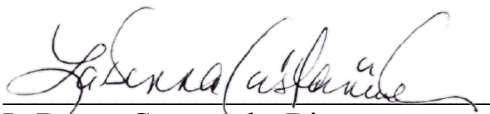
AGREED AS TO FORM AND SUBSTANCE:

Joseph M. Downs

By: 
Joseph M. Downs, Sole Owner

Date: 01 / 28 / 2022

**Texas Lottery Commission
Charitable Bingo Operations Division**

By: 
LaDonna Castañuela, Director

Date: 1/28/2022

Commission Order No. 22-0021

Date: FEBRUARY 10, 2022

Case No. 2021-770

IN THE MATTER OF

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§

BEFORE THE TEXAS

**JOSEPH M. DOWNS,
TAXPAYER NO. 18336299542**

LOTTERY COMMISSION

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 Joseph M. Downs shall pay a \$1,000 administrative penalty within thirty (30) days following the date this Consent Order is signed by the Commission (effective date).

(2) IT IS FURTHER ORDERED by the Commission that Joseph M. Downs shall provide a letter issued by the Texas Secretary of State verifying that Joseph M. Downs is in good standing with the Texas Secretary of State within ten (10) days of the effective date of this Order.

(3) IT IS FURTHER ORDERED by the Commission that for one (1) year following the effective date of this Order, Joseph M. Downs shall:

a. timely and accurately file all quarterly reports and all supplements, as required by the Bingo Enabling Act and the Charitable Bingo Administrative Rules;

b. maintain a valid address for its registered agent for service in the state of Texas, and notify the Division of any changes to its address within ten (10) days of the change; and

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c. continuously maintain a \$10,000 bond as required by the Bingo Enabling Act and the Charitable Bingo administrative rules.

(4) IT IS FURTHER ORDERED by the Commission that if Joseph M. Downs fails to comply with any requirement of this Order, then, upon notice by the Division, Joseph M. Downs shall surrender its manufacturer's license within ten (10) days.

(5) IT IS FURTHER ORDERED by the Commission that if Joseph M. Downs is required to surrender its license pursuant to the above paragraph 3 and fails to do within ten (10) days of being notified by the Division, Joseph M. Downs' manufacturer's license shall be immediately revoked without further notice or hearing.

(6) 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 Joseph M. Downs has failed to comply with the terms of this Consent Order, the Commission may seek any and all authorized remedies, including revocation of its manufacturer's license.

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Passed and approved at the regular meeting of the Texas Lottery Commission in Austin, Texas, on the 10TH day of FEBRUARY, 2022.

Entered this 10TH day of FEBRUARY, 2022.

ROBERT G. RIVERA, CHAIRMAN

CINDY FIELDS, COMMISSIONER

MARK A. FRANZ, COMMISSIONER

ERIK C. SAENZ, COMMISSIONER

JAMES H. C. STEEN, COMMISSIONER