



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 *RAB*

Date: June 21, 2023

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: JUNE 21, 2023

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: JUNE 21, 2023

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. 23-0020

Date: JUNE 21, 2023

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 21st day of JUNE 2023.

Entered this 21st day of JUNE 2023.

ROBERT G. RIVERA, CHAIRMAN

CINDY FIELDS, COMMISSIONER

MARK A. FRANZ, COMMISSIONER

ERIK C. SAENZ, COMMISSIONER

JAMES H. C. STEEN, COMMISSIONER

Date: JUNE 21, 2023

ATTACHMENT A

TAB NO.	SOAH DOCKET NO.	TICKET SALES AGENT NAME	TICKET SALES AGENT ADDRESS	LOTTERY LICENSE NO.
A.	362-23-07493	Mr. D's Kwick Food Mart Limited Liability Company d/b/a Mr. D's Kwick Food Mart Limited Liability Company	1506 Quincy Plainview, TX 79702	191623
B.	362-23-11873	Ly Pham d/b/a Quick Chek Food Store	2301 E. Berry St. Fort Worth, TX 76119	186527
C.	362-23-11874	Fresh Star Food LLC d/b/a Shop N Go	3119 Commercial Ave. San Antonio, TX 78221	183801
D.	362-23-12837	S & S USA Enterprises Inc. d/b/a Berry Food Store	516 Berry Rd. Houston, TX 77022	142081
E.	362-23-14634	Prime Time Grocery LLC d/b/a EZ Buy	13550 O'Conner Rd., Ste. 1 San Antonio, TX 78233	187065
F.	362-23-16387	Khyber KPK Inc. d/b/a Paisano Food Store	6101 Glenmont Dr., Ste. A Houston, TX 77081	183234

ACCEPTED
362-23-07493
4/27/2023 2:19:30 pm
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Kevin Garza, CLERK

SOAH Docket No. 362-23-07493

Suffix: TLC

BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

**TEXAS LOTTERY COMMISSION,
PETITIONER**

V.

**MR. D'S KWICK FOOD MART LIMITED LIABILITY
COMPANY DBA MR D'S KWICK FOOD MART LIMITED
LIABILITY COMPANY,
RESPONDENT**

DEFAULT DISMISSAL ORDER

On April 27, 2023, 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). Mr. D's Kwick Food Mart Limited Liability Company (Respondent) did not appear and was not represented at the hearing. Staff Exhibits 1, 2, and 3 were admitted showing proof of jurisdiction and adequate notice to Respondent.¹ Upon establishing adequate

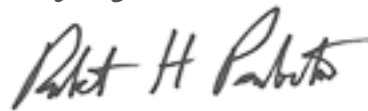
¹ See 1 Tex. Admin. Code § 155.501(b).

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 APRIL 27, 2023.

ALJ Signature:



Robert Pemberton,

Presiding Administrative Law Judge

² See 1 Tex. Admin. Code § 155.501(d)(1).

³ See 1 Tex. Admin. Code § 155.501(e).

⁴ See Tex. Gov't Code § 2001.056.

SOAH Docket No. 362-23-11873

Suffix: TLC

**BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

FILED
362-23-11873
3/24/2023 12:08 PM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Pegah Nasrollahzadeh, CLERK

ACCEPTED
362-23-11873
3/24/2023 12:10:53 pm
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Pegah Nasrollahzadeh, CLERK

**TEXAS LOTTERY COMMISSION,
PETITIONER
V.
LY PHAM D/B/A QUICK CHEK FOOD STORE,
RESPONDENT**

DEFAULT DISMISSAL ORDER

On March 23, 2023, 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). Ly Pham d/b/a Quick Chek Food 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

¹ 1 Tex. Admin. Code § 155.501(b). Exhibit 2 was supplemented after the hearing.

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 MARCH 23, 2023.

ALJ Signature:

A handwritten signature in cursive script, appearing to read "Heather Hunziker", written over a horizontal line.

Heather D. Hunziker,
Presiding Administrative Law Judge

² 1 Tex. Admin. Code § 155.501(d)(1).

³ 1 Tex. Admin. Code § 155.501(e).

⁴ Tex. Gov't Code § 2001.056.

SOAH Docket No. 362-23-11874

Suffix: TLC

**BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

FILED
362-23-11874
3/24/2023 12:12 PM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Pegah Nasrollahzadeh, CLERK

ACCEPTED
362-23-11874
3/24/2023 12:13:11 pm
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Pegah Nasrollahzadeh, CLERK

**TEXAS LOTTERY COMMISSION,
PETITIONER
V.
FRESH STAR FOOD LLC D/B/A SHOP N GO,
RESPONDENT**

DEFAULT DISMISSAL ORDER

On March 23, 2023, 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). Fresh Star Food LLC d/b/a Shop N Go (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

¹ 1 Tex. Admin. Code § 155.501(b). Exhibit 2 was supplemented after the hearing.

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 MARCH 23, 2023.

ALJ Signature:

A handwritten signature in cursive script, appearing to read "Heather Hunziker", is written over a horizontal line.

Heather D. Hunziker,
Presiding Administrative Law Judge

² 1 Tex. Admin. Code § 155.501(d)(1).

³ 1 Tex. Admin. Code § 155.501(e).

⁴ Tex. Gov't Code § 2001.056.

SOAH Docket No. 362-23-12837

Suffix: TLC

ACCEPTED
362-23-12837
4/10/2023 10:26:36 am
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Carol Hale, CLERK

BEFORE THE

STATE OFFICE OF ADMINISTRATIVE

HEARINGS

TEXAS LOTTERY COMMISSION,

PETITIONER

V.

S AND S USA ENTERPRISES INC DBA BERRY FOOD STORE,

RESPONDENT

DEFAULT DISMISSAL ORDER

On April 6, 2023, the undersigned Administrative Law Judge (ALJ) convened a hearing on the merits in this matter. Staff Attorney Kyle Wolfe appeared for the staff (Staff) of the Texas Lottery Commission (Commission). S and S USA Enterprises Inc. d/b/a Berry Food Store (Respondent) did not appear and was not represented at the hearing. Staff Exhibits 1, 2, and 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

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

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 APRIL 10, 2023.

ALJ Signature(s):

A handwritten signature in cursive script that reads "Linda Brite". The signature is written in dark ink and is positioned above a horizontal line.

Linda Brite,

Presiding Administrative Law Judge

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.

ACCEPTED
362-23-14634
4/27/2023 2:10:10 pm
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Kevin Garza, CLERK

FILED
362-23-14634
4/27/2023 2:06 PM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Kevin Garza, CLERK

SOAH Docket No. 362-23-14634

Suffix: TLC

BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

**TEXAS LOTTERY COMMISSION,
PETITIONER
v.
PRIME TIME GROCERY LLC DBA EZ BUY,
RESPONDENT**

DEFAULT DISMISSAL ORDER

On April 27, 2023, 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). Prime Time Grocery LLC d/b/a EZ Buy (Respondent) did not appear and was not represented at the hearing. Staff Exhibits 1, 2, and 3 were admitted showing proof of jurisdiction and 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

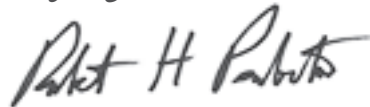
¹ See 1 Tex. Admin. Code § 155.501(b).

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 APRIL 27, 2023.

ALJ Signature:



Robert Pemberton,

Presiding Administrative Law Judge

² See 1 Tex. Admin. Code § 155.501(d)(1).

³ See 1 Tex. Admin. Code § 155.501(e).

⁴ See Tex. Gov't Code § 2001.056.

BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

**TEXAS LOTTERY COMMISSION,
PETITIONER
v.
KHYBER KPK INC DBA PAISANO FOOD STORE,
RESPONDENT**

DEFAULT DISMISSAL ORDER

This matter was set for hearing on May 18, 2023, via Zoom videoconference before the undersigned Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH). Kyle Wolfe appeared on behalf of the staff (Staff) of the Texas Lottery Commission (Commission). Respondent Khyber KPK, Inc., d/b/a Paisano Food Store, did not appear and was not represented at the hearing. At the hearing, Staff submitted a Motion for Default. 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 for Default.¹

¹ 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.

Accordingly, this matter is **dismissed** from the SOAH docket and returned to the Commission for informal disposition on a default basis in accordance with Texas Government Code section 2001.056.

Signed MAY 18, 2023.

ALJ Signature(s):

A handwritten signature in black ink that reads "Steve Rivas". The signature is written in a cursive, slightly slanted style. Below the signature is a solid horizontal line.

Steve Rivas,

Presiding Administrative Law Judge

Commission Order No. 23-0021

Date: JUNE 21, 2023

Case No. 2023-211

IN THE MATTER OF	§	BEFORE THE TEXAS
	§	
BIG DIAMOND LLC	§	
D/B/A CIRCLE K #2741024	§	
	§	
TEXAS LOTTERY TICKET SALES	§	
AGENT LICENSE NO. 225460	§	LOTTERY COMMISSION

MEMORANDUM OF AGREEMENT AND CONSENT ORDER

The Texas Lottery Commission (Commission) and Big Diamond LLC d/b/a Circle K #2741024 (Circle K) 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 K holds Texas Lottery Ticket Sales Agent License No. 225460.
2. Francis Lapointe is the Vice President of Regional Operations of Circle K, which is located at 2151 S.W. 36th St., San Antonio, TX 78237.
3. On March 30, 2022, at the San Antonio Claim Center, Jessica Richardson, a Circle K employee, presented a Texas Lottery scratch ticket for validation. Based on an internal review, the Commission initiated an investigation into this claim.
4. On March 30, 2022, Ms. Richardson admitted to a Commission investigator that she purchased the ticket from a store customer for \$200.

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 K 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. 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:

...
(D) purchases a lottery ticket from a person who is not a licensed lottery retailer.

4. 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.

5. 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).

6. 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.).

7. 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.

8. The Texas Lottery Ticket Sales Agent License of Circle K is subject to suspension or revocation pursuant to Tex. Gov't Code §466.155(a)(5), as a result of Circle K's violation of 16 Tex. Admin. Code §§ 401.158(b)(33)(D) and 401.366.

MEMORANDUM OF AGREEMENT

1. By signing this Memorandum of Agreement, Circle K 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 K agrees that, as a result of its violation of 16 Tex. Admin. Code §§ 401.158(b)(33)(D) 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 K 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 K 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 K's Ticket Sales Agent License is posted.

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

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

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

Big Diamond LLC
d/b/a Circle K #2741024

Texas Lottery Commission
Lottery Operations Division

By:


Francis Lapointe
Vice President of Regional Operations

04/14/23
DATE

By:


Robert Tirloni
Director

4/17/2023

DATE

Commission Order No. 23-0021

Date: JUNE 21, 2023

Case No. 2023-211

IN THE MATTER OF	§	BEFORE THE TEXAS
	§	
BIG DIAMOND LLC	§	
D/B/A CIRCLE K #2741024	§	
	§	
TEXAS LOTTERY TICKET SALES	§	
AGENT LICENSE NO. 225460	§	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 Big Diamond LLC d/b/a Circle K #2741024 (Circle K), 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 K 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 K 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 K's Texas Lottery Ticket Sales Agent License is posted.

Commission Order No. 23-0021

Date: JUNE 21, 2023

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

(4) IT IS FURTHER ORDERED by the Commission that Circle K 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 K will be charged for the tickets sold on or before that date. Circle K 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. 23-0021

Date: JUNE 21, 2023

Passed and approved at the regular meeting of the Texas Lottery Commission in Austin,
Texas, on the 21ST day of JUNE, 2023

Entered this 21ST day of JUNE, 2023.

ROBERT G. RIVERA, CHAIRMAN

CINDY FIELDS, COMMISSIONER

MARK A. FRANZ, COMMISSIONER

ERIK C. SAENZ, COMMISSIONER

JAMES H. C. STEEN, COMMISSIONER

Commission Order No. 23-0022

Date: JUNE 21, 2023

Case No. 2023-213

IN THE MATTER OF	§	BEFORE THE TEXAS
	§	
CST STATIONS TEXAS LLC	§	
D/B/A CIRCLE K #2741858	§	
	§	
TEXAS LOTTERY TICKET SALES	§	
AGENT LICENSE NO. 599734	§	LOTTERY COMMISSION

MEMORANDUM OF AGREEMENT AND CONSENT ORDER

The Texas Lottery Commission (Commission) and CST Stations Texas LLC d/b/a Circle K #2741858 (Circle K) 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 K holds Texas Lottery Ticket Sales Agent License No. 599734.
2. Francis Lapointe is the Vice President of Regional Operations of Circle K, which is located at 9310 W. Loop 1604 N., San Antonio, TX 78254.
3. On April 7, 2022, at the San Antonio Claim Center, Josephine Gash, a Circle K employee, presented a Texas Lottery scratch ticket for validation. Based on an internal review, the Commission initiated an investigation into this claim.
4. On April 7, 2022, Ms. Gash admitted to a Commission investigator that she purchased the ticket from a store customer for \$200.

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 K 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. 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:

...
(D)purchases a lottery ticket from a person who is not a licensed lottery retailer.

4. 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.

5. 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).

6. 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.).

7. 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.

8. The Texas Lottery Ticket Sales Agent License of Circle K is subject to suspension or revocation pursuant to Tex. Gov't Code §466.155(a)(5), as a result of Circle K's violation of 16 Tex. Admin. Code §§ 401.158(b)(33)(D) and 401.366.

MEMORANDUM OF AGREEMENT

1. By signing this Memorandum of Agreement, Circle K 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 K agrees that, as a result of its violation of 16 Tex. Admin. Code §§ 401.158(b)(33)(D) 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 K 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 K 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 K's Ticket Sales Agent License is posted.

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

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

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

CST Stations Texas LLC
d/b/a Circle K #2741858

Texas Lottery Commission
Lottery Operations Division

By:


Francis Lapointe
Vice President of Regional Operations

04/14/23
DATE

By:


Robert Mironi
Director

4/17/2023

DATE

Commission Order No. 23-0022

Date: JUNE 21, 2023

Case No. 2023-213

IN THE MATTER OF	§	BEFORE THE TEXAS
	§	
CST STATIONS TEXAS LLC	§	
D/B/A CIRCLE K #2741858	§	
	§	
TEXAS LOTTERY TICKET SALES	§	
AGENT LICENSE NO. 599734	§	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 CST Stations Texas LLC d/b/a Circle K #2741858 (Circle K), 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 K 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 K 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 K's Texas Lottery Ticket Sales Agent License is posted.

Commission Order No. 23-0022

Date: JUNE 21, 2023

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

(4) IT IS FURTHER ORDERED by the Commission that Circle K 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 K will be charged for the tickets sold on or before that date. Circle K 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. 23-0022

Date: JUNE 21, 2023

Passed and approved at the regular meeting of the Texas Lottery Commission in Austin,
Texas, on the 21ST day of JUNE, 2023

Entered this 21ST day of JUNE, 2023.

ROBERT G. RIVERA, CHAIRMAN

CINDY FIELDS, COMMISSIONER

MARK A. FRANZ, COMMISSIONER

ERIK C. SAENZ, COMMISSIONER

JAMES H. C. STEEN, COMMISSIONER

Commission Order No. 23-0023

Date: JUNE 21, 2023

Case No. 2023-570

IN THE MATTER OF	§	BEFORE THE TEXAS
	§	
EAGLE C-STORES INC.	§	
D/B/A SEVEN HILLS MARKET	§	
	§	
TEXAS LOTTERY TICKET SALES	§	
AGENT LICENSE NO. 452704	§	LOTTERY COMMISSION

MEMORANDUM OF AGREEMENT AND CONSENT ORDER

The Texas Lottery Commission (Commission) and Eagle C-Stores Inc. d/b/a Seven Hills Market (Seven Hills Market) make the following Agreed Findings of Fact, Agreed Conclusions of Law, and Memorandum of Agreement, and enter into this Consent Order.

AGREED FINDINGS OF FACT

1. Seven Hills Market holds Texas Lottery Ticket Sales Agent License No. 452704.
2. Jasbir Sidhu is the president of Seven Hills Market, which is located at 10326 S. US Hwy. 287, Rhome, TX 76078.
3. On August 17, 2022, the Commission received a complaint that Seven Hills Market required a \$10 minimum when purchasing Texas Lottery tickets with a debit card. The Commission initiated an investigation into this complaint.
4. On September 7, 2022, a Commission investigator traveled to Seven Hills Market and observed a sign posted in the store that stated, “We accept debit for Lotto/Scratch Off if total in store purchase is \$10 or over.”

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. Seven Hills Market 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 Seven Hills Market is subject to suspension or revocation pursuant to Tex. Gov't Code §466.155(a)(5), as a result of Seven Hills Market's violation of 16 Tex. Admin. Code §§ 401.158(b)(23) and 401.366.

MEMORANDUM OF AGREEMENT

1. By signing this Memorandum of Agreement, Seven Hills Market agrees to these terms, acknowledges understanding them, and waives all rights to 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 the Order is signed by the Commission.

3. Seven Hills Market 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 the Order is signed by the Commission. During the period of suspension, Seven Hills Market 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, Seven Hills Market 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 Seven Hills Market's Ticket Sales Agent License is posted.

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

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

8. Seven Hills Market 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 Seven Hills Market will be charged for tickets sold on or before that date. Seven Hills Market 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.

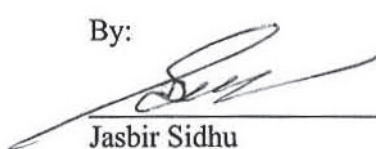
AGREED AS TO FORM AND SUBSTANCE:

Eagle C-Stores Inc.
d/b/a Seven Hills Market

Texas Lottery Commission
Lottery Operations Division

By:


By:



Jasbir Sidhu
President

04/10/2023

DATE



Robert Tirloni
Director

4/10/2023

DATE

Commission Order No. 23-0023

Date: JUNE 21, 2023

Case No. 2023-570

IN THE MATTER OF	§	BEFORE THE TEXAS
	§	
EAGLE C-STORES INC.	§	
D/B/A SEVEN HILLS MARKET	§	
	§	
TEXAS LOTTERY TICKET SALES	§	
AGENT LICENSE NO. 452704	§	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 Eagle C-Stores Inc. d/b/a Seven Hills Market (Seven Hills Market), 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 (Order) is signed by the Commission. During the period of suspension, Seven Hills Market 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, Seven Hills Market 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 Seven Hills Market's Texas Lottery Ticket Sales Agent License is posted.

Commission Order No. 23-0023

Date: JUNE 21, 2023

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

(4) IT IS FURTHER ORDERED by the Commission that Seven Hills Market 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 Seven Hills Market will be charged for the tickets sold on or before that date. Seven Hills Market 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. 23-0023

Date: JUNE 21, 2023

Passed and approved at the regular meeting of the Texas Lottery Commission in Austin,
Texas, on the 21ST day of JUNE, 2023.

Entered this 21ST day of JUNE, 2023.

ROBERT G. RIVERA, CHAIRMAN

CINDY FIELDS, COMMISSIONER

MARK A. FRANZ, COMMISSIONER

ERIK C. SAENZ, COMMISSIONER

JAMES H. C. STEEN, COMMISSIONER

Date: JUNE 21, 2023

DOCKET NO. 362-23-01176

TEXAS LOTTERY COMMISSION,
Petitioner,

v.

LINH THI PHUONG KHUU
D/B/A RICHMOND FOOD SUPER
MARKET
RETAILER NO. 190665,
Respondent,

§
§
§
§
§
§
§
§
§

BEFORE THE TEXAS

LOTTERY COMMISSION

ORDER OF THE COMMISSION

TO: Linh Thi Phuong Khuu
d/b/a Richmond Food Super Market
512 Morton St.
Richmond, TX 77469

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

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

NOW, THEREFORE, IT IS ORDERED that the Texas Lottery Ticket Sales Agent License of Linh Thi Phuong Khuu d/b/a Richmond Food Super Market is hereby revoked.

Commission Order No. 23-0024

Date: JUNE 21, 2023

Passed and approved at the regular meeting of the Texas Lottery Commission in Austin, Texas, on the 21ST day of JUNE 2023.

Entered this 21ST day of JUNE 2023.

ROBERT G. RIVERA, CHAIRMAN

CINDY FIELDS, COMMISSIONER

MARK A. FRANZ, COMMISSIONER

ERIK C. SAENZ, COMMISSIONER

JAMES H. C. STEEN, COMMISSIONER

FILED
362-23-01176
4/18/2023 9:26 AM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Crystal Rosas, CLERK

ACCEPTED
362-23-01176
4/18/2023 9:27:47 am
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Crystal Rosas, CLERK

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

April 18, 2023

Kyle Wolfe

VIA EFILE TEXAS

Linh Le

VIA EFILE TEXAS

**RE: Docket Number 362-23-01176.TLC; TEXAS LOTTERY
COMMISSION v. LINH THI PHUONG KHUU DBA
RICHMOND FOOD SUPER MARKET**

Dear Parties:

Please find attached a Proposal for Decision in this case.

Exceptions and replies may be filed by any party in accordance with 1 Texas Administrative Code section 155.507(b), a SOAH rule which may be found at www.soah.texas.gov.

CC: Service List

**BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**TEXAS LOTTERY COMMISSION,
PETITIONER**

v.

**LINH THI PHUONG KHUU
DBA RICHMOND FOOD SUPER MARKET,
SALES AGENT LICENSE NUMBER 190665,
RESPONDENT**

PROPOSAL FOR DECISION

Staff of the Texas Lottery Commission (Staff/Commission) seeks to revoke lottery sales agent license #190665 held by Linh Thi Fuong Khuu (Licensee) d/b/a Richmond Food Super Market based on allegations that Licensee failed to have sufficient funds available to cover electronic funds transfers to the Commission on four occasions within a 12-month period. The Administrative Law Judge (ALJ)

concludes that Staff proved the allegations by a preponderance of the evidence and recommends the license be revoked.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

There are no contested issues of notice or jurisdiction in this proceeding, and those matters are addressed solely in the Findings of Fact and Conclusions of Law. On September 16, 2022, Licensee's sales agent license was summarily suspended because Licensee failed to have sufficient funds to cover an electronic funds transfer to the Commission's account.¹

On February 28, 2023, State Office of Administrative Hearings (SOAH) ALJ Steve Rivas convened a hearing on the merits by Zoom videoconference. Attorney Kristin Guthrie represented Staff. Licensee appeared and represented herself with the assistance of a Vietnamese interpreter. The record closed on that same date after Staff e-filed the exhibits admitted at the hearing.

II. APPLICABLE LAW

The Commission governs all lottery operations in the state under the State Lottery Act (the Act),² and the Commission's rules.³ The Commission shall

¹ Tex. Gov't Code § 466.160.

² Tex. Gov't Code § 466.

³ 16 Tex. Admin. Code § 401.

suspend or revoke a license if the Commission finds that a sales agent⁴ has violated a chapter of the Act or has violated a rule adopted under the Act.⁵

All revenue received from the sale of tickets and all money credited to the state lottery account from any other source shall be deposited in the state treasury through approved state depositories on the settlement day or days established by the director.⁶ A sales agent is liable to the division for all tickets accepted or generated by the sales agent or any employee or agent of the sales agent, and tickets shall be deemed to have been purchased by the sales agent unless returned to the division within the time and manner prescribed by the division.⁷

Money received by a sales agent from the sales of tickets, less the amount retained for prizes paid by the sales agent or for the agent's commission, if any, together with any unsold tickets, shall be held in trust for the benefit of the state before delivery to a lottery operator or the division or electronic transfer to the state treasury, and the sales agent is liable to the division for the full amount of the money or unsold tickets so held.⁸

⁴ A sales agent is a person licensed under this chapter to sell tickets. Tex. Gov't Code § 466.002(9).

⁵ Tex. Gov't Code § 466.155(a)(5).

⁶ Tex. Gov't Code § 466.351(a).

⁷ Tex. Gov't Code § 466.353(a).

⁸ Tex. Gov't Code § 466.353(b); 16 Tex. Admin. Code §§ 401.351-353.

The Commission may revoke a license if a licensee incurs four (4) notices of nonsufficient fund transfers or non-transfer of funds within a 12-month period,⁹ or the licensee fails to pay the full amount of money owed to the Commission after a nonsufficient funds transfer or non-transfer of funds to the Commission's account.¹⁰

III. EVIDENCE

Staff offered ten exhibits, which were admitted without objection, and called Joel Garza, retail services specialist with the Commission, to offer testimony. Licensee testified on her behalf and did not offer any additional exhibits.

A. STAFF'S EVIDENCE AND TESTIMONY

Mr. Garza presented documentary evidence that Licensee failed to have sufficient funds available to cover an electronic funds transfer (EFT) to the Commission on four occasions within a 12-month period.¹¹ Commission records, offered at the hearing and summarized below, show the date and amount of each

⁹ 16 Tex. Admin. Code § 401.158(b)(40).

¹⁰ 16 Tex. Admin. Code § 401.158(b)(41).

¹¹ Staff Exs. 2-5.

EFT owed to the Commission based on alleged sales of draw games¹² and scratch ticket games¹³ made by Licensee to the public. The amounts and dates are as follows:¹⁴

September 14, 2022:	\$151,741.15
September 8, 2022:	\$346,510.25
August 31, 2022:	\$235,183.02
August 3, 2022:	\$49,308.57

Mr. Garza testified that on each of the dates listed above, the Commission was unable to “sweep” the amount owed to the Commission based on non-sufficient funds (NSF) in Licensee’s account. Mr. Garza further testified that on October 17, 2022, following the summary suspension hearing in this matter, he spoke to Licensee’s ex-husband, Linh Le, to inquire about the NSF sweeps listed above. Mr. Garza testified that Linh Le stated he was an employee at Licensee’s store, and that he did not have any money to cover the NSF sweeps. Mr. Garza further testified that Linh Le said he played all the scratch ticket games that were assigned to Licensee without paying for the tickets.¹⁵ Nevertheless, Mr. Garza noted, Licensee is still liable to the division for all scratch game tickets that were

¹² A draw game is a lottery game which utilizes a computer system to administer plays, the type of game, and amount of play for a specified drawing date, and in which a player either selects a combination of numbers or allows number selection by a random number generator approved by the commission, referred to as Quick Pick. 16 Tex. Admin. Code § 401.301(12).

¹³ A scratch ticket lottery game offered for sale to the public is played by revealing the ticket play symbols. A ticket is presumed to be sold by a sales agent unless it is returned to the Commission. 16 Tex. Admin. Code § 401.301(47).

¹⁴ Staff Exs. 2-5.

¹⁵ See also Staff Ex. 2 at p. 19 (a note Mr. Garza made after speaking with Mr. Le on October 17, 2022).

not sold or not returned to the Commission under Texas Government Code section 466.353(a).

Furthermore, Mr. Garza testified that as of the date of the hearing, the total amount Licensee owed to the Commission was \$497,989.81, which reflects the total owed to cover the NSF sweeps, plus interest, less any amount of payments made by Licensee to the Commission.¹⁶ In addition, Mr. Garza testified that if Licensee has not paid the full amount owed to the Commission after a NSF transfer or non-transfer of funds, the Commission may revoke the license under 16 Texas Administrative Code section 401.158(b)(41).¹⁷

B. LICENSEE'S TESTIMONY

Licensee did not deny that she owed the Commission for the failed sweeps of her account due to NSF. She contended that her ex-husband suffered from a gambling addiction and played all the scratch game tickets at Licensee's store without her knowledge and without paying for them. However, she acknowledged, that her name is on the license and that she was responsible for the failed sweeps owed to the Commission due to having NSF in her account.

She testified that she has made payments to the Commission through deductions, but admitted she had no records to support the existence of these

¹⁶ Staff Exs. 2-5 contain specific amounts owed to the Commission for sales of draw games and scratch ticket games and the dates the amounts were due to the Commission through EFTs.

¹⁷ According to Mr. Garza, the Commission may revoke a license even if the delinquent amount owed is \$1.

payments. She further suggested that if the Commission reinstates her license, she can sell lottery tickets to raise funds for the money owed to the Commission.

IV. ANALYSIS

Staff proved by a preponderance of the evidence that the lottery sales agent license held by License should be revoked because pursuant to Texas Government Code section 466.155(a) and Commission rules.

Licensee violated Texas Government Code section 466.351 and 16 Texas Administrative Code sections 401.351-.352, which require licensees to have adequate funds available through electronic funds transfer. The Commission's rule at 16 Texas Administrative Code section 401.353 also requires retailers to maintain sufficient funds for electronic funds transfers and further provides that if a license has been summarily suspended for nonsufficient funds four times in a 12-month period, that license shall be revoked.

The preponderant evidence established that in August and September 2022, Licensee had insufficient funds in her account on four occasions where the Commission attempted to perform an EFT sweep. As such, the Commission may revoke the license under the Commission's rule at 16 Texas Administrative Code section 401.158(b)(40) because Licensee incurred four notices of nonsufficient funds within a 12-month period.

The evidence also established that Licensee has failed to pay the full amount of \$497,989.81 owed to the Commission after a nonsufficient funds transfer or non-transfer of funds to the Commission's account under the Commission's rule at 16 Texas Administrative Code section 401.158(b)(41).

Licensee offered genuine and sincere testimony that the NSF sweeps and the amount she owes the Commission are attributable to the actions of her ex-husband. The ALJ is sympathetic to her situation. The ALJ further appreciates that Licensee is interested in retaining her license so that she can raise funds to pay the amount she owes the Commission.

However, Staff proved Licensee has violated the statutes and rules set forth above, in that, Licensee failed to have sufficient funds available to cover electronic funds transfers to the Commission on four occasions within a 12-month period, and Licensee remains delinquent on funds she owes the Commission. Under the applicable statutes and rules, the Commission has the authority and the obligation to revoke Licensee's license. The ALJ concludes that it should do so and makes the following Findings of Fact and Conclusions of Law.

V. FINDINGS OF FACT

1. Linh Thi Fuong Khuu (Licensee) d/b/a Richmond Food Super Market is a lottery sales agent licensed by the Texas Lottery Commission (Commission). Licensee holds license number 190665.

2. Licensee has had nonsufficient funds (NSF) in her account to cover electronic funds transfers to the Commission on four occasions within a 12-month period.

3. The amounts of nonsufficient funds (NSF) and dates are as follows:

September 14, 2022:	\$151,741.15
September 8, 2022:	\$346,510.25
August 31, 2022:	\$235,183.02
August 3, 2022:	\$49,308.57

4. Licensee owes the Commission \$497,989.81, which includes the amounts of NSFs, plus interest, less any payments Licensee has made to the Commission.

5. On February 16, 2023, the Commission staff (Staff) sent a fourth amended notice of hearing to Licensee.

6. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and either a short, plain statement of the factual matters asserted, or an attachment that incorporated by reference the factual matters asserted in the complaint or petition filed with the state agency.

7. On February 28, 2023, State Office of Administrative Hearings Administrative Law Judge Steve Rivas convened a hearing on the merits via Zoom videoconference technology. Staff appeared through Attorney Kristen Guthrie. Licensee appeared and represented herself with the assistance of a Vietnamese interpreter. The hearing was adjourned, and the record closed the same day.

VI. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter. Tex. Gov't Code § 466.155

2. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law. Tex. Gov't Code ch. 2003.
3. Licensee received proper and timely notice of the hearing. Tex. Gov't Code §§ 2001.051-52, 16 Tex. Admin. Code § 401.205(a)(4).
4. Licensee's actions were in violation of Texas Government Code section 466.351, and the Commission's rules at 16 Texas Administrative Code sections 401.351-.352.
5. Licensee's license should be revoked pursuant to Texas Government Code sections 466.155(a) and the Commission's rule at 16 Texas Administrative Code section 401.353.

Signed April 18, 2023.

ALJ Signature:

A handwritten signature in dark ink that reads "Steve Rivas". The signature is written in a cursive, slightly slanted style.

Steve Rivas

Presiding Administrative Law Judge

SOAH Docket No. 362-23-01176

Suffix: TLC

ACCEPTED
362-23-01176
11/15/2022 8:49:07 am
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Carol Hale, CLERK

BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS

TEXAS LOTTERY COMMISSION,
PETITIONER
v.
LINH THI PHUONG KHUU DBA RICHMOND FOOD SUPER
MARKET,
RESPONDENT

ORDER GRANTING MOTION TO SET ASIDE

On October 27, 2022, the undersigned Administrative Law Judge (ALJ) convened a hearing on the merits in this matter via Zoom videoconference. Attorney Tyler Vance appeared for the staff (Staff) of the Texas Lottery Commission (Commission). Linh Thi Phuong Khuu d/b/a Richmond Food Super Market (Respondent) did not appear and was not represented at the hearing. Upon establishing adequate notice, Staff moved for a default dismissal, which was granted. The default dismissal order was issued on October 27, 2022.

Respondent accessed the Zoom videoconference after the hearing took place and, subsequently, timely filed a motion to set aside the default dismissal order. Having considered the motion, it is **GRANTED**.

Accordingly, this case is reset and will convene on **December 22, 2022, at 9:00 AM (CST)** via Zoom videoconference. The ALJ will make an audio recording of the hearing, and it will be the official record of the proceeding. Staff must issue a notice of hearing.

At the time of the hearing, you may access the videoconference hearing in one of these ways:

To join by computer or smart device, go to <https://soah-texas.zoomgov.com> and enter this:

Zoom Meeting ID: 160 278 6898

Zoom Video Passcode: LOTTERYDC1

To join by telephone (audio only), call this number and enter this passcode:

Zoom Telephone Number: 669 254 5252

Zoom Meeting ID: 160 278 6898

Zoom Telephone Passcode: 8160621945

If you represent yourself, you will still be required to follow SOAH's procedures and applicable law. SOAH has published material that will help parties understand how to do that. Here is the Guide for Self-Represented Litigants:

<https://www.soah.texas.gov/representing-yourself-general-hearings-cases-state-office-administrative-hearings>.

If you need a language interpreter, you must contact SOAH Docketing Division at (512) 475-4993 by **December 15, 2022**.

Signed NOVEMBER14, 2022.

ALJ Signature:



Katerina DeAngelo,

Presiding Administrative Law Judge

FILED
362-23-01176
11/10/2022 9:30 PM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Carol Hale, CLERK

DOCUMENTS RECEIVED BY FAX

MOTION TO SET ASIDE DEFAULT

ACCEPTED
362-23-01176
11/14/2022 11:07:25 am
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Carol Hale, CLERK

FOR DOCKET NUMBER

362-23-01176

FAXED RECEIVED DATE AND TIME

11-10-2022 @ 9:30 PM

FILED BY

LINH THI PHUONG KHUU

RESPONDENT



State Office of Administrative Hearings

P.O. Box 13025, Austin, Texas 78711-3025

Phone 512.475.4993

Motion to Set Aside Default by Self-Represented Litigant

Case Name: LINH THI PHUONG KHUU
KHUU

SOAH Docket Number: 362-23-01176

§

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§

§

§

§

LINH THI PHUONG KHUU
Printed Name

richmondfoodtx@gmail.com
Email Address

Address:

512 Morton street

Street Name

Richmond
City

TX
State

77469
Zip

Hearing Date

Hearing Time

Hearing Location

1. I hereby request that the default decision against me in this case be set aside and that the hearing and record be reopened. There is good cause to set aside the default and reopen the hearing, and/or it is in the interest of justice to set aside the default and reopen the hearing, because:
2. My failure to appear at the hearing was not intentional or the result of conscious indifference, but was accidental and a mistake on my part.
3. I contacted _____, who is the other party to the hearing or the other party's attorney.
4. The other party:

- ☐ **DOES NOT OPPOSE** the motion.
- ☐ **OPPOSES** the motion.
- ☐ **WAS NOT AVAILABLE** to discuss the request.

5. I can be available on the following dates for rescheduling the hearing (three available dates and times must be included):

12-15-2022

Proposed Hearing Date One

9:00AM

Proposed Hearing Time One

12-22-2022

Proposed Hearing Date Two

9.00 AM

Proposed Hearing Time Two

12-29-2022

Proposed Hearing Date Three

9.00 AM

Proposed Hearing Time Three

I certify that on this date I served a copy of the Motion to Set Aside Default to the opposing party by the following means:

☐ First Class Mail

☐ Fax

☒ Email : *general docket fax @ soah.labusa.com*

Khumlink
Signature

11-09-2022
Date

**BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**TEXAS LOTTERY COMMISSION,
PETITIONER
v.
LINH THI PHUONG KHUU DBA RICHMOND FOOD SUPER
MARKET,
RESPONDENT**

DEFAULT DISMISSAL ORDER

On October 27, 2022, 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). Linh Thi Phuong Khuu d/b/a Richmond Food Super Market (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

¹ 1 Tex. Admin. Code § 155.501(b).

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 OCTOBER 27, 2022.

ALJ Signature:

A handwritten signature in dark ink, reading "Katerina DeAngelo", is written over a horizontal line.

Katerina DeAngelo,

Presiding Administrative Law Judge

² 1 Tex. Admin. Code § 155.501(e)(1).

³ 1 Tex. Admin. Code § 155.501(e).

⁴ Tex. Gov't Code § 2001.056.

Date: JUNE 21, 2023

DOCKET NO. 362-23-08285

TEXAS LOTTERY COMMISSION,	§	BEFORE THE TEXAS
<i>Petitioner,</i>	§	
	§	
v.	§	
	§	
ELUTERIA TORRES	§	
D/B/A MATT'S QUICK STOP AND	§	
BAKERY	§	
TICKET SALES AGENT LICENSE	§	
NO. 134703,	§	
<i>Respondent.</i>	§	LOTTERY COMMISSION

ORDER OF THE COMMISSION

To: Eluteria Torres
d/b/a Matt's Quick Stop and Bakery
1100 W. Combes St.
San Benito, TX 78586
via certified and regular mail
via email at eluteriatorres70@gmail.com

During an open meeting in Austin, Texas, the Texas Lottery Commission (Commission) heard the above-styled case in which Eluteria Torres d/b/a Matt's Quick Stop and Bakery (Respondent) 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 hearing in the referenced case before SOAH was provided to Respondent, pursuant to Tex. Gov't Code §§ 2001.051 and 2001.052 and 1 Tex. Admin. Code §§ 155.401 and 155.501(b). The 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.

Date: JUNE 21, 2023

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

3. The Commission, by and through its attorney of record, filed a motion to dismiss the case from the SOAH docket and to remand the 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).

4. The ALJ conditionally dismissed the case from the SOAH docket and remanded the case to the Commission for informal disposition under Tex. Gov't Code §2001.056, provided the Respondent did not file a motion to set aside the default no later than 15 days from the date of the ALJ's conditional order.

5. The Respondent did not file a motion to set aside the default within the 15 days from the date of the ALJ's conditional 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 ch. 401.

2. The Respondent violated Tex. Gov't Code ch 466 (the State Lottery Act) and/or Title 16 Tex. Admin. Code ch. 401 (Rules for the Administration of State Lottery Act) as set forth in the Commission's notice of hearing.

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 of the above-styled case, this matter is hereby disposed of by default, and:

Commission Order No. 23-0025

Date: JUNE 21, 2023

1. All allegations set forth in the Commission's notice of hearing are deemed admitted; and

2. The Texas Lottery Ticket Sales Agent license of Eluteria Torres d/b/a Matt's Quick Stop and Bakery is hereby suspended for a period of ten (10) days.

Passed and approved at the regular meeting of the Texas Lottery Commission in Austin, Texas, on the 21ST day of JUNE 2023.

Entered this 21ST day of JUNE 2023.

ROBERT G. RIVERA, CHAIRMAN

CINDY FIELDS, COMMISSIONER

MARK A. FRANZ, COMMISSIONER

ERIK C. SAENZ, COMMISSIONER

JAMES H. C. STEEN, COMMISSIONER

FILED
362-23-08285
4/6/2023 2:06 PM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Crystal Rosas, CLERK

ACCEPTED
362-23-08285
4/6/2023 2:19:04 pm
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Crystal Rosas, CLERK

SOAH Docket No. 362-23-08285

Suffix: TLC

BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

**TEXAS LOTTERY COMMISSION,
PETITIONER**

V.

**ELUTERIA TORRES D/B/A MATT'S QUICK STOP AND BAKERY,
RESPONDENT**

DEFAULT DISMISSAL ORDER

On April 6, 2023, the undersigned Administrative Law Judge (ALJ) convened a hearing on the merits in this matter. Attorney Kristen Guthrie appeared for the staff (Staff) of the Texas Lottery Commission (Commission). Eluteria Torres d/b/a Matt's Quick Stop and Bakery (Respondent) did not appear and was not represented at the hearing. Staff presented, and the ALJ has admitted, evidence establishing jurisdiction and adequate notice to Respondent.¹ Based on its proof of adequate notice, Staff moved for a default dismissal. Staff's motion is GRANTED, and the

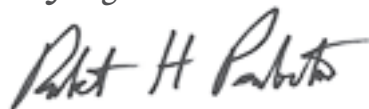
¹ Filed as Attachments A, B, and C to Staff's motion to dismiss and remand. *See* 1 Tex. Admin. Code § 155.501(b).

factual allegations detailed in the Notice of Hearing and any 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 APRIL 6, 2023.

ALJ Signature:



Robert Pemberton,

Presiding Administrative Law Judge

² See 1 Tex. Admin. Code § 155.501(d)(1).

³ See 1 Tex. Admin. Code § 155.501(e).

⁴ See Tex. Gov't Code § 2001.056.



Texas Lottery Commission

Commissioners:

Robert G. Rivera, Chairman

Cindy Fields • Mark A. Franz • Erik C. Saenz • Jamey Steen



LaDonna Castañeda
Director

January 5, 2023

Eluteria Torres
d/b/a Matt's Quick Stop and Bakery
1100 W. Combes St.
San Benito, TX 78586

**RE: NOTICE OF FINAL HEARING CONCERNING SUSPENSION OR
REVOCATION OF LOTTERY LICENSE
SOAH DOCKET NO. 362-23-08285
TEXAS LOTTERY LICENSE SALES AGENT NO. 134703**

Dear Licensee:

Be advised that a formal hearing to consider the Texas Lottery Commission's suspension or revocation of the Texas Lottery Ticket Sales Agent License of Eluteria Torres d/b/a Matt's Quick Stop and Bakery, pursuant to the provisions of the Tex. Gov't. Code chs. 466, 2001, and 2003; 1 Tex. Admin. Code ch. 155; and 16 Tex. Admin. Code ch. 401, will be held at the State Office of Administrative Hearings (SOAH) as follows:

TIME OF HEARING: 10:00 a.m.

DATE OF HEARING: April 6, 2023

LOCATION OF HEARING: Zoom or Telephonic SOAH Hearing

Join by computer or smart device:

Go to <https://soah-texas.zoomgov.com> and enter the following:

Meeting ID: 161 160 2495

Video Passcode: TLC8285

Join by telephone (audio only):

Call +1 669 254 5252 and enter the following:

Meeting ID: 161 160 2495

Telephone Pass.: 7384429

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

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

texaslottery.com • txbingo.org

NOTICE OF HEARING

I.

Factual Matters Asserted

Eluteria Torres d/b/a Matt's Quick Stop and Bakery (Matt's Quick Stop and Bakery) holds Texas Lottery Ticket Sales Agent License No. 134703. Eluteria Torres is the owner of Matt's Quick Stop and Bakery, which is located at 1100 W. Combes, San Benito, TX 78586.

On March 10, 2022, the Texas Lottery Commission (Commission) received a complaint that Matt's Quick Stop and Bakery charges customers a fee for using debit cards for lottery ticket purchases. The Commission initiated an investigation into this complaint.

On July 7, 2022, a Commission investigator purchased two Texas Lottery draw game tickets on a debit card at Matt's Quick Stop and Bakery. The investigator was charged an additional \$0.81 for the tickets.

II.

Legal Authority and Jurisdiction

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

The State Office of Administrative Hearings (SOAH) has jurisdiction over this matter pursuant to Tex. Gov't Code ch. 2003 and 1 Tex. Admin. Code ch. 155.

III.

Applicable Statutes and Rules

Tex. Gov't Code §466.151(e) 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.

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.

Tex. Gov't Code §466.302(a) states:

A person commits an offense if the person intentionally or knowingly sells a ticket at a price the person knows is greater than that fixed by the commission or by the lottery operator authorized to set that price.

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:

...

(22) licensee intentionally or knowingly sells a ticket at a price the licensee knows is greater than the price set by the executive director;

(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.

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.

If you do not oppose the suspension or revocation of your license, your appearance at the SOAH hearing is not required. If you do oppose the suspension or revocation of your license, you have the right to appear and present evidence. You are entitled to be represented by a lawyer at the SOAH hearing, but it is your responsibility to obtain and pay for such representation. A court reporter may be present, and a record of the proceedings will be created. It is, however, the sole and exclusive responsibility of each party to request and pay for any printed transcript.

The hearing is conducted under the authority of Tex. Gov't Code §466.155 and 16 Tex. Admin. Code §§ 401.158 and 401.201–.227.

All hearings are formal due process matters governed by and conducted in accordance with law, including Texas Government Code Chapters 466, 2001, and 2003; the Texas Rules of Civil Procedure; the Texas Rules of Evidence; Title 1 of the Texas Administrative Code Chapter 155; and Title 16 of the Texas Administrative Code Chapter 401.

AT LEAST TEN (10) CALENDAR DAYS BEFORE THE DATE OF THE HEARING, YOU ARE REQUIRED TO FILE A WRITTEN ANSWER TO THE ALLEGATIONS IN THIS NOTICE OF HEARING WITH SOAH. SEE 16 TEX. ADMIN. CODE §401.207(d). A GENERAL DENIAL OF THE ALLEGATIONS SHALL BE A SUFFICIENT ANSWER.

FAILURE TO FILE A WRITTEN ANSWER BY THIS DATE AND/OR TO APPEAR AT THE HEARING MAY RESULT IN THE ALLEGATIONS BEING ADMITTED AS TRUE AND THE RELIEF REQUESTED BEING GRANTED BY DEFAULT.

IF YOU WISH TO HAVE AN IN-PERSON SOAH HEARING INSTEAD OF A ZOOM OR TELEPHONIC SOAH HEARING, YOU MUST REQUEST AN IN-PERSON HEARING BY FILING A MOTION OR OBJECTION DEMONSTRATING GOOD CAUSE AS TO WHY AN IN-PERSON HEARING IS REQUESTED OR WHY THE USE OF REMOTE TECHNOLOGIES IS NOT FEASIBLE OR IN THE INTEREST OF JUSTICE.

ANY WRITTEN ANSWER OR MOTION MUST ALSO BE SENT TO THE COMMISSION. THE ANSWER OR MOTION CAN BE SENT VIA FAX AT 512-344-5189 OR EMAIL AT legal.input@lottery.state.tx.us.

PARTIES THAT ARE NOT REPRESENTED BY AN ATTORNEY MAY OBTAIN INFORMATION REGARDING CONTESTED CASE HEARINGS ON THE PUBLIC WEBSITE OF SOAH AT WWW.SOAH.TEXAS.GOV, OR IN PRINTED FORMAT UPON REQUEST TO SOAH.

FOR UNREPRESENTED PARTIES WHO CANNOT FILE DOCUMENTS ELECTRONICALLY WITH SOAH, DOCUMENTS MAY BE FILED: (1) BY MAIL ADDRESSED TO SOAH AT P.O. BOX 13025, AUSTIN, TEXAS 78711-3025; (2) BY HAND-DELIVERY TO SOAH AT 300 WEST 15TH STREET, ROOM 504; (3) BY FAX TO SOAH AT (512) 322-2061; OR (4) AT THE SOAH FIELD OFFICE WHERE THE CASE IS ASSIGNED, USING THE FIELD OFFICE ADDRESS OR FAX NUMBER, WHICH ARE AVAILABLE AT SOAH'S WEBSITE.

TO VIEW YOUR PUBLIC CASE FILE, GO TO THE SOAH WEBSITE (WWW.SOAH.TEXAS.GOV), CLICK THE "SEARCH PUBLIC CASE FILES" LINK, AND THEN CLICK THE "re:SearchTX" LINK AND FOLLOW THE INSTRUCTIONS.

The Commission reserves the right to amend this Notice of Hearing.

Respectfully,

/s/ Kristen Guthrie
KRISTEN GUTHRIE
Assistant General Counsel
Texas Lottery Commission

CERTIFICATE OF SERVICE

I certify that on January 5, 2023, a true and correct copy of this *Notice of Final Hearing on Suspension or Revocation of Lottery License* was sent to Eluteria Torres d/b/a Matt's Quick Stop and Bakery at 1100 W. Combes, San Benito, TX 78586 via certified and regular mail and email at *ellietorres70@gmail.com*.

/s/ Kristen Guthrie
KRISTEN GUTHRIE
Assistant General Counsel
Texas Lottery Commission
P.O. Box 16630
Austin, Texas 78761-6630
Phone: (512) 344-5475
Fax: (512) 344-5189

cc: SOAH
Lottery Operations Division

Date: JUNE 21, 2023

DOCKET NO. 362-23-13223

TEXAS LOTTERY COMMISSION,
Petitioner,

v.

BISHAL LLC
D/B/A VENUS COUNTRY STORE
TICKET SALES AGENT LICENSE
NO. 183470,
Respondent.

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BEFORE THE TEXAS

LOTTERY COMMISSION

ORDER OF THE COMMISSION

To: Bishal LLC
d/b/a Venus Country Store
108 S. Main St., Suite A
Venus, TX 76084
via certified and regular mail
via email at bishal.tamang@mavs.uta.edu

During an open meeting in Austin, Texas, the Texas Lottery Commission (Commission) heard the above-styled case in which Bishal LLC d/b/a Venus Country Store (Respondent) 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 hearing in the referenced case before SOAH was provided to Respondent, pursuant to Tex. Gov't Code §§ 2001.051 and 2001.052 and 1 Tex. Admin. Code §§ 155.401 and 155.501(b). The 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.

Date: JUNE 21, 2023

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

3. The Commission, by and through its attorney of record, filed a motion to dismiss the case from the SOAH docket and to remand the 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).

4. The ALJ conditionally dismissed the case from the SOAH docket and remanded the case to the Commission for informal disposition under Tex. Gov't Code §2001.056, provided Respondent did not file a motion to set aside the default no later than 15 days from the date of the ALJ's conditional order.

5. The Respondent did not file a motion to set aside the default within the 15 days of the date of the ALJ's conditional 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 ch. 401.

2. The Respondent violated Tex. Gov't Code ch 466 (the State Lottery Act) and/or Title 16 Tex. Admin. Code ch. 401 (Rules for the Administration of State Lottery Act) as set forth in the Commission's notice of hearing.

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 of the above-styled case, this matter is hereby disposed of by default, and:

Commission Order No. 23-0026

Date: JUNE 21, 2023

1. All allegations set forth in the Commission's notice of hearing are deemed admitted; and

2. The Texas Lottery Ticket Sales Agent license of Bishal LLC d/b/a Venus Country Store is hereby suspended for a period of ninety (90) days.

Passed and approved at the regular meeting of the Texas Lottery Commission in Austin, Texas, on the 21ST day of JUNE 2023.

Entered this 21ST day of JUNE 2023.

ROBERT G. RIVERA, CHAIRMAN

CINDY FIELDS, COMMISSIONER

MARK A. FRANZ, COMMISSIONER

ERIK C. SAENZ, COMMISSIONER

JAMES H. C. STEEN, COMMISSIONER

SOAH Docket No. 362-23-13223

Suffix: TLC

**BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

FILED
362-23-13223
5/24/2023 11:35 AM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Pegah Nasrollahzadeh, CLERK

ACCEPTED
362-23-13223
5/24/2023 11:38:22 am
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Pegah Nasrollahzadeh, CLERK

**TEXAS LOTTERY COMMISSION,
PETITIONER
V.
BISHAL LLC D/B/A VENUS COUNTRY STORE,
RESPONDENT**

DEFAULT DISMISSAL ORDER

On May 23, 2023, the undersigned Administrative Law Judge (ALJ) convened a hearing on the merits in this matter via Zoom videoconference. Attorney Kristen Guthrie appeared on behalf of the Staff of the Texas Lottery Commission (Staff), while Bishal LLC d/b/a Venus Country Store. (Respondent) did not appear either personally or through a representative.¹ On the same date, Staff filed a Motion to Remand, seeking a default dismissal and remand. Staff included three attachments to this motion, which established adequate notice to

¹ Nor did Respondent make any filings prior to the hearing date.

Respondent. Staff's motion is **GRANTED**.²

Due to Respondent's failure 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. It is therefore **ORDERED** that this case is **DISMISSED** pursuant to 1 Texas Administrative Code § 155.501(d)(1). Respondent may file a motion to set aside the default no later than 15 days from the date of this order. Such a motion must show good cause for reopening the hearing.

Signed MAY 24, 2023.

ALJ Signature(s):

A handwritten signature in cursive script that reads "Rebecca S. Smith". The signature is written in dark ink and is positioned above a horizontal line.

Rebecca Smith,
Presiding Administrative Law Judge

² See 1 Tex. Admin. Code § 155.501. The ALJ reviewed only the adequacy of the notice and not the merits of Staff's factual allegations.



Texas Lottery Commission

Commissioners:

Robert G. Rivera, Chairman

Cindy Fields • Mark A. Franz • Erik C. Saenz • Jamey Steen



LaDonna Castañuela
Director

March 23, 2023

Bishal LLC
d/b/a Venus Country Store
108 S. Main St., Suite A
Venus, TX 76084

**RE: FIRST AMENDED NOTICE OF FINAL HEARING CONCERNING SUSPENSION
OR REVOCATION OF LOTTERY LICENSE
SOAH DOCKET NO. 362-23-13223
TEXAS LOTTERY LICENSE SALES AGENT NO. 183470**

Dear Licensee:

Be advised that a formal hearing to consider the Texas Lottery Commission's suspension or revocation of the Texas Lottery Ticket Sales Agent License of Bishal LLC d/b/a Venus Country Store, pursuant to the provisions of the Tex. Gov't. Code chs. 466, 2001, and 2003; 1 Tex. Admin. Code ch. 155; and 16 Tex. Admin. Code ch. 401, will be held at the State Office of Administrative Hearings (SOAH) as follows:

TIME OF HEARING: 10:00 a.m.

DATE OF HEARING: May 23, 2023

LOCATION OF HEARING: Zoom or Telephonic SOAH Hearing

Join by computer or smart device:

Go to <https://soah-texas.zoomgov.com> and enter the following:

Meeting ID: 161 652 0437

Video Passcode: TLC3223

Join by telephone (audio only):

Call +1 669 254 5252 and enter the following:

Meeting ID: 161 652 0437

Telephone Pass.: 2569538

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

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

texaslottery.com • txbingo.org

NOTICE OF HEARING

I.

Factual Matters Asserted

Bishal LLC d/b/a Venus Country Store (Venus Country Store) holds Texas Lottery Ticket Sales Agent License No. 183470. Bishal Tamang is the managing member of Venus Country Store, which is located at 108 S. Main St., Suite A, Venus, TX 76084.

On May 19, 2021, at the Dallas Claim Center, Kumar Tamang, a Venus Country Store employee, and Bishal Tamang's father, claimed two Texas Lottery scratch tickets for a total of \$2,000 in prize winnings. Based on an internal review, the Texas Lottery Commission (Commission) initiated an investigation into these claims.

Kumar Tamang told a Commission investigator that he purchased the two Texas Lottery scratch tickets himself. The investigation revealed that one of the tickets that Kumar Tamang claimed he purchased was actually purchased by another person.

II.

Legal Authority and Jurisdiction

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

The State Office of Administrative Hearings (SOAH) has jurisdiction over this matter pursuant to Tex. Gov't Code ch. 2003 and 1 Tex. Admin. Code ch. 155.

III.

Applicable Statutes and Rules

Tex. Gov't Code §466.151(e) 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.

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.

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.

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.

Tex. Gov't Code §466.312 states:

(a) A person commits an offense if the person intentionally or knowingly makes a material and false, incorrect, or deceptive statement to a person conducting an investigation or exercising discretion under this chapter or a rule adopted under this chapter.

(b) In this section, "statement" includes:

- (1) a written or oral statement; and
- (2) a sworn or unsworn statement.

(c) An offense under this section is a Class A misdemeanor.

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.

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

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

...

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

...

(33) licensee:

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

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.

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.

If you do not oppose the suspension or revocation of your license, your appearance at the SOAH hearing is not required. If you do oppose the suspension or revocation of your license, you have the right to appear and present evidence. You are entitled to be represented by a lawyer at the SOAH hearing, but it is your responsibility to obtain and pay for such representation. A court reporter may be present, and a record of the proceedings will be created. It is, however, the sole and exclusive responsibility of each party to request and pay for any printed transcript.

The hearing is conducted under the authority of Tex. Gov't Code §466.155 and 16 Tex. Admin. Code §§ 401.158 and 401.201–.227.

All hearings are formal due process matters governed by and conducted in accordance with law, including Texas Government Code Chapters 466, 2001, and 2003; the Texas Rules of Civil Procedure; the Texas Rules of Evidence; Title 1 of the Texas Administrative Code Chapter 155; and Title 16 of the Texas Administrative Code Chapter 401.

AT LEAST TEN (10) CALENDAR DAYS BEFORE THE DATE OF THE HEARING, YOU ARE REQUIRED TO FILE A WRITTEN ANSWER TO THE ALLEGATIONS IN THIS NOTICE OF HEARING WITH SOAH. *SEE* 16 TEX. ADMIN. CODE §401.207(d). A GENERAL DENIAL OF THE ALLEGATIONS SHALL BE A SUFFICIENT ANSWER.

FAILURE TO FILE A WRITTEN ANSWER BY THIS DATE AND/OR TO APPEAR AT THE HEARING MAY RESULT IN THE ALLEGATIONS BEING ADMITTED AS TRUE AND THE RELIEF REQUESTED BEING GRANTED BY DEFAULT.

IF YOU WISH TO HAVE AN IN-PERSON SOAH HEARING INSTEAD OF A ZOOM OR TELEPHONIC SOAH HEARING, YOU MUST REQUEST AN IN-PERSON HEARING BY FILING A MOTION OR OBJECTION DEMONSTRATING GOOD CAUSE AS TO WHY AN IN-PERSON HEARING IS REQUESTED OR WHY THE USE OF REMOTE TECHNOLOGIES IS NOT FEASIBLE OR IN THE INTEREST OF JUSTICE.

ANY WRITTEN ANSWER OR MOTION MUST ALSO BE SENT TO THE COMMISSION. THE ANSWER OR MOTION CAN BE SENT VIA FAX AT 512-344-5189 OR EMAIL AT legal.input@lottery.state.tx.us.

PARTIES THAT ARE NOT REPRESENTED BY AN ATTORNEY MAY OBTAIN INFORMATION REGARDING CONTESTED CASE HEARINGS ON THE PUBLIC WEBSITE OF SOAH AT WWW.SOAH.TEXAS.GOV, OR IN PRINTED FORMAT UPON REQUEST TO SOAH.

FOR UNREPRESENTED PARTIES WHO CANNOT FILE DOCUMENTS ELECTRONICALLY WITH SOAH, DOCUMENTS MAY BE FILED: (1) BY MAIL ADDRESSED TO SOAH AT P.O. BOX 13025, AUSTIN, TEXAS 78711-3025; (2) BY HAND-DELIVERY TO SOAH AT 300 WEST 15TH STREET, ROOM 504; (3) BY FAX TO SOAH AT (512) 322-2061; OR (4) AT THE SOAH FIELD OFFICE WHERE THE CASE IS ASSIGNED, USING THE FIELD OFFICE ADDRESS OR FAX NUMBER, WHICH ARE AVAILABLE AT SOAH'S WEBSITE.

TO VIEW YOUR PUBLIC CASE FILE, GO TO THE SOAH WEBSITE (WWW.SOAH.TEXAS.GOV), CLICK THE "SEARCH PUBLIC CASE FILES" LINK, AND THEN CLICK THE "re:SearchTX" LINK AND FOLLOW THE INSTRUCTIONS.

The Commission reserves the right to amend this Notice of Hearing.

Respectfully,

/s/ Kristen Guthrie
KRISTEN GUTHRIE
Assistant General Counsel
Texas Lottery Commission

CERTIFICATE OF SERVICE

I certify that on March 23, 2023, a true and correct copy of this *First Amended Notice of Final Hearing on Suspension or Revocation of Lottery License* was sent to Bishal LLC d/b/a Venus Country Store at 108 S. Main St., Suite A, Venus, TX 76084 via certified and regular mail and email at *bishal.tamang@mavs.uta.edu*.

/s/ Kristen Guthrie
KRISTEN GUTHRIE
Assistant General Counsel
Texas Lottery Commission
P.O. Box 16630
Austin, Texas 78761-6630
Phone: (512) 344-5475
Fax: (512) 344-5189

cc: SOAH
Lottery Operations Division

Date: JUNE 21, 2023

DOCKET NO. 362-23-15254

TEXAS LOTTERY COMMISSION,	§	BEFORE THE TEXAS
<i>Petitioner,</i>	§	
	§	
v.	§	
	§	
JAYSINHPRSK LIMITED LIABILITY	§	
COMPANY	§	
D/B/A AMAZING ANGEL FOOD MART	§	
RETAILER NO. 185270,	§	
<i>Respondent,</i>	§	LOTTERY COMMISSION

ORDER OF THE COMMISSION

TO: Jaysinhprsk Limited Liability Company
d/b/a Amazing Angel Food Mart
14428 Bally Castle Trail
Austin, TX 78717

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

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

NOW, THEREFORE, IT IS ORDERED that the Texas Lottery Ticket Sales Agent License of Jaysinhprsk Limited Liability Company d/b/a Amazing Angel Food Mart is hereby revoked.

Commission Order No. 23-0027

Date: JUNE 21, 2023

Passed and approved at the regular meeting of the Texas Lottery Commission in Austin, Texas, on the 21ST day of JUNE 2023.

Entered this 21ST day of JUNE 2023.

ROBERT G. RIVERA, CHAIRMAN

CINDY FIELDS, COMMISSIONER

MARK A. FRANZ, COMMISSIONER

ERIK C. SAENZ, COMMISSIONER

JAMES H. C. STEEN, COMMISSIONER

ACCEPTED
362-23-15254
5/23/2023 3:05:36 pm
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Kevin Garza, CLERK

FILED
362-23-15254
5/23/2023 3:02 PM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Kevin Garza, CLERK

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

May 23, 2023

Jaysinhprsk Limited Liability Company Db a Amazing Angel Food Mart

Respondent

VIA EFILE TEXAS

Kyle Wolfe & Tyler Vance for the Texas Lottery Commission

Petitioner

VIA EFILE TEXAS

RE: Docket Number 362-23-15254.TLC; *Texas Lottery Commission v. Jaysinhprsk Limited Liability Company d/b/a Amazing Angel Food Mart*

Dear Parties:

Please find attached a Proposal for Decision in this case.

Exceptions and replies may be filed by any party in accordance with 1 Texas Administrative Code section 155.507(b), a SOAH rule that may be found at www.soah.texas.gov.

CC: Service List

**BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**TEXAS LOTTERY COMMISSION,
PETITIONER**

V.

**JAYSINHPRSK LIMITED LIABILITY COMPANY D/B/A
AMAZING ANGEL FOOD MART,
RESPONDENT**

PROPOSAL FOR DECISION

The staff (Staff) of the Texas Lottery Commission (Commission) seeks to revoke the lottery sales agent license held by Jaysinhprsk Limited Liability Company d/b/a Amazing Angel Food Mart (Licensee) because Licensee failed to have sufficient funds available to cover an electronic funds transfer to the Commission's account. After considering the evidence and applicable law, the Administrative Law Judge (ALJ) concludes that Licensee's license should 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 below.

This case was docketed with the State Office of Administrative Hearings (SOAH) on March 23, 2023. On the same day, SOAH convened a preliminary hearing via Zoom videoconference on the summary suspension of Licensee's lottery sales agent license.¹ Licensee did not appear at the preliminary hearing, and an order was issued upholding the summary suspension of the license pending a final hearing.²

On May 4, 2023, SOAH ALJ Cassandra Quinn convened the hearing on the merits via Zoom videoconference. Staff was represented by attorney Kyle Wolfe. Licensee was represented by its owner and license holder, Minal Keshvara. After the presentation of evidence and arguments, the hearing was adjourned, and the record closed later that same day after Staff eFiled its admitted exhibits.

II. DISCUSSION

A. APPLICABLE LAW

The Commission must suspend or revoke a sales agent license if it finds, after a hearing, that the sales agent has violated the State Lottery Act or a rule adopted

¹ See Tex. Gov't Code § 466.160.

² Order Upholding Summary Suspension (Mar. 24, 2023).

under that Act.³ Pursuant to the Act, the Commission has adopted rules that require a retailer to establish a single separate electronic funds transfer account for the purpose of receiving monies from ticket sales, making payments to the Commission, and receiving payments from the Commission.⁴ Failure to have sufficient funds available to cover an electronic funds transfer to the Commission's account is cause for suspension, summary suspension, and revocation of a retailer's license.⁵

As is relevant here, the Commission's rules provide that a license may be suspended or revoked when a "licensee fails to pay the full amount of money owed to the commission after a nonsufficient funds transfer or non-transfer of funds to the commission's account."⁶ The Commission has adopted a standard penalty chart designating such a violation as a "3rd Tier" violation that is subject to revocation of the license for the first occurrence.⁷ However, the penalty chart is not binding if mitigating circumstances are shown.⁸

³ Tex. Gov't Code § 466.155(a)(5).

⁴ 16 Tex. Admin. Code § 401.352(a); *see also* Tex. Gov't Code § 466.351(b).

⁵ 16 Tex. Admin. Code § 401.352(a); *see also* 16 Tex. Admin. Code §§ 401.351 (requiring that proceeds from the sale of lottery tickets be delivered to the Commission or its authorized collection representative on demand), .353(b) (requiring retailer to maintain an account balance sufficient to cover monies due the Commission for the established billing period).

⁶ 16 Tex. Admin. Code § 401.158(a), (b)(41).

⁷ 16 Tex. Admin. Code § 401.160(h).

⁸ 16 Tex. Admin. Code § 401.160(e)-(g).

Licensee has the burden of proof to show by a preponderance of the evidence why its license should not be suspended or revoked.⁹

B. EVIDENCE AND ARGUMENT

Staff had eight exhibits¹⁰ admitted and offered the testimony of Joel Garza, a retailer services specialist with the Commission. Licensee did not offer any evidence.

Staff Exhibit 6 shows that Licensee provided an electronic funds transfer authorization for the Commission to sweep its account to collect funds for lottery tickets sold. Mr. Garza testified and presented documentary evidence that the Commission attempted to sweep Licensee's designated account on March 8, 2023, in the amount of \$5,532.05, but received a notice of insufficient funds.¹¹ According to Mr. Garza, Licensee still had not paid any portion of the amount due to the Commission as of the date of the hearing.

Mr. Keshvara did not dispute that the funds had not been paid, but stated that Licensee intends to pay and needs at least 14 more days.

C. ANALYSIS

There is no dispute that Licensee failed to have sufficient funds available to cover an electronic funds transfer to the Commission's account. The failure to pay

⁹ Tex. Gov't Code § 466.155(c).

¹⁰ Staff Exs. 1-8.

¹¹ Staff Exs. 3-5.

the full amount of money owed to the Commission after a nonsufficient funds transfer is a violation of the Commission's rules.¹² As of the date of the hearing, which was nearly two months after the initial notice of insufficient funds, Licensee had not paid any amount toward the balance owed. The ALJ therefore finds that Licensee violated the Commission's rules. Under the Commission's standard penalty chart, the penalty for this violation is revocation.¹³ Licensee did not present any evidence showing that the license should not be revoked.¹⁴ Accordingly, the ALJ recommends that the Commission revoke Licensee's license.

III. FINDINGS OF FACT

1. Jaysinhprsk Limited Liability Company d/b/a Amazing Angel Food Mart (Licensee) is a lottery sales agent licensed by the Texas Lottery Commission (Commission). Licensee holds license number 185270.
2. This case was docketed with the State Office of Administrative Hearings (SOAH) on March 23, 2023. On the same day, SOAH convened a preliminary hearing via Zoom videoconference on the summary suspension of Licensee's lottery sales agent license. Licensee did not appear at the preliminary hearing, and an order was issued upholding the summary suspension of the license pending a final hearing.
3. On April 6, 2023, the Commission staff (Staff) sent a notice of final hearing to Licensee.
4. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and either a short, plain statement of the factual matters asserted, or

¹² See 16 Tex. Admin. Code §§ 401.158(b)(41), .351, .353(b).

¹³ 16 Tex. Admin. Code § 401.160(h).

¹⁴ See Tex. Gov't Code § 466.155(c); 16 Tex. Admin. Code § 401.160(e)-(g).

an attachment that incorporated by reference the factual matters asserted in the complaint or petition filed with the state agency.

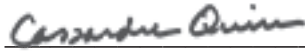
5. On May 4, 2023, SOAH Administrative Law Judge Cassandra Quinn convened the hearing on the merits via Zoom videoconference. Staff was represented by attorney Kyle Wolfe. Licensee was represented by its owner and license holder, Minal Keshvara. After the presentation of evidence and arguments, the hearing was adjourned, and the record closed later that same day after Staff eFiled its admitted exhibits.
6. On March 8, 2023, Licensee failed to have sufficient funds in the amount of \$5,532.05 available to cover an electronic funds transfer to the Commission's account.
7. As of the date of the hearing, Licensee had not paid any portion of the amount due to the Commission.

IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter under Texas Government Code § 466.155.
2. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law. Tex. Gov't Code § 466.155(b-1); *see also* Tex. Gov't Code ch. 2003.
3. Licensee had proper and timely notice of the hearing pursuant to Texas Government Code §§ 466.155(b), 2001.051-.052 and 16 Texas Administrative Code (TAC) § 401.205(4).
4. Licensee had the burden of proof to show by a preponderance of the evidence why its license should not be suspended or revoked. Tex. Gov't Code § 466.155(c).
5. Licensee's actions were in violation of Texas Government Code § 466.351 and 16 TAC §§ 401.158(b)(41), .351, .353(b).

6. Licensee's license should be revoked pursuant to Texas Government Code § 466.155(a)(5) and 16 TAC §§ 401.158(a), (b)(41), .160(h), .352(a).

SIGNED May 23, 2023

A handwritten signature in dark ink, appearing to read "Cassandra Quinn", is positioned above a horizontal line.

Cassandra Quinn

Presiding Administrative Law Judge

CASE SUMMARY

PARTY NAME: Texas Lottery Commission (Commission)

DOCKET NO./CASE NAME: SOAH Docket No. 362-21-2282.B – Monica Weber (Respondent)

ISSUE(S): Should Respondent be removed from the Registry of Approved Bingo Workers (Registry) for her failure to comply with the Bingo Enabling Act (BEA) and Commission's Charitable Bingo Administrative Rules (Rules) by failing to maintain records that fully and accurately recorded each transaction connected with Alamo Hills Bingo Unit's (Unit) conduct of bingo while employed as a primary bookkeeper for the Unit members? [**Yes**]

KEY FACTS: In 2019, the U.S. Department of Homeland Security's Homeland Security Investigations Division (DHS) referred information to the Commission regarding a DHS investigation into charges that Respondent had misapplied Unit's funds while employed by the Unit. Based on information from DHS, the Bingo Division conducted a compliance audit of the Unit for the audit period of July 1, 2015 to June 30, 2019 (Audit Period). During that time, the Unit failed to account for \$1,439,768.38 in bingo revenue.

As the Unit members' primary bookkeeper, Respondent was ultimately responsible for the preparation of financial records and the maintenance of bingo inventory records for the Unit members. The Commission presented uncontroverted evidence that over \$1.4 million in bingo proceeds related to bingo cards, pull-tabs, and voided electronic card-minders could not be accounted for because Respondent systematically failed to comply with the Act and Rules related to record keeping during the Audit Period. Specifically, Respondent failed to properly void card-minder sales, failed to maintain voided card-minder receipts, failed to maintain a perpetual inventory of pull-tabs, and failed to maintain complete and accurate financial records related to all bingo activity. The Commission submitted numerous records and presented the testimony of several witnesses credibly supporting the Commission's allegation that Respondent served as the Unit members' primary bookkeeper and hall manager during the time the violations occurred.

In stark contrast, Respondent provided no evidence to counter the Commission's claims that the Unit could not account for more than \$1.4 million during the Audit Period and that Respondent served as the Unit members' primary bookkeeper during that period and was the person responsible for accounting for the missing funds. Respondent appeared at the hearing but failed to offer testimony.

The Administrative Law Judge (ALJ) for the State Office of Administrative Hearings (SOAH) found Respondent failed to maintain receipts of the Unit's voided sales of card-minding devices, failed to maintain a purchase log and perpetual inventory of pull-tab games for the Unit, and failed to record the Unit's transactions of bingo gross receipts on a cash register or point of sale station. Further, the SOAH ALJ found the Bingo Division was entitled to remove Respondent from the Registry.

LEGAL PRINCIPLES INVOLVED:

BEA §2001.313 states, in pertinent part: (a) . . . the commission shall maintain a registry of individuals on whom the commission has conducted a criminal history background check and who are approved to be involved in the conduct of bingo or to act as a bingo operator; . . .

(e) The commission may refuse to add an individual's name to, or remove an individual's name from, the registry established by this section if, after notice and, if requested by the individual, a hearing, the individual is finally determined to have . . . (7) participated in any violation of this chapter or rules adopted by the commission for the administration of this chapter.

The preponderance of the evidence (all the evidence) supports the Commission's position.

ACTION REQUESTED: Approve SOAH's Proposal for Decision and issue an order removing Respondent from the Registry.

CASE SUMMARY

PARTY NAME: Monica Weber

DOCKET NO./CASE NAME: 362-21-2282.B

ISSUE(S): Whether Ms. Weber received adequate legal representation in preparation for the pending case. Ms. Weber now has new legal representation and Ms. Weber is now ready to testify to all issues in the proceeding. Had Ms. Weber retained adequate legal representation, Ms. Weber, as well as others, would have testified in this proceeding; the testimony would have helped the Commission understand that the Proposal for Decision is in error.

KEY FACTS: Ms. Weber did not receive adequate legal representation in this proceeding. Had Ms. Weber received adequate legal representation, she would have known she and others needed to testify. Ms. Weber was made aware that Commission staff threatened Ms. Weber with prosecution in this case and the evidence will show that Commission staff were unaware of Ms. Weber's gaming income – Ms. Weber's W2G records will show Ms. Weber did not misapply any bingo funds (See Commission Ex 3). Moreover, notwithstanding the Commission's apparent belief that Ms. Weber was "engaged in money laundering" (Id, Bates stamp page 000083) and that the Commission made a criminal referral to the Bexar County District Attorney's office in May, 2021, no criminal case has been instituted against Ms. Weber. A reopened case will once and for all establish that Ms. Weber did not misapply any bingo funds or money launder any funds, that Ms. Weber properly accounted for bingo inventory and destroyed certain damaged inventory.

LEGAL PRINCIPLES INVOLVED: Ms. Weber's ability to earn a living is predicated on her ability to maintain her position on the Commission's Registry of Approved Bingo Workers, TEX. OCC. CODE §2001.313. Ms. Weber has a constitutional right to pursue her work as a bingo worker and that right is "one of the most fundamental of those privileges protected by" the Privileges and Immunities Clause of the US Constitution, Art. IV, 2 cl 1, *United Bldg & Constr Trades Council v. Camden*, 446 US 208, 219 (1984). Ms. Weber's ineffective assistance of counsel compromised and eliminated her constitutional right to earn a living. As such, the Commission must reopen the proceeding to allow Ms. Weber and others to testify on the important issues in this case.

ACTION REQUESTED: Reopen the Hearing to allow Monica Weber and several others to testify about: 1) the volume of bingo products (pull-tab bingo tickets and bingo paper) that were destroyed following instructions from the Commission's representative; 2) other authorized charitable bingo employees who voided card minders, including the over 152 days during the time frame of July 1, 2015 to June 30, 2019 when Ms. Weber was not working; 3) the perpetual inventory records that were maintained and provided to the Bingo Division; 4) Ms. Weber's W-2G IRS gaming and records that show Ms. Weber won over \$4 million at the Kickapoo Lucky Eagle Casino in the time period of 2016-2019; and 4) the several break-ins that occurred during the relevant time frame and in which bingo product was stolen. The evidence will establish that, contrary to the Staff's assertions: 1) Ms. Weber and the other employees did maintain a proper perpetual inventory; 2) Ms. Weber did not steal, appropriate, or launder any funds; and 3) there were numerous employees who kept bingo records and operated the point-of-sale terminals when Ms. Weber was working and when Ms. Weber was on vacation or off for sick leave.

Date: JUNE 21, 2023

DOCKET NO. 362-21-2282.B

TEXAS LOTTERY COMMISSION,
Petitioner,

v.

MONICA WEBER
WORKER REGISTRY NO. 100465,
Respondent.

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§
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§
§

BEFORE THE TEXAS

LOTTERY COMMISSION

ORDER OF THE COMMISSION

To: Mr. Leslie Sachanowicz
Les Law Group PLLC
508 Canterbury Hill
San Antonio, TX 78209
via email at les.law@hotmail.com

Mr. Stephen Fenoglio
Attorney and Counselor at Law
P.O. Box 301525
Austin, TX 78703
via email at jsfenoglio@fenogliolaw.com

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

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

Commission Order No. 23-0028

Date: JUNE 21, 2023

NOW, THEREFORE, IT IS ORDERED that Monica Weber is hereby removed from the Registry of Approved Bingo Workers.

Passed and approved at the regular meeting of the Texas Lottery Commission in Austin, Texas, on the 21ST day of JUNE 2023.

Entered this 21ST day of JUNE 2023.

ROBERT G. RIVERA, CHAIRMAN

CINDY FIELDS, COMMISSIONER

MARK A. FRANZ, COMMISSIONER

ERIK C. SAENZ, COMMISSIONER

JAMES H. C. STEEN, COMMISSIONER

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

November 4, 2022

Leslie Sachanowicz

VIA EFILE TEXAS

Drew McEwen

VIA EFILE TEXAS

Kristen Guthrie

VIA EFILE TEXAS

RE: Docket Number 362-21-2282.B; Texas Lottery Commission No. 2021-190; Texas Lottery Commission v. Monica Weber

Dear Parties:

Please find attached a Proposal for Decision in this case.

Exceptions and replies may be filed by any party in accordance with 1 Texas Administrative Code section 155.507(b), a SOAH rule which may be found at www.soah.texas.gov.

CC: Service List

BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

**TEXAS LOTTERY COMMISSION,
PETITIONER
V.
MONICA WEBER,
RESPONDENT**

PROPOSAL FOR DECISION

The Staff (Staff) of the Charitable Bingo Operations Division (Division) of the Texas Lottery Commission (Commission) proposes to remove Monica Weber (Respondent) from the Registry of Approved Bingo Workers (Registry) based on allegations that she failed to maintain records and failed to maintain inventory connected with the conduct of bingo. The Administrative Law Judge (ALJ) concludes that Staff proved the allegations by a preponderance of the evidence and recommends that the Division remove Respondent's name from the Registry.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

There are no contested issues of notice or jurisdiction in this proceeding and those matters are addressed solely in the Findings of Fact and Conclusions of Law. On April 12, 2022, State Office of Administrative Hearings (SOAH) ALJ Steve Rivas convened a hearing on the merits by Zoom videoconference. Attorney Kristin Guthrie represented Staff. Attorney Leslie Sachanowicz represented Respondent. The hearing adjourned and the record remained open until July 21, 2022, to allow the parties an opportunity to submit written closing arguments. On July 18, 2022, before the record closed, Respondent filed a Motion to Strike Attachment A of Staff's closing argument on the basis that it contained evidence that was not addressed at the hearing on the merits. On July 20, 2022, Staff filed a response to Respondent's motion to strike. On September 12, 2022, the ALJ issued an order granting Respondent's motion to strike Attachment A, and the record closed on that date.

II. APPLICABLE LAW

The Commission governs all bingo operations in the State under the Bingo Enabling Act (Act).¹ The Commission shall maintain a registry of individuals who are approved to be involved in the conduct of bingo or to act as a bingo operator at any location at which bingo is lawfully conducted.² The Commission may remove an individual's name from the Registry if the individual has violated any provision

¹ Tex. Occ. Code § 2001.001, 16 Tex. Admin. Code § 402.200.

² Tex. Occ. Code § 2001.313(a), (b).

of the Act or any Commission rule adopted pursuant to the Act.³

A person commits an offense and the person's license is subject to revocation if the person fails to maintain records that fully and accurately record each transaction connected with the conducting of bingo, the leasing of premises to be used for bingo, or the manufacture, sale, or distribution of bingo supplies or equipment.⁴

An organization selling pull-tab bingo tickets must maintain a purchase log showing the date of the purchase, the form number and corresponding serial number of the purchased pull-tab bingo tickets, and a record of the prizes that were paid and the form number and serial number of the pull-tab bingo tickets on the occasion cash report.⁵ An organization or unit shall also maintain a perpetual inventory of pull-tab bingo tickets.⁶

An organization conducting bingo must record on a cash register all transactions for which it receives bingo gross receipts in conformance with Commission rules relating to transaction recording specifications.⁷

The Commission defines a bookkeeper as an individual ultimately responsible for the preparation of any financial records for information reported on

³ Tex. Occ. Code § 2001.313(e)(7).

⁴ Tex. Occ. Code § 2001.554(a)(2).

⁵ 16 Tex. Admin. Code § 402.300(g)(1), (2).

⁶ 16 Tex. Admin. Code § 402.511(a)(2).

⁷ Tex. Occ. Code § 2001.414(b).

the Texas Bingo Conductor's Quarterly Report or for preparation and maintenance of bingo inventory records for a licensed authorized organization.⁸

III. EVIDENCE

Staff exhibits 1, 2, 4, 5, 6, 8, 9, and 10 were admitted into evidence without objection. Respondent's hearsay objection to Staff exhibits 3 and 7 was sustained and these exhibits were not admitted into evidence. Staff also called three witnesses to offer testimony. Respondent did not testify or offer any exhibits.

A. BACKGROUND FACTS

In 2019, Respondent was a bookkeeper and hall manager for the Alamo Hills Bingo Unit (Unit), an organization that hosted bingo games for the benefit of six charities in San Antonio, Texas. In separate matters before SOAH, the Commission also seeks to revoke the charitable bingo licenses of the following organizations that comprise the Unit: (Terra-Genesis of San Antonio (362-21-2276); Ella Austin Community Center (362-21-2277.B); TG 106, Inc. (362-21-2278.B); Sav-Baby, Inc. (362-21-2279.B); Central Park Lions Club (362-21-2280.B); and District 2-2A Sight and Tissue Foundation, Inc. (362-21-2281.B).

On August 13, 2020, Division Staff conducted an audit of the Unit's records for the period between July 1, 2015, and September 9, 2019. Staff proposed to remove Respondent's name from the registry based on the discrepancies found

⁸ 16 Tex. Admin. Code § 402.402(a)(2).

during the audit (described below), and Respondent timely requested a hearing before SOAH.

B. STAFF'S CASE

1. The Division's Audit⁹

Vivian Cohn, the Division's Audit Manager, noted the following discrepancies were found during the audit:

- The Unit did not maintain or provide receipts for voided sales transactions of electronic card-minding devices for the period of July 1, 2015, to December 31, 2018.¹⁰ [Respondent] stated during the audit that she is the person who voided the card-minding device sales at the end of each occasion and that she did not maintain any voided receipts or attach any documentation regrading voided card-minding device transactions.¹¹
- The Unit did not maintain a perpetual inventory of pull-tabs that contain all required information. Based on a sample of 16 occasion cash reports, 62 pull-tab serial numbers that were sold could not be located on the perpetual inventory logs.¹² [Respondent] stated during the audit that she could not locate the perpetual inventory logs.¹³

⁹ Staff Ex. 4.

¹⁰ *Id.* at 97.

¹¹ *Id.*

¹² Staff Ex. 4 at 98.

¹³ *Id.*

- The Unit did not record transactions of bingo gross receipts on a cash register or point of sale station on 12 of 16 sampled occasion cash reports.¹⁴ [Respondent] stated during the audit that the gross receipts should have been recorded on a point-of-sale system but did not know why the amounts were not recorded.¹⁵

2. Testimony of Agent Clint Johnson

Staff asserted that an investigation by the United States Department of Homeland Security (DHS) prompted the Division's investigation into Respondent. DHS agent Clint Johnson testified that he investigated Respondent for allegations of money laundering between her, the Unit, and the Lucky Eagle Casino (the casino) in Eagle Pass, Texas. Agent Johnson testified that the DHS investigation of Respondent was initiated due to reports of large cash deposits that were made into Respondent's personal bank account that far exceeded her salary.

Agent Johnson testified that, on May 2, 2018, when he interviewed Respondent, she stated that the large cash deposits were from winnings at the casino, which included jackpots of \$25,000 and \$50,000.¹⁶ Respondent also told Agent Johnson that her son and other family members loaned her money when she did not win at the casino, but that she won money at the casino "substantially" more often than she lost.¹⁷

¹⁴ *Id.* at 99.

¹⁵ *Id.*

¹⁶ Staff Ex. 10 at 182. Agent Johnson's report was partially admitted into evidence. The portions of the report that contained hearsay were not admitted into evidence pursuant to Respondent's objection.

¹⁷ *Id.*

Agent Johnson further testified that he did not subpoena Respondent's tax records from the Internal Revenue Service (IRS) to confirm whether she reported her casino winnings to the IRS. Additionally, he testified that he could not determine if the large cash deposits were connected to Respondent's employment as a bookkeeper for the Unit.

3. Testimony of Officer John Graham

John Graham is a licensed peace officer with the Commission and testified that he is familiar with the facts of this case. He stated that based on agent Johnson's investigation, the Commission was concerned that Respondent had laundered money by diverting funds from the Unit through the casino and eventually to her personal bank account in the form of large cash deposits. However, Mr. Graham testified, that when he interviewed Respondent, she stated the large cash deposits were from casino winnings.¹⁸

4. Testimony of Joy Bishop

Ms. Bishop is a senior auditor for the Division who participated in the audit of the Unit's records.

¹⁸ Staff Ex. 3. Mr. Graham's report was partially admitted into evidence. The portions of the report that contained hearsay (including attached bank records) were not admitted into evidence per Respondent's objection. The report also contained statements from Respondent's co-worker, Vanessa Reeves, who described how Respondent allegedly diverted funds from the Unit. However, Ms. Reeves's statements were also deemed as inadmissible hearsay.

a) Voided card-minding device receipts

According to Ms. Bishop, a card-minding device is an electronic or computerized device used by a player to monitor numbers called on bingo cards stored on the device.¹⁹ In some cases when a large crowd is expected to attend a bingo occasion,²⁰ Ms. Bishop testified, an organization may pre-sell card-minding devices to bingo players to avoid long lines of bingo players who want to purchase card-minding devices at the beginning of a bingo occasion. However, Ms. Bishop pointed out, a card-minding device purchase that is voided must be done before the start of the second game of the bingo occasion.²¹ Ms. Bishop testified this rule is in place to ensure that a person does not request a refund for the purchase of a card-minding device at the end of a bingo occasion after the person has used the card-minding device during the bingo occasion. She further testified that an organization must maintain a record of each voided transaction.²²

Ms. Bishop testified that the audit revealed the Unit did not maintain or provide receipts for voided sales transactions of card-minding devices for the period of July 1, 2015, to December 31, 2018. Based on her review of the card-minding reports for the audit period, Ms. Bishop stated the amount of voided card-minding device sales totaled approximately \$600,000.²³ Ms. Bishop further

¹⁹ See also 16 Tex. Admin. Code § 402.321(2)(A).

²⁰ Ms. Bishop referred to a bingo occasion as a set or sessions of bingo games that occur on any given day.

²¹ 16 Tex. Admin. Code § 402.325(e).

²² 16 Tex. Admin. Code § 402.325(d)(4).

²³ Although the card-minding reports were not offered as evidence, the audit found that the Unit had approximately \$600,000 in voided card-minding device transactions that were unaccounted for during the audit period. See Staff Ex. 4.

testified that during the audit, Respondent stated that she was the person who voided the Unit's card-minding device sales at the end of each occasion and that she did not maintain any voided receipts or documentation of the voided card-minding device transactions.

b) Purchase log and perpetual inventory of pull-tab games

Ms. Bishop testified that when the audit team reviewed 16 of the Unit's occasion cash reports for the audit period, it found that 62 pull-tab games were listed as being sold. Ms. Bishop then testified that the audit team requested the Unit to produce its purchase log to confirm that all required information was contained on the log such as the date of the purchase, the form number and corresponding serial number of the purchased pull-tab bingo ticket.²⁴

However, Ms. Bishop testified, that during the audit, Respondent stated she could not locate the purchase logs that may have contained the required information for the 62 pull-tab games in question. Ms. Bishop further testified that Respondent could not produce the Unit's perpetual inventory for the audit period, which may have contained the 62 pull-tab games in question.²⁵

²⁴ 16 Tex. Admin. Code § 402.300(g)(1), (2).

²⁵ 16 Tex. Admin. Code § 402.300(g)(3).

c) Recorded transactions

Ms. Bishop testified that for the audit period, the Unit did not maintain a record of sales of bingo products such as pull tabs, paper bingo or card minding devices on a cash register or point of sale device. Specifically, Ms. Bishop contended that on 12 of 16 sampled occasion cash reports, the Unit did not record transactions of bingo gross receipts on a cash register or point of sale station.²⁶ Ms. Bishop asserted that Respondent was responsible as the Unit's bookkeeper and hall manager to ensure that all sales were properly recorded. However, Ms. Bishop testified, that during the audit, Respondent admitted that a record of the Unit's bingo gross receipts should have but did not know why it was not maintained.

IV. ANALYSIS

Respondent offered no evidence to dispute any of Staff's allegations. Hence, the ALJ need only evaluate Staff's evidence. In this case, the ALJ finds the preponderant evidence establishes that Respondent failed to maintain records and inventory connected with the conduct of bingo.²⁷

The audit's finding that Respondent failed to maintain receipts of voided sales for card-minding devices for the audit period was uncontested. The audit also contained statements made by Respondent that she was responsible for voiding the card-minding device sales but that she failed to maintain a record of the

²⁶ See Staff Ex. 4. The occasion cash reports were referenced in the audit but were not offered as evidence.

²⁷ Although the ALJ appreciates the testimony of DHS Agent Johnson and Officer Graham, the relevant testimony in this case was provided by Ms. Bishop and by the audit itself.

transactions. Ms. Bishop further testified that \$600,000 was the amount of card-minding device sales that was voided, and that Respondent stated she did not maintain a record of the voided transactions. Respondent's failure to maintain records of these voided transactions is violation of the Texas Occupations Code section 2001.554(a)(2).

The evidence that Respondent failed to maintain a purchase log and perpetual inventory of pull-tab games was also uncontested. The audit revealed that 16 occasion cash reports reflected 62 pull-tab games were sold during the audit period but could not be located on the Unit's purchase log or within the Unit's perpetual inventory of pull-tab games because Respondent could not produce these items. Ms. Bishop further testified that Respondent stated to the audit team that she could not locate the requested purchase logs or perpetual inventory in question. Respondent's failure to maintain the Unit's purchase logs is a violation of the Division's rule at 16 Texas Administrative Code sections 402.300(g)(1) and (2). Respondent's failure to maintain the Unit's perpetual inventory of pull-tab games is a violation of the Division's rules at 16 Texas Administrative Code sections 402.300(g)(3) and 402.511(a)(2).

Respondent further did not dispute Staff's evidence that she failed to record transactions of the Unit's bingo gross receipts on a cash register or point of sale station. According to Ms. Bishop, Respondent admitted to the audit team that the Unit's bingo gross receipts should have been recorded and that she did not know why they were not recorded. Respondent's failure to record transactions of the

Unit's bingo gross receipts on a cash register or point of sale station is a violation of Texas Occupations Code section 2001.414(b).

Based on the evidence presented and the applicable legal authorities, the ALJ concludes that Respondent: (1) failed to maintain receipts of the Unit's voided sales of card-minding devices; (2) failed to maintain a purchase log and perpetual inventory of pull-tab games for the Unit; and (3) failed to record the Unit's transactions of bingo gross receipts on a cash register or point of sale station. For these reasons, the ALJ finds the Division is entitled to remove Respondent's name from the Registry pursuant to Texas Occupations Code section 2001.313(e)(7).

V. FINDINGS OF FACT

1. Monica Weber (Respondent) is on the Registry of Approved Bingo Workers (Registry) of the Texas Lottery Commission (Commission).
2. In 2019, Respondent was a bookkeeper and hall manager for the Alamo Hills Bingo Unit (Unit), an organization that hosted bingo games for the benefit of six charities in San Antonio, Texas.
3. The charities that comprise the Unit are Terra-Genesis of San Antonio; Ella Austin Community Center; TG 106, Inc; Sav-Baby, Inc; Central Park Lions Club; and District 2-2A Sight and Tissue Foundation, Inc.
4. On August 13, 2020, Staff of the Commission's Charitable Bingo Division conducted an audit of the Unit's records for the period between July 1, 2015, and September 9, 2019.
5. Respondent did not maintain any of the Unit's voided receipts or documentation of the voided card-minding device transactions for the period of July 1, 2015, to December 31, 2018.

6. Respondent was the person who voided the Unit's card-minding device sales at the end of each bingo occasion.
7. The amount of voided card-minding device sales totaled approximately \$600,000.
8. The Unit sold 62 pull-tab games during the audit period.
9. Respondent did not maintain the Unit's purchase log that should have contained required information for 62 pull-tab games that were sold during the audit period.
10. Respondent did not produce the Unit's perpetual inventory during the audit, which would have contained 62 pull-tab games that were sold during the audit period.
11. Respondent was responsible as the Unit's bookkeeper and hall manager to ensure that all sales were properly recorded. Respondent did not record bingo gross receipts for sales of bingo products such as pull-tabs, paper bingo or card-minding devices on a cash register or point of sale device for the Unit on 12 of 16 sampled reports for the audit period.
12. Division Staff proposed to remove Respondent's name from the Registry and Respondent timely requested a hearing on the merits.
13. On May 6, 2021, the Commission referred this matter to the State Office of Administrative Hearings (SOAH) for a hearing on the merits.
14. On May 11, 2021, a Notice of Final Hearing was sent to Respondent.
15. The Notice of Final Hearing advised the parties that the matter would be subject to a hearing before a SOAH Administrative Law Judge (ALJ), contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and either a short, plain statement of the factual matters asserted or an attachment that incorporated by reference the factual matters asserted in the complaint or petition filed with the state agency.

16. On April 12, 2022, ALJ Steve Rivas convened a hearing on the merits by Zoom videoconference. Staff was represented by attorney Kristen Guthrie. Respondent was represented by attorney Leslie Sachanowicz.
17. The hearing adjourned and the record remained open until July 21, 2022, to allow the parties an opportunity to submit written closing arguments.
18. On July 18, 2022, before the record closed, Respondent filed a Motion to Strike Attachment A of Staff's closing argument on the basis that it contained evidence that was not addressed at the hearing on the merits.
19. On July 20, 2022, Staff filed a response to Respondent's motion to strike.
20. On September 12, 2022, the ALJ issued an order granting Respondent's motion to strike Attachment A, and the record closed on that date.

VI. CONCLUSIONS OF LAW

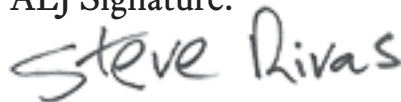
1. The Commission has jurisdiction over this matter. Tex Occ. Code ch. 2001.
2. SOAH has jurisdiction over all matters relating to the conduct of a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003.
3. Staff has the burden of proving that the Division is authorized to remove Respondent's name from the Registry. 1 Tex. Admin. Code § 155.427.
4. Adequate and timely notice of the hearing was provided. Tex. Gov't Code §§ 2001.051-.052.
5. The Commission may remove an individual's name from the Registry if the individual has violated any provision of the Bingo Enabling Act (Act) or any Commission rule adopted pursuant to the Act. Tex. Occ. Code § 2001.313(e)(7).
6. Respondent was ultimately responsible for the Unit's preparation of any financial records for information reported on the Texas Bingo Conductor's

Quarterly Report or for preparation and maintenance of bingo inventory records for a licensed authorized organization. 16 Tex. Admin. Code § 402.402(a)(2).

7. Respondent failed to maintain the Unit's records that fully and accurately recorded voided sales of card-minding devices that totaled over \$600,000. Tex. Occ. Code § 2001.554(a)(2).
8. Respondent failed to maintain the Unit's purchase log of pull-tab bingo tickets. 16 Tex. Admin. Code § 402.300(g)(1), (2).
9. Respondent failed to maintain the Unit's perpetual inventory of pull-tab bingo tickets. 16 Tex. Admin. Code § 402.511(a)(2).
10. Respondent failed to record on a cash register the Unit's transactions for which it receives bingo gross receipts in conformance with Commission rules relating to transaction recording specifications. Tex. Occ. Code § 2001.414(b).
11. Respondent's name should be removed from the Registry.

SIGNED NOVEMBER 4, 2022.

ALJ Signature:



Steve Rivas,
Administrative Law Judge

FILED
362-21-2282
1/31/2023 4:44 PM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Pegah Nasrollahzadeh, CLERK

ACCEPTED
362-21-2282
1/31/2023 4:45:22 pm
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Pegah Nasrollahzadeh, CLERK

SOAH DOCKET NO. 362-21-2282.B

TEXAS LOTTERY COMMISSION,
Petitioner,

v.

MONICA WEBER
BINGO WORKER REGISTRY
NO. 100462
Respondent.

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

**RESPONDENT MONICA WEBER'S
EXCEPTIONS TO PROPOSAL FOR DECISION**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE RIVAS:

On November 4, 2022, Your Honor issued a Proposal for Decision (the "PFD") in the above-styled matter.

Monica Weber ("Respondent") respectfully disagrees with the findings and conclusions in the PFD and hereby files this her Exceptions to the PFD.

Summary of the PFD

The PFD accepts all the allegations and adopts all the proposals in the Texas Lottery Commission's ("Petitioner") August 2020 Audit Report (the "Audit Report"), which was admitted at the oral hearing as Petitioner's Ex. 4. The PFD specifically adopted the following substantive findings and conclusions with which Respondent disagrees:

- 1- that in 2019, Respondent was the bookkeeper and hall manager for the Alamo Hills Bingo Unit (the "Unit"), an organization that hosted bingo games for the benefit of six charities in San Antonio, Texas.
- 2- Respondent did not maintain any of the Unit's voided receipts or documentation of the voided card-minding device transactions for the period of July 1, 2015 to December 31, 2018.
- 3- Respondent was the person who voided the Unit's card-minding device sales at the end of each bingo occasion.
- 4- The amount of voided card-minding device sales totaled approximately \$600,000.
- 5- The Unit sold 62 pull-tab games during the audit period.
- 6- Respondent did not maintain the Unit's purchase log that should have contained required information for 62 pull-tab games that were sold during the audit period.
- 7- Respondent did not produce the Unit's perpetual inventory during the audit, which would have contained 62 pull-tab games that were sold during the audit.
- 8- Respondent was responsible as the Unit's bookkeeper and hall manager to ensure that all sales were properly recorded. Respondent did not record bingo gross receipts for

sales of bingo products such as pull-tabs, paper bingo or card-minding devices on a cash register or point of sale device for the Unit on 12 of 16 sampled reports for the audit period.

- 9- Respondent's name should be removed from the worker registry.

Exceptions

Petitioner simply has not met its evidentiary burden to support its claims—certainly not against Respondent, and certainly not to such a degree warranting the suspension or removal of the Respondent from the Bingo Registry.

The PFD Incorrectly Holds That Respondent Offered No Evidence at Hearing

The PFD holds that the Respondent provided no evidence to support her arguments. First, the PFD appears to shift the Burden of Proof on Respondent and holds it against Respondent for not testifying. The no evidence finding is simply unfounded by the record.

Respondent presented an abundant amount of evidence through the cross examination of the Petitioner's witnesses. Evidence such as:

1. Most importantly, at the outset, neither John Graham (an Investigator with Petitioner) nor Joy Bishop (a senior auditor with the Audit Services Division of Petitioner) ever verified who was the Unit's bookkeeper and disregarded there were two bookkeepers listed in Petitioner's records.
2. Mr. Graham testified he did not investigate whether Respondent had access to the Unit's bank accounts.
3. Mr. Graham testified he had no experience in forensic accounting and did not subpoena or examine Respondent's tax returns to substantiate Agent Johnson's hunch.
4. Mr. Graham failed to even speak with the Bingo Lessor, Kris Keller.
5. Mr. Graham did a spot check at the Bingo Hall managed by Respondent and it showed that the pull-tab games sold "were accurately reflected in the daily accounting". (Ex. 3 at p. 3)
6. Neither Mr. Graham nor Ms. Bishop examined or considered Respondent's worker registry history.
7. On cross-examination, Ms. Bishop stated she *did not take into consideration* Respondent's answer to Interrogatory No. 3, which was admitted into evidence, that

*forty-three (43) other people*¹ were also responsible for voiding the card-minding devices.

8. On cross-examination, Ms. Bishop stated she *did not take into consideration* Respondent's answer to Interrogatory No. 4, which was admitted into evidence, that *forty-three (43) other people*² also signed the cash reports for the Unit members during the audit period.
9. On cross-examination, Ms. Bishop admitted it was possible that there were other people responsible for preparing and maintaining perpetual inventory logs besides Respondent.
10. Neither Mr. Graham nor Ms. Bishop examined or considered the other employees' worker registry history.
11. Agent Johnson testified that he did not subpoena Respondent's tax records from the IRS to confirm her casino winnings. (PFD, p.7)
12. Most importantly, Agent Johnson could not determine if Respondent's large cash deposits into her joint account were connected to Respondent's employment with the Unit. (PFD, p.7)
13. At the outset, it is important to note that Ms. Bishop, with the introduction of Exhibit #4, page 97, admits that on behalf of Petitioner, "It is difficult to determine if the unit can ensure all proceeds are accurately recorded and actual funds are available for charitable purposes without all the records and supporting information being maintained" (emphasis added). Therefore, by their own admission, any dollar estimates by Petitioner are admittedly flawed.

This last admission by Ms. Bishop fails to fulfill Petitioner's requirement to prove by a preponderance of evidence that Respondent violated any Bingo Division rules or statutes. Moreover, Respondent cannot prove a negative, *i.e.*, that she did not receive bingo proceeds, nor is she required to do so.

Regarding the first point, the Bookkeeper issue, 16 TEX. ADMIN. CODE §402.402 (a) provides:

¹ The names of the forty-three employees are: Angelica Sandoval, Jenny Narvaiz, Paula Clark, Judith Greer, Marcella Marrero, Ashleigh Wilson, Rafael Arredondo, Savanghan Battles, Monica Barranga, Shirley Busker, Julie Dobbs, Anthoine Douglas, Jonathan Espino, Jason Franklin, Joseph Frausto, Eric Garcia, Erica Walker, Jasmine Walker, Annalisa Garza, Tanya Gates, Valerie Gamez, Lauren Halorson, John Hernandez, Angelika Jimenez, Skylor Johnson, Marialena Kennicutt, Mac Lopez, Diana Medrano, Elizabeth Montoya, Stephen Morales, David Narvaiz, Genevieve Navaro, Bianca Ornelas, Angelica Phelps, Vanessa Reeves, Brandon Reichert, Yvonne Reyes, Joseph Rollins, Derek Ross, Adrian Silva, John Sisk, and Xavier Villanueva.

² *Id.*

(2) Bookkeeper--an individual ultimately responsible for the preparation of any financial records for information reported on the Texas Bingo Conductor's Quarterly Report or for preparation and maintenance of bingo inventory records for a licensed authorized organization.

Although Respondent may be considered a bookkeeper, she is not THE bookkeeper for the charities that comprise the Alamo Hills Bingo Unit.

The evidence shows that there were a number of employees (and one outside consultant) who performed bookkeeping services for the six charities identified in the SOAH Docket Nos. 362-21-2276.B, 2277.B, 2278.B, 2279.B, 2280.B, and 2281.B. See: 1) Exhibit 5, Response to TLC's First Set of Requests for Admissions, First Set of Interrogatories and First Requests for Production, Request for Admission No. 9, page 000109, Response to Interrogatory Nos. 9 and 10 page 000112; and 2) Exhibit 9, Weber's Answers to TLC's First Set of Requests for Admission, First Set of Interrogatories, and First Request for Production, Request for Admission Nos. 3 and 4, Interrogatory Nos. 1, 2. Furthermore, Ms. Melissa Baxter admitted she (Ms. Baxter) is the unit's bookkeeper; Transcript p. 133, 139. Furthermore, as previously noted, there were forty one (41) other individuals responsible for voiding the card-minding devices at the end of each bingo occasion (Exhibit 9, Request for Admission "RFA" No. 5 and Interrogatory No. 3), signing the cash reports (Id., RFA No. 6, Interrogatory No. 4), and recording the gross receipts on the point of sale system (Id, RFA No. 7).

Furthermore, lacking a preponderance of the evidence, Petitioner did not attempt to explain how it calculated the gross receipts estimate that serves as the foundation of its entire case.

The bottom line is that Petitioner failed to prove its assertion that the Unit underreported their bingo sales by \$1,439,768.38 and through their own witness, their auditor admitted, "they could not agree or disagree with the financial estimates." Petitioner did not have to prove that this amount was stolen from the Unit or even provide a theory regarding where the claimed amount went. Petitioner did not offer a single piece of evidence supporting the asserted audit estimate; it offered only the Audit Report³ and testimony of *one of four* auditors who produced the report, both of which/whom make assertions without providing the supporting documentary evidence on which those assertions were either derived or based. Accordingly, the amount by which Petitioner asserts that the Unit underreported sales during the Audit Period remains just that: a mere, unproven assertion.

To that end, Respondent believes it beneficial to inventory the offered evidence concerning Petitioner's audit estimate and analyze the cumulative weight:

Testimony – Ms. Bishop was the only witness to provide testimony about Petitioner's audit of the Unit. Ms. Bishop offered the following testimony, and nothing further, about Petitioner's estimated calculation of gross sales that serves as the central issue in this hearing:

Kristen Guthrie: "And what was done to ensure that the missing records did not impact the calculation amount in the finding."

³ See Limited Scope Review Report, Petitioner's Exhibit 4 at Bates Stamp Nos. 000092 – 000102.

Joy Bishop: “So the other three items in the calculation above [in Petitioner’s Ex. 4 at 94] are purchases, sales, and ending inventory. For inventory that was purchased, we used invoices and credit memos that we received directly from the distributors that were supplying these products to the unit members for reported sales...”

Kristen Guthrie: “And what were the other items in the calculation regarding reported sales?”

Joy Bishop: “So those other items are like I said, the purchases, the sales and the ending inventory.”

Audit Report – The Audit Report provides two (and only two) references to basing its estimated gross receipts calculations on purchases: the first line of Table 1 provides that its calculation (i.e., estimate) of “Total Paper Gross Receipts based on Purchases” was \$2,397,000, and the first line of Table 2 provides its estimated amounts of “Total Gross Receipts and Prize Payout based on Purchases.”⁴ Moreover, the audit report lists in its appendix the scope of the audit and information and records that were reviewed. These sections also failed to contain a reference to vendor or distributor records.

That is it—the entirety of the evidence Petitioner presented at the hearing to support its calculation that the Unit underreported sales by at least an amount that is precisely \$1,439,768.38. The conclusion that the evidence supports Petitioner’s claim and satisfies its burden of proof is simply unwarranted. Forget for a moment that the **best evidence** (i.e., *the referenced vendor invoices, spreadsheets tabulating the products listed in those invoices, and the calculations based on that data*) **was not offered**; no meaningful evidence was offered to substantiate the claimed amount of underreported receipts.

In addition, the Audit Report’s appendix provides in part:

Scope

The scope of the review covered the financial records, perpetual inventory records, and supporting documentation from July 1, 2015 (20153) through June 30, 2019 (20192). The review of bingo card/paper and pull-tab was extended to 9/9/2019 to incorporate all necessary information through the date of the physical inventory count by audit staff.

Methodology

The methodologies included collecting information and documentation, conducting interviews with unit and organization staff, observing processes, researching applicable laws and regulations, and analyzing and evaluating the results of testing.

Information collected and reviewed included the following:

- Bingo bank account records including the banks statements and reconciliations, bank signature cards, cancelled checks, deposit slips, and check register.

⁴

See Petitioner’s hearings exhibit at 000094.

- Occasion records including: daily cash reports, floor sales by usher, schedule of prizes, cash register tapes, and game schedules.
- Inventory records.
- Sales journal.
- Bingo quarterly reports.

Procedures and tests conducted included the following:

- Interviewed unit/organization staff.
- Reviewed the unit's and organizations' processes.
- Tested and analyzed sales, prizes paid and prize fees.
- Tested and analyzed the accuracy of the quarterly reports.⁵

Incredibly absent from the scope and methodology sections of the Audit Report is any reference to distributor or supplier records or the review thereof. Yet, this information is seemingly the underlying basis for Petitioner's claim that the Unit underreported at least \$1,439,768.38 in sales during the period. On the other hand, perhaps distributor records did not serve as the basis for the claimed underreported amount. But, then, how did Petitioner determine that the Unit underreported sales, much less an actual amount of underreported sales? Notably, the PFD does not address this issue in any manner.

Indeed, the PFD does not once mention vendor/distributor records, likely because Petitioner failed to appropriately address the issue through documentary evidence or testimony. Petitioner certainly did not present sufficient evidence (particularly the best evidence) to substantiate its claims.⁶ Ultimately, Petitioner's claims must fail because they are mere assertions, unsupported by the evidence.

The Removal of Respondent's Name From the Bingo Registry is Nuclear in Nature

Respondent disagrees with the PFD on the basis that its findings and conclusions were unsupported by the evidence presented at hearing. But, even if the findings were supported by the evidence, the removal of Respondent from the Bingo Registry is unwarranted because it is grossly disproportionate to the alleged failures. Indeed, the removal of Respondent from the Bingo Registry is contrary to 16 TEX. ADMIN. CODE §402.76, which is *"intended to promote consistent*

⁵ *Id.* at 000101.

⁶ At most, Petitioner's evidence still does not address the following fundamental questions:

- where did the auditors obtain the purchase records;
- what did those purchase records show;
 - what were the quantities (even if just a cumulative total) of products listed in the purchase records;
 - did they reflect any credits for damaged, defective, or returned products;
 - were they exclusive of any other bingo hall; and
 - did the auditor reconcile the Unit's bank records with these purchase records to determine if they were accepted and paid for by the Unit;
- were the purchase records summaries from the suppliers or actual invoices; and
- how were the purchase records used to calculate estimated sales?

sanctions for similar violations, facilitate timely resolution of cases and encourage settlements,” and as such, is unwarranted and invalid.

Petitioner has enacted administrative rules governing the conduct of charitable bingo, including licensing, compliance, and enforcement. 16 TEX. ADMIN. CODE §402.706, Schedule of Sanctions, is intended to provide guidelines relating to the handling of violations of the Bingo Enabling Act and the Charitable Bingo Administrative Rules. That rule provides, in relevant part:

(a) The purpose of this section is to provide guidance for administering sanctions to licensees and other persons that violate the Bingo Enabling Act and/or the Charitable Bingo Administrative Rules. The Schedule of Sanctions attached to §402.706(c) provides a list of the most common violations and the sanctions generally assessed for those violations, though the Commission may deviate from the schedule if it has a reasonable basis to do so. The objectives for applying sanctions are to protect the public, encourage compliance with the Bingo Enabling Act and the Charitable Bingo Administrative Rules, deter future violations, offer opportunities for rehabilitation as appropriate, punish violators, and deter others from committing violations. This section is intended to promote consistent sanctions for similar violations, facilitate timely resolution of cases and encourage settlements.

* * *

(f) Additional remedies may be imposed along with or in lieu of sanctions, which may include: a redeposit of funds to the bingo account; a removal of funds from the bingo account; or a disbursement of net proceeds in order to comply with the charitable distribution requirement.

* * *

(i) If a person is charged with a repeat violation within 36 months (3 years) of a previous violation, then the sanction for a repeat violation will be imposed according to the Schedule of Sanctions for repeat violations.

(j) The sanction(s) imposed will be determined by considering the following factors, as applicable:

(1) seriousness of the violation which includes the nature, circumstances, extent, and gravity of the prohibited acts;

(2) history of previous violations which includes:

(A) the number of previous violations; and

(B) the number of repeated violations;

(3) the action(s) necessary to deter future violations;

(4) efforts to correct the violation after awareness of the violation through personal knowledge or notification by the commission;

* * *

(l) The Commission may impose lesser sanctions than those listed in the Schedule of Sanctions for a particular violation if mitigating circumstances exist, including mitigating circumstances described in §402.706(j)(5)(A) - (E).

The rule includes a schedule of specific violations and sanctions that are particularly relevant here. The following violations and sanctions are particularly noteworthy:

No. 3 – A person falsified or made false entries in books and records.

\$0 (Warning) to \$1,000 for the 1st offense;⁷ and
\$0 (Warning) to \$1,000 and/or license suspension, revocation or denial, or registry removal or denial for the 2nd offense

No. 21 – The organization or unit failed to deposit in the bingo account all funds derived from the conduct of bingo, less the amount awarded as cash prizes.

\$0 (Warning) to \$400 for the 1st offense;
\$0 (Warning) to \$600 for the 2nd offense; and
\$0 (Warning) to \$1,000 and/or license suspension, revocation or denial, or registry removal or denial for the 3rd offense

No. 25 – A person failed to maintain records that fully and truly record all transactions connected with the conduct of bingo...

\$0 (Warning) to \$400 for the 1st offense;
\$0 (Warning) to \$600 for the 2nd offense; and
\$0 (Warning) to \$800 for the 3rd offense

Until this audit and hearing, Respondent had not faced any violation of the Bingo Enabling Act or Charitable Bingo Administrative Rules. Respondent therefore faces her first offense and, if found in violation, should be sanctioned accordingly. Those sanctions do not include registry revocation; revoking Respondent's worker registry is inconsistent with Petitioner's own administrative rules. Of course, if Respondent is ultimately found to be in violation of either No. 3 or No. 21 and are subsequently charged with the same violation within three years, then Respondent will rightly and justly face a sanction up to the revocation of her worker registry. But that is a future hypothetical, not the present case.

⁷ The scheduled sanctions provide for a potential license revocation for No. 6 (conducting or allowing a game of chance at a bingo premises during a bingo occasion, except as permitted under Occupations Code §2001.416 and 16 TAC §402.211), **but not for No. 3**. That is, Petitioner drafted the rule to give itself the flexibility and power to revoke a person's license for a first offense involving Violation No. 6, which is not applicable here, but not Violation No. 3.

Petitioner may also argue that the sanctions in 16 TEX. ADMIN. CODE §402.706 are simply guidelines that can be exceeded. However, a combined reading of subsections (f) and (l) dispositively addresses this argument in Respondent's favor. Subsection (f) provides that Petitioner may impose remedies in addition to those listed in the schedule of sanctions.

Most importantly, Petitioner, in the evidentiary record, through its witnesses or records, fails to mention and IGNORES the Standard Administrative Penalty Chart, despite its application in Bingo penalty situations.

Conclusion

Based on the foregoing, Respondent Monica Weber respectfully requests that the Proposal for Decision be amended to hold that Petitioner did not prove by a preponderance of the evidence that the Unit underreported receipts from the conduct of bingo. In the alternative, Respondent Monica Weber requests that the Proposal for Decision be amended to hold that Respondent Monica Weber should be responsible for paying the prize fees associated with the prizes on the alleged amount of underreported receipts, but should not have her worker registry revoked.

Respectfully,

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By: /s/ *Leslie Sachanowicz*

LESLIE SACHANOWICZ

State Bar No. 17503200

CERTIFICATE OF SERVICE

Pursuant to 1 TEX. ADMIN. CODE §155.105, I hereby certify that a true and correct copy of the foregoing was provided to counsel for Petitioner by electronic filing on this 31st day of January, 2023.

/s/ *Leslie Sachanowicz*

Leslie Sachanowicz

SOAH DOCKET NO. 362-21-2282.B

TEXAS LOTTERY COMMISSION,
Petitioner,

v.

MONICA WEBER,
Respondent.

§
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§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

TEXAS LOTTERY COMMISSION'S REPLY TO RESPONDENT'S
EXCEPTIONS TO PROPOSAL FOR DECISION

TO: THE HONORABLE ADMINISTRATIVE LAW JUDGE STEVEN RIVAS

The Texas Lottery Commission (Commission) files this *Reply to Respondent's Exceptions to Proposal for Decision*, as follows:

I. Introduction.

On November 4, 2022, the Administrative Law Judge (ALJ) issued the Proposal for Decision (PFD) in the above-referenced matter. On January 31, 2023, Bingo Worker Monica Weber (Respondent) filed Exceptions to the PFD.

The Commission respectfully requests that the ALJ reject Respondent's Exceptions because they are not supported by the Bingo Enabling Act (Act), the Charitable Bingo Administrative Rules (Rules), and/or the evidence presented at the hearing in this matter. The Commission reasserts the arguments made in its closing argument, reply brief, and rebuttal (without repeating them), and with that in mind, will briefly address the disarrayed arguments raised in Respondent's Exceptions.

II. The ALJ Correctly Determined That Respondent Committed the Violations Alleged by the Commission.

The Commission's Limited Scope Review (Audit) of the Alamo Hills Bingo Unit (Unit) revealed that the Unit failed to account for \$1,439,768.38 in bingo revenue during the Audit period of July 1, 2015 to June 30, 2019 (Audit Period). The Unit failed to provide adequate records (or any records at all) in three specific areas: bingo paper sales, pull-tab inventories, and voided card-minders.¹ Respondent is on the Registry of Approved Bingo Workers (Registry) and was employed by the Unit as the primary bookkeeper during the Audit Period.² Respondent, as the Unit's primary bookkeeper and manager, oversaw the day-to-day operations and was responsible for preparing and maintaining those records. For four years, Respondent and the Unit repeatedly failed to comply with their record keeping responsibilities.³

The ALJ properly found that:

- a. As a bookkeeper and pursuant to 16 Tex. Admin. Code §402.402(a)(2), Respondent was ultimately responsible for the Unit's preparation of any financial records for information reported on the Texas Bingo Conductor's Quarterly Report or for preparation and maintenance of bingo inventory records for a licensed authorized organization.
- b. Removal of Respondent from the Registry is warranted pursuant to Tex. Occ. Code §2001.554(a)(2) for her failure to maintain the Unit's records that fully and accurately recorded voided sales of card-minding devices that totaled over \$600,000.
- c. Respondent failed to maintain the Unit's purchase log of pull-tab bingo tickets, in violation of 16 Tex. Admin. Code §§ 402.300(g)(1), (2).
- d. Respondent failed to maintain the Unit's perpetual inventory of pull-tab bingo tickets, in violation 16 Tex. Admin. Code §402.511(a)(2).
- e. Respondent failed to record on a cash register the Unit's transactions for which it receives bingo gross receipts in conformance with Commission rules relating to transaction recording specifications, in violation of Tex. Occ. Code §2001.414(b).

¹ Audio at 2:29.

² Pet. Ex. 9 at 180.

³ Pet. Ex. 5 and Pet. Ex. 9 at 180.

Without offering any specific exceptions, Respondent complains that the Commission failed to meet its evidentiary burden to prove each of its allegations by a preponderance of the evidence. To the contrary, all the evidence in the record supports the allegations that Respondent failed to comply with the Act and Rules⁴ over a four-year period, resulting in an unprecedented \$1.4 million in unaccounted for bingo proceeds.

In her discovery responses,⁵ Respondent improperly denied she was a bookkeeper for the Unit. Respondent now claims there were other bookkeepers who may have committed the violations at issue. The preponderance of the evidence, however, shows that Respondent was the primary bookkeeper responsible for maintaining complete and accurate financial records during the Audit Period, that she failed to do so, and that she is therefore responsible for the violations noted in the Audit.⁶

The Unit and Respondent failed to provide any records to account for more than \$1.4 million in missing bingo funds attributable to the Audit Period, in violation of §2001.554(a) of the Act. The Unit deferred to Respondent, who merely asserted that sales and prize figures reported were accurate, complete, and included all funds derived from the Unit's conduct of bingo.⁷ The Unit relied entirely on the financial information provided by Respondent and assumed it was accurate and complete.⁸

The Commission presented uncontroverted evidence that over \$1.4 million in bingo proceeds related to bingo cards, pull-tabs, and voided electronic card-minders could not be accounted for because Respondent repeatedly failed to comply with the Act and Rules related to

⁴ 16 Tex. Admin. Code ch. 402.

⁵ Request for Admission No. 3, states "Admit that you were the Unit members' bookkeeper responsible for the Unit's accounting and record keeping during the audit period." Pet. Ex. 6 at 161; Audio at 2:31.

⁶ See Commission's Closing Argument at 7–8.

⁷ Pet. Ex. 4 at 103–106.

⁸ Audio at 4:22.

record keeping during the Audit Period. Respondent admitted that she was responsible for improperly voiding card-minding device sales and that she failed to maintain voided receipts or attach any documentation regarding voided card-minders to the bingo occasion cash reports.⁹ Respondent admitted that she was responsible for ordering and receiving the inventory of pull-tabs purchased for the Unit, which was wholly missing or inaccurate.¹⁰ Of the sampled occasion cash reports reviewed, Respondent was the only person who signed the reports attesting to the accuracy and completeness of all records.¹¹ During the Audit entrance conference and throughout the Audit, Respondent claimed that she alone was responsible for recording all transactions for the Unit.¹²

Accordingly, the preponderance of the evidence shows that Respondent repeatedly failed to comply with the Act and the Rules and therefore should be removed from the Registry.

III. Respondent Falsely Claims this is Her First Violation.

Respondent falsely claims that “until this audit and hearing, Respondent had not faced any violation” of the Act or Rules.¹³ To the contrary, Respondent was the subject of a settlement approved by the Commission on April 4, 2013, documenting Respondent’s prior bingo violation history with the Commission. It is a public record that can be provided on request, which discloses Respondent’s prior disciplinary history for violations threatening the integrity of charitable bingo. This is mentioned here solely for the purpose of noting Respondent’s misrepresentation and not as a request to reopen the evidentiary record in this case.

⁹ Pet. Ex. 4 at 97. Audio at 3:11; Audio at 3:15.

¹⁰ Pet. Ex. 4 at 99.

¹¹ Pet. Ex. 4 at 99.

¹² Audio at 3:35.

¹³ Respondent’s Exceptions to the Proposal for Decision (PFD) at 8.

IV. The ALJ Correctly Determined That Respondent Offered No Evidence at Hearing to Dispute the Commission's Allegations.

Again, without offering any specific exceptions, Respondent mentions, without directly disputing, that the ALJ found that Respondent presented no evidence to support her arguments.¹⁴ Respondent correctly asserts that the Commission did not have to prove if the funds were stolen or where the funds went at all.¹⁵ Nevertheless, the Commission proved that over \$1.4 million was unaccounted for by Respondent and the Unit.¹⁶

Respondent failed to criticize the Audit at hearing when she had the opportunity to do so. But now, after the record is closed, Respondent through her Exceptions seeks to criticize the methodologies of the Audit and offer evidence not admitted at hearing by suggesting the bases of the Audit were flawed.¹⁷ Respondent attempts to justify her failure to raise these issues at hearing by saying the Commission should have explained the calculations in the Audit. To the contrary, the Audit was evidence admitted at hearing that stood on its own merit because none of the parties disputed it until now. Respondent is unable to point to any evidence admitted at hearing to show any of the source documents of the Audit, including distributor records, were flawed or should not have been considered. Thus, the preponderance of the evidence of record supports the validity and integrity of the Audit.

Respondent also claims to have presented an “abundant amount of evidence” through cross-examination of the witnesses. Nevertheless, the Commission provided numerous uncontroverted records and the testimony of several witnesses to support its allegations. Respondent presented no evidence at the hearing to rebut the Commission's position and evidence.

¹⁴ Respondent's Exceptions to the PFD at 2.

¹⁵ Respondent's Exceptions to the PFD at 4.

¹⁶ Audio at 2:10; Pet. Ex. 4.

¹⁷ Respondent's Exceptions to the PFD at 6.

Respondent implies Commission Investigator John Graham should have been able to answer questions about the Audit. However, Mr. Graham's portion of the investigation was the result of the U.S. Department of Homeland Security's Homeland Security Investigations Division (DHS) referring information to the Commission regarding a DHS's investigation into charges that Respondent had misapplied Unit funds while employed by the Unit.¹⁸ DHS investigated Respondent's financial activities due to bank account transactions in amounts that far exceeded her reported income from the Unit.¹⁹ As a Commission investigator, Mr. Graham was not involved in the Audit. The PFD properly acknowledged that Commission Auditor Joy Bishop was the key fact witness regarding the Audit and testified regarding the unaccounted-for funds and violations at issue.

The Commission's evidence showed that Respondent failed to comply with the Act and Rules. In contrast, Respondent provided no evidence to counter the Commission's claims that the Unit could not account for more than \$1.4 million during the Audit Period or that Respondent served as the Unit members' primary bookkeeper during that period and was the person responsible for accounting of the missing funds. Because the preponderance of the evidence – and, in fact, *all* of the evidence – in this case supports the Commission's position, the Commission should prevail on all of its allegations.

Respondent did not provide any evidence to show the findings in the Audit were incorrect or the allegations against Respondent were false. Respondent provided no evidence or arguments to contradict the Commission's position; she only attempts to muddle the issues by saying Respondent is unable to prove a negative. The preponderance of the evidence shows that

¹⁸ Pet. Ex. 3 at 82-83; Pet. Ex. 10 at 181-184.

¹⁹ Pet. Ex. 10 at 181-184; Audio at 1 (hours): 14 (minutes).

Respondent - as the Unit's primary bookkeeper - was responsible for the repeated and egregious failures to comply with the record-keeping requirements for the Unit.

V. Respondent Should be Removed from the Registry of Approved Bingo Workers.

Once again, without offering any specific exceptions, Respondent protests that even if the allegations were proven, removal from the Registry is "nuclear" given the violations.

Neither the Unit nor the Respondent provided any records to account for more than \$1.4 million in missing bingo funds attributable to the Audit Period. Respondent, as the primary bookkeeper ultimately responsible for the bingo occasion records used in the preparation of financial information reported to the Division, was the only person who signed the sampled occasion cash reports during the Audit Period (of the reports that had a signature) indicating that she prepared and reviewed the reports and deposits and agreed to their contents, including the deposit amounts.²⁰ In the Unit's responses to Commission's Interrogatory No. 3, the Unit members each stated that Respondent was responsible for maintaining daily sales and prize amounts, reporting those amounts, and depositing the funds derived from the conduct of bingo, including pull-tab bingo tickets.²¹ The Unit looked to Respondent to provide financial information and relied on her when she said the reports were accurate despite the Audit findings.²² This reliance is echoed

²⁰ Audio at 2:26.

²¹ Pet. Ex. 5.

²² Exhibit 5 – Unit members' Response to Commission's Interrogatory No. 2: The Unit member "has no knowledge of any funds derived by the organizations from the conduct of bingo, less the amount awarded as cash prizes, that were not deposited into the Unit's bingo account . . . is also unaware of any instances in which the organizations failed to account for any deal of pull-tab bingo tickets in sales, prizes or unsold cards. The Alamo Hills Bingo Unit (Unit) . . . employed Ms. Weber as a General Manager. Ms. Weber was responsible for maintaining daily sales and prize amounts, reporting those amounts, and depositing the funds derived from the conduct of bingo, including pull-tab bingo tickets . . . understands that the findings in the audit report and underlying audit indicate that there is a difference between the funds reported . . . and the amounts that Petitioner alleges should have been reported and deposited. Ms. Weber has communicated . . . that the sales and prize figures reported to Petitioner are accurate, complete, and include all funds derived from the Unit's conduct of bingo. Ms. Weber has likewise communicated . . . that all such funds reported to Petitioner were deposited in the Unit's bingo account."

in the Unit's initial response to the Audit, in which the Unit asserted (relying on Respondent's claims) that sales and prize figures provided by Respondent were accurate, complete, and included all funds derived from the Unit's conduct of bingo.²³ At the hearing, the Unit's witness, Melissa Baxter-Kosub, testified that she was also a bookkeeper for the Unit members, but she relied entirely on the financial information provided by Respondent.²⁴ Ms. Baxter-Kosub admitted that she did not independently verify that the documentation provided by Respondent was accurate and complete.²⁵ The preponderance of the evidence shows that Respondent was the primary bookkeeper responsible for maintaining complete and accurate financial records during the Audit Period and that she failed to do so.

The Unit failed to provide records to account for the missing money during the Audit Period in three specific areas: bingo paper, pull-tabs, and voided card-minders.²⁶ Respondent, as the Unit members' primary bookkeeper during the Audit Period, was responsible for creating and maintaining those records, but failed to do so.²⁷ Respondent's failure to comply with the Act and Rules supports revocation of her worker registration.²⁸

The Commission may remove a bingo worker from the Registry for a failure to comply with the Act or Rules, and in this case, there are many such failures. Assuming arguendo that a revocation is contrary to the Schedule of Sanctions, Rule §402.706(a) states that "the Commission may deviate from the schedule if it has a reasonable basis to do so." The number of records missing and the amount of money missing in this case is unprecedented, and Respondent's years-long failure to comply with the law necessitates her removal from the Registry.

²³ Pet. Ex. 4 at 103-106.

²⁴ Audio at 4:21.

²⁵ Audio at 4:22.

²⁶ Audio at 2:29.

²⁷ Pet. Ex. 5 – Unit's response to Interrogatory No. 3.

²⁸ Tex. Occ. Code 2001.353(a)(1).

VI. Conclusion

The ALJ's recommendation of Respondent's removal from the Registry is warranted under Tex. Occ. Code §2001.554(a)(2) and 16 Tex. Admin. Code §402.706 because of the unprecedented amount of money missing in this case, Respondent's consistent and repeated failure to comply with the Act and Rules over the four-year Audit Period in which the funds are unaccounted for, and Respondent's failure to meet her burden of proof or to introduce any evidence into the record of this proceeding on her behalf.

Accordingly, the ALJ should reject Respondent's Exceptions as discussed herein.

Respectfully submitted,

/s/ Kristen Guthrie
KRISTEN GUTHRIE
Assistant General Counsel
Texas Lottery Commission
P.O. Box 16630
Austin, TX 78761
Tel. 512-344-5475
Fax 512-344-5189

CERTIFICATE OF SERVICE

I certify that on March 1, 2023, a true and correct copy of the *Texas Lottery Commission's Reply to Respondent's Exceptions to the Administrative Law Judge's Proposal for Decision* was served on the following individual(s) at the location and in the manner indicated below.

Mr. Leslie Sachanowicz
Les Law Group PLLC
508 Canterbury Hill
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via email at les.law@hotmail.com

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Attorney and Counselor at Law
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State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

March 3, 2023

Leslie Sachanowicz

VIA EFILE TEXAS

Drew McEwen

Kristen Guthrie

RE: Docket Number 362-21-2282.B; Texas Lottery Commission No. 2021-190; TLC v. Monica Weber

Dear Parties:

The undersigned Administrative Law Judge (ALJ) has reviewed the exceptions to the Proposal for Decision (PFD) and response to exceptions filed in this matter and recommends no changes be made to the PFD. The ALJ's reasoning is outlined in the PFD.

Therefore, the ALJ recommends that the PFD be adopted as written. Because SOAH has concluded its involvement in the matter, the case is being returned to the Texas Lottery Commission. *See* Tex. Gov't Code § 2003.051(a).

ALJ Signature(s):

Exceptions Letter

March 3, 2023

Page 2 of 2

A handwritten signature in black ink that reads "Steve Rivas". The signature is written in a cursive, slightly slanted style. Below the signature is a solid horizontal line.

Steve RIVAS,

Presiding Administrative Law Judge

CC: Service List

SOAH DOCKET NO. 362-21-2282.B

TEXAS LOTTERY COMMISSION	§	BEFORE THE STATE OFFICE
V.	§	OF
MONICA WEBER	§	ADMINISTRATIVE HEARINGS

MOTION TO REOPEN

COMES NOW, Monica Weber (“Respondent”) and files this her Motion to Reopen the hearing for additional evidence. At the reopened hearing, Respondent, along with other individuals, will testify with direct knowledge about relevant facts in this proceeding.

Respondent was justifiably wary of testifying given the testimony that she was a potential “target” of both a federal and state criminal investigation. Respondent was naturally reluctant to inadvertently provide any testimony that could be used against her. However, given the status of this case, Respondent is now willing to testify about the allegations in this proceeding, to prove her income, and address the specious and truly unsubstantiated claims by the Texas Lottery Commission (the “Commission”). If the Commission grants this Motion, Respondent will produce appropriate documents that bear on these issues.

In fact, the Commission investigator, John Graham, threatened Respondent with criminal prosecution during a meeting in the Commission’s San Antonio office.

The additional witnesses will include the following individuals: Chris Talamantez, a contractor who was paid to repair the bingo hall following a leaking roof and to destroy certain bingo products; Kris Keller, the landlord of the bingo hall who can testify as to the damaged bingo products that were destroyed; and Jenny Narvaiz and Lauren Elizondo, both of whom are employees of the Alamo Hills Bingo Unit charities who worked as cashiers and assistant

managers with knowledge of preparing daily cash reports, perpetual inventory, and bingo product damage and destruction.

These witnesses will address issues in this case and, given the recommendation of the ALJ, must be heard so that a full and complete record can be established.

Respectfully submitted,

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By: /s/ Stephen Fenoglio
STEPHEN FENOGLIO
State Bar No. 06904600

ATTORNEY FOR RESPONDENT
MONICA WEBER

CERTIFICATE OF CONFERENCE

Pursuant to 1 TEX. ADMIN. CODE §155.305, I certify that I attempted to confer with Ms. Kristen Guthrie on February 24, 2023 about this Motion. Ms. Guthrie, on behalf of the Texas Lottery Commission, has stated that the Commission will oppose the re-opening of this matter.

I further certify that I conferred with Mr. Kevin Oldham, who represents the following licensed authorized organizations: 1) Terra-Genesis of San Antonio (SOAH Docket No. 362-21-2276.B); 2) Ella Austin Community Center (SOAH Docket No. 362-21-2277.B); 3) TG 106, Inc. (SOAH Docket No. 362-21-2278.B); 4) Sav-Baby, Inc. (SOAH Docket No. 362-21-2279.B); 5) Central Park Lions Club (SOAH Docket No. 362-21-2280.B); and 6) District 2-2A Sight & Tissue Foundation, Inc. (SOAH Docket No. 362-21-2281.B). Mr. Oldham has stated that his clients do not oppose the re-opening of this matter.

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing was served as indicated below, on this the 4th day of April 2023, to the following person(s) in the following manner:

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

Via E-File

Leslie Sachanowicz
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Via E-File

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Via E-File

/s/ Stephen Fenoglio
STEPHEN FENOGLIO

**BEFORE THE STATE OFFICE OF
ADMINISTRATIVE HEARINGS**

**TEXAS LOTTERY COMMISSION,
PETITIONER**

V.

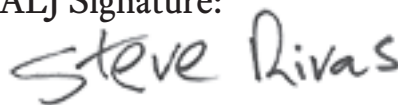
**MONICA WEBER,
RESPONDENT**

ORDER DENYING PLEA TO THE JURISDICTION

Respondent Monica Weber filed a Motion to Reopen the Record in the above-referenced matter. Please be advised, this matter is no longer within the jurisdiction of the State Office of Administrative Hearings and the undersigned Administrative Law Judge's involvement with this matter has concluded. Therefore, the Administrative Law Judge will not be ruling on the motion.

Signed April 4, 2023.

ALJ Signature:



Steve Rivas,
Administrative Law Judge

CASE SUMMARY

PARTY NAME: Texas Lottery Commission (Commission)

DOCKET NO./CASE NAME: SOAH Docket Nos. 362-21-2276.B, 362-21-2277.B., 362-21-2278.B, 362-21-2279.B, 362-21-2280.B, and 362-21-2281.B – Terra-Genesis of San Antonio, Ella Austin Community Center, TG 106 Inc., Sav-Baby Inc., Central Park Lions Club, and District 2-A2 Sight & Tissue Foundation Inc. (collectively, Respondents)

ISSUE(S): Should Respondents' licenses be revoked for their failure to comply with the laws and rules governing charitable bingo in Texas as members of the Alamo Hills Bingo Unit (Unit) during the time period of July 1, 2015 to June 30, 2019 (Audit Period), for which the Unit failed to account for \$1,439,768.38 in bingo revenue? [**Yes**]

KEY FACTS: Respondents are the members of the Unit. In 2019 the U.S. Department of Homeland Security's Homeland Security Investigations Division (DHS) referred information to the Commission regarding a DHS investigation into charges that the Respondents' primary bookkeeper Monica Weber had misapplied Unit's funds while employed by the Unit. Based on information from DHS, the Bingo Division conducted a compliance audit (Audit) of the Unit for the Audit Period.

Evidence presented at the hearing showed Respondents failed to provide records to account for the missing money during the Audit Period in three specific areas: bingo card/paper, pull-tabs, and voided card-minders. During the Audit Period, the Unit failed to account for \$1,439,768.38 in bingo revenue. Respondents failed to deposit in the Unit's bingo account all funds derived from the conduct of bingo, less the amount awarded as cash prizes. Respondents did not maintain records, including voided receipts, for voided electronic card-minding device sales transactions. Furthermore, Respondents failed to pay to the state an estimated \$30,839.64 in prize fees associated with pull-tab prizes not accounted for by the Unit. Respondents' failure to provide records to account for missing funds and failure to pay prize fees owed warrants revocation of Respondents' licenses.

The Administrative Law Judge (ALJ) for the State Office of Administrative Hearings (SOAH) found Respondents failed to pay prize fees to the Commission, failed to maintain records that fully and accurately record transactions connected with conducting bingo by failing to maintain records of the Unit's voided sales of card-minding devices, and failed to record transactions of bingo gross receipts on a cash register or point of sale station. Further, the SOAH ALJ found the Bingo Division was entitled to revoke Respondents' licenses to conduct bingo.

LEGAL PRINCIPLES INVOLVED:

Bingo Enabling Act (BEA) §2001.414(b) states: An organization conducting bingo must record on a cash register all transactions for which it receives bingo gross receipts in conformance with commission rules relating to transaction recording specifications.

BEA §2001.435(b) states, in pertinent part: Each member of a unit shall deposit into the unit's bingo account all funds derived from the conduct of bingo.

BEA §2001.451(b) states, in pertinent part: . . . a licensed authorized organization shall deposit in the bingo account all funds derived from the conduct of bingo, less the amount awarded as cash prizes

BEA §2001.504(a) states: A fee on prizes authorized or imposed under this subchapter is due and is payable by the license holder or a person conducting bingo without a license to the commission and county or municipality, as applicable, quarterly on or before the 25th day of the month succeeding each calendar quarter.

BEA §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: . . . (2) fails to maintain records that fully and accurately record each transaction connected with the conducting of bingo, the leasing of premises to be used for bingo, or the manufacture, sale, or distribution of bingo supplies or equipment.

ACTION REQUESTED: Approve SOAH's Proposal for Decision and issue an order revoking Respondents' licenses to conduct charitable bingo.

CASE SUMMARY

Names and Docket Nos.: Alamo Hills Bingo Unit (the “Unit”), comprised of Terra-Genesis of San Antonio (SOAH Docket No. 362-21-2276.B), Ella Austin Community Center (SOAH Docket No. 362-21-2277.B), TG 106 Inc. (SOAH Docket No. 362-21-2278.B), Sav-Baby Inc. (SOAH Docket No. 362-21-2279.B), Central Park Lions Club (SOAH Docket No. 362-21-2280.B), and District 2-2A Sight & Tissue Foundation Inc. (SOAH Docket No. 362-21-2281.B) (collectively, the “Charities”).

Key Facts: The Unit employed Ms. Monica Weber as Unit manager. Ms. Weber is still an active registrant, through October 31, 2024, on the Commission’s registry of bingo workers. The Bingo Division audited the Unit for the period July 1, 2015 through September 9, 2019 (the “Audit Period”) and concluded that Ms. Weber misappropriated at least \$1.4 million in bingo proceeds from the Unit during the Audit Period. The Bingo Division alleges that Ms. Weber sold certain bingo and pull-tab games without reporting the sales so that she could keep the proceeds. The Bingo Division further asserts that because Ms. Weber did not report the alleged misappropriated funds to the Unit bookkeeper or deposit the funds in the Unit’s account, the funds were never distributed to the Charities. The Bingo Division seeks to revoke the Charities’ licenses to conduct bingo because the violations occurred while Ms. Weber was the Unit manager.

The audit report concluded that the violations by Ms. Weber led to the Charities’ failure to:

- deposit \$1,439,768.38 in proceeds from the conduct of bingo;
- pay \$30,839.64 in prize fees;
- properly maintain a perpetual inventory and purchase log of bingo paper and pull-tab games;
- deposit all funds derived from the conduct of bingo;
- pay prize fees to the Commission;
- properly void card-minding device sales; and
- maintain a purchase log of pull-tab bingo tickets.

Legal Principles Involved: If these violations are true, the Charities are the victims (not the perpetrators). Although the Charities are ultimately responsible for complying with the Bingo Enabling Act (the “Act”) and Charitable Bingo Administrative Rules (“Bingo Rules”), the revocation of the Charities’ licenses is unwarranted under the facts. Revocation is also inconsistent with Bingo Rules. 16 Tex. Admin. Code § 402.706 (Schedule of Sanctions) provides guidelines relating to the handling of violations of the Act and the Bingo Rules. That Rule includes a detailed schedule of specific violations and sanctions, attached as Exhibit A, that are particularly relevant here.

Until this audit, none of the Charities had been charged with a violation of the Act or Bingo Rules. Each Charity therefore faces its first charged offense and should be sanctioned accordingly. Those sanctions do not include license revocation for first or even second-time violators of the rules. Revoking the Charities’ licenses would be inconsistent with the Commission’s own administrative rules, especially under the facts set forth by the auditor that the Unit’s manager stole from the Charities and actively misstated the sales records to conceal the unreported sales from the Charities.

Action Requested: Within 30 days of the Commissioner’s hearing, the Unit shall be required to: (i) pay the outstanding prize fee assessment of \$30,839.64; (ii) pay statutory interest on that amount from the middle of the audit period; (iii) pay and an administrative penalty of \$5,000; and (iv) implement internal controls and procedures to ensure compliance with requirements of the Bingo Enabling Act. Upon satisfaction of those payments and conditions, the Charities shall be allowed to keep their licenses.

Date: JUNE 21, 2023

**SOAH DOCKET NOS. 362-21-2276.B, 362-21-2277.B, 362-21-2278.B,
362-21-2279.B, 362-21-2280.B, and 362-21-2281.B**

TEXAS LOTTERY COMMISSION,
Petitioner,

v.

**TERRA-GENESIS OF SAN ANTONIO,
ELLA AUSTIN COMMUNITY CENTER,
TG 106 INC., SAV-BABY INC.,
CENTRAL PARK LIONS CLUB, AND
DISTRICT 2-A2 SIGHT & TISSUE
FOUNDATION INC.,**
Respondents.

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

ORDER OF THE COMMISSION

To: Mr. Kevin Oldham
Mr. Drew McEwen
Duggins Wren Mann & Romero, LLP
600 Congress Ave., Suite 1900
Austin, TX 78701
via email at koldham@dwmrlaw.com
via email at dmcewen@dwmrlaw.com

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

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

Commission Order No. 23-0029

Date: JUNE 21, 2023

NOW, THEREFORE, IT IS ORDERED that the respective licenses to conduct charitable bingo of Terra-Genesis of San Antonio, Ella Austin Community Center, TG 106 Inc., Sav-Baby Inc., Central Park Lions Club, and District 2-A2 Sight and Tissue Foundation Inc. are hereby revoked.

Passed and approved at the regular meeting of the Texas Lottery Commission in Austin, Texas, on the 21ST day of JUNE 2023.

Entered this 21ST day of JUNE 2023.

ROBERT G. RIVERA, CHAIRMAN

CINDY FIELDS, COMMISSIONER

MARK A. FRANZ, COMMISSIONER

ERIK C. SAENZ, COMMISSIONER

JAMES H. C. STEEN, COMMISSIONER

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

November 4, 2022

ACCEPTED
362-21-2276
11/4/2022 4:01:24 pm
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Pegah Nasrollahzadeh, CLERK

FILED
362-21-2276
11/4/2022 1:37 PM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Pegah Nasrollahzadeh, CLERK

Kevin Oldham

VIA EFILE TEXAS

Les Sachanowicz

VIA EFILE TEXAS

Kristen Guthrie

VIA EFILE TEXAS

**RE: Docket Number 362-21-2276.B; Texas Lottery Commission
No. 2021-197; Texas Lottery Commission v. Terra-Genesis of San
Antonio**

Dear Parties:

Please find attached a Proposal for Decision in this case.

Exceptions and replies may be filed by any party in accordance with 1 Texas
Administrative Code section 155.507(b), a SOAH rule which may be found at
www.soah.texas.gov.

CC: Service List

FILED
362-21-2277
12/20/2022 1:39 PM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Crystal Rosas, CLERK

362-21-2277

ACCEPTED
362-21-2277
12/20/2022 1:45:13 pm
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Crystal Rosas, CLERK

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

November 4, 2022

ACCEPTED
362-21-2276
11/4/2022 4:01:24 pm
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Pegah Nasrollahzadeh, CLERK

Kevin Oldham

VIA EFILE TEXAS

Les Sachanowicz

VIA EFILE TEXAS

Kristen Guthrie

VIA EFILE TEXAS

**RE: Docket Number 362-21-2276.B; Texas Lottery Commission
No. 2021-197; Texas Lottery Commission v. Terra-Genesis of San
Antonio**

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www.soah.texas.gov.

CC: Service List

362-21-2278

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

November 4, 2022

ACCEPTED
362-21-2276
11/4/2022 4:01:24 pm
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Pegah Nasrollahzadeh, CLERK

FILED
362-21-2276
11/4/2022 1:37 PM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Pegah Nasrollahzadeh, CLERK

Kevin Oldham
FILED
362-21-2278
12/20/2022 1:42 PM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Crystal Rosas, CLERK

Les Sachanowicz

ACCEPTED
362-21-2278
12/20/2022 1:48:52 pm
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Crystal Rosas, CLERK

Kristen Guthrie

VIA EFILE TEXAS

VIA EFILE TEXAS

VIA EFILE TEXAS

**RE: Docket Number 362-21-2276.B; Texas Lottery Commission
No. 2021-197; Texas Lottery Commission v. Terra-Genesis of San
Antonio**

Dear Parties:

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www.soah.texas.gov.

CC: Service List

362-21-2279

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

November 4, 2022

ACCEPTED
362-21-2276
11/4/2022 4:01:24 pm
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Pegah Nasrollahzadeh, CLERK

FILED
362-21-2276
11/4/2022 1:37 PM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Pegah Nasrollahzadeh, CLERK

Kevin Oldham
Les Sachanowicz
Kristen Guthrie

FILED
362-21-2279
12/20/2022 1:50 PM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Crystal Rosas, CLERK

VIA EFILE TEXAS

VIA EFILE TEXAS

VIA EFILE TEXAS

ACCEPTED
362-21-2279
12/20/2022 1:57:39 pm
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Crystal Rosas, CLERK

**RE: Docket Number 362-21-2276.B; Texas Lottery Commission
No. 2021-197; Texas Lottery Commission v. Terra-Genesis of San
Antonio**

Dear Parties:

Please find attached a Proposal for Decision in this case.

Exceptions and replies may be filed by any party in accordance with 1 Texas
Administrative Code section 155.507(b), a SOAH rule which may be found at
www.soah.texas.gov.

CC: Service List

362-21-2280

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

November 4, 2022

ACCEPTED
362-21-2276
11/4/2022 4:01:24 pm
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Pegah Nasrollahzadeh, CLERK

FILED
362-21-2280
12/20/2022 1:55 PM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Crystal Rosas, CLERK

Kevin Oldham

VIA EFILE TEXAS

Les Sachanowicz

ACCEPTED
362-21-2280
12/20/2022 1:59:47 pm
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Crystal Rosas, CLERK

VIA EFILE TEXAS

Kristen Guthrie

VIA EFILE TEXAS

**RE: Docket Number 362-21-2276.B; Texas Lottery Commission
No. 2021-197; Texas Lottery Commission v. Terra-Genesis of San
Antonio**

Dear Parties:

Please find attached a Proposal for Decision in this case.

Exceptions and replies may be filed by any party in accordance with 1 Texas
Administrative Code section 155.507(b), a SOAH rule which may be found at
www.soah.texas.gov.

CC: Service List

362-21-2281

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

November 4, 2022

ACCEPTED
362-21-2276
11/4/2022 4:01:24 pm
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Pegah Nasrollahzadeh, CLERK

FILED
362-21-2276
11/4/2022 1:37 PM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Pegah Nasrollahzadeh, CLERK

FILED
362-21-2281
12/20/2022 1:58 PM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Crystal Rosas, CLERK

Kevin Oldham

VIA EFILE TEXAS

Les Sachanowicz

ACCEPTED
362-21-2281
12/20/2022 2:03:58 pm

VIA EFILE TEXAS

Kristen Guthrie

STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Crystal Rosas, CLERK

VIA EFILE TEXAS

**RE: Docket Number 362-21-2276.B; Texas Lottery Commission
No. 2021-197; Texas Lottery Commission v. Terra-Genesis of San
Antonio**

Dear Parties:

Please find attached a Proposal for Decision in this case.

Exceptions and replies may be filed by any party in accordance with 1 Texas
Administrative Code section 155.507(b), a SOAH rule which may be found at
www.soah.texas.gov.

CC: Service List

**SOAH Docket Nos. 362-21-2276.B, 362-21-2277.B, 362-21-2278.B,
362-21-2277.B, 362-21-2278.B, 362-21-2279.B, 362-21-2280.B,
and 362-21-2281.B**

BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

**TEXAS LOTTERY COMMISSION,
PETITIONER**

V.

**TERRA-GENESIS OF SAN ANTONIO; ELLA AUSTIN COMMUNITY
CENTER; TG 106, INC.; SAB-BABY, INC.; CENTRAL PARK LIONS
CLUB; AND DISTRICT 2-2A SIGHT AND TISSUE FOUNDATION,
RESPONDENTS**

PROPOSAL FOR DECISION

The staff (Staff) of the Charitable Bingo Operations Division (Division) of the Texas Lottery Commission (Commission) seeks to revoke the licenses of the following six charities that comprise the Alamo Hills Bingo Unit: Terra-Genesis of San Antonio; Ella Austin Community Center; TG 106, Inc.; Sav-Baby, Inc.; Central Park Lions Club; and District 2-2A Sight and Tissue Foundation, Inc. (collectively, Respondents or Unit). Staff alleges that Respondents failed to deposit proceeds, pay prize fees, maintain records, and maintain inventory connected with

the conduct of bingo. The Administrative Law Judge (ALJ) concludes that Staff proved the allegations by a preponderance of the evidence and recommends that the Division revoke the licenses to conduct bingo of each Respondent.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

This hearing was held jointly with 362-21-2282.B (Monica Weber), in which the Division sought to remove Ms. Weber's name from the registry of approved bingo workers (Registry). There are no contested issues of notice or jurisdiction in this proceeding and those matters are addressed solely in the Findings of Fact and Conclusions of Law.

On April 12, 2022, State Office of Administrative Hearings (SOAH) ALJ Steve Rivas convened a hearing on the merits by Zoom videoconference. Attorney Kristin Guthrie represented Staff. Attorney Kevin C. Oldham represented Respondents. The hearing adjourned and the record remained open to allow the parties an opportunity to submit written closing arguments.

On July 18, 2022, before the record closed, Ms. Weber filed a Motion to Strike Attachment A of Staff's closing argument in 362-21-2282.B on the basis that it contained evidence that was not addressed at the hearing on the merits. On July 20, 2022, Staff filed a response to Ms. Weber's motion to strike. On September 12, 2022, the ALJ issued an order granting Ms. Weber's motion to strike Attachment A, and the record closed on that date.¹

¹ Although the hearing concerning Ms. Weber has a separate docket number, the allegations against Ms. Weber occurred while she was a bookkeeper for Respondents. Hence, the ALJ closed the record on the same date.

II. APPLICABLE LAW

The Commission governs all bingo operations in the state under the Bingo Enabling Act (Act).² A licensed authorized organization is required to deposit into the unit's bingo account all funds derived from the conduct of bingo, less the amount awarded as cash prizes.³ A fee on prizes (prize fee) authorized or imposed under subchapter K of the Act is due and is payable by the license holder to the Commission and county or municipality, as applicable, quarterly on or before the 25th day of the month succeeding each calendar quarter.⁴

An organization selling pull-tab bingo tickets must maintain a purchase log showing the date of the purchase, the form number and corresponding serial number of the purchased pull-tab bingo tickets, and a record of the prizes that were paid and the form number and serial number of the pull-tab bingo tickets on the occasion cash report.⁵ An organization or unit shall also maintain a perpetual inventory of disposable bingo cards and pull-tab bingo tickets.⁶

A person commits an offense and the person's license is subject to revocation under this chapter if the person fails to maintain records that fully and

² Tex. Occ. Code ch. 2001, 16 Tex. Admin. Code ch. 402.

³ Tex. Occ. Code § 2001.435(b).

⁴ Tex. Occ. Code § 2001.504(a).

⁵ 16 Tex. Admin. Code §§ 402.300(e)(9), (g)(1), (2), .301(e)(3)(C).

⁶ 16 Tex. Admin. Code §§ 402.511(a)(1), (2), .300(g)(3).

accurately record each transaction connected with the conducting of bingo; the leasing of premises to be used for bingo; or the manufacture, sale, or distribution of bingo supplies or equipment.⁷ A license-holder shall maintain records to substantiate the contents of each report.⁸

The licensed authorized organization's gross receipts from the sale of pull-tab bingo tickets must be included in the reported total gross receipts for the organization.⁹ An organization conducting bingo must record on a cash register all transactions for which it receives bingo gross receipts in conformance with Commission rules relating to transaction recording specifications.¹⁰

The Commission defines a bookkeeper as an individual ultimately responsible for the preparation of any financial records for information reported on the Texas Bingo Conductor's Quarterly Report or for preparation and maintenance of bingo inventory records for a licensed authorized organization.¹¹

⁷ Tex. Occ. Code § 2001.554(a)(2).

⁸ Tex. Occ. Code § 2001.505(b).

⁹ 16 Tex. Admin. Code § 402.300(e)(9).

¹⁰ Tex. Occ. Code § 2001.414(b).

¹¹ 16 Tex. Admin. Code § 402.402(a)(2).

III. EVIDENCE

Staff exhibits 1, 2, 4, 5, 6, 8, 9, and 10 were admitted into evidence without objection.¹² Staff also called three witnesses to offer testimony. Respondents called two witnesses to testify and offered one exhibit.

A. BACKGROUND FACTS

In 2019, Ms. Weber was a bookkeeper and hall manager for Respondents. On August 13, 2020, Division Staff conducted an audit of the Respondents' records for the period between July 1, 2015, and September 9, 2019. Staff proposed to revoke the licenses to conduct bingo of each Respondent based on discrepancies found during the audit (described below), and Respondents timely requested a hearing before SOAH.

B. STAFF'S CASE

1. The Division's Audit¹³

Vivian Cohn, the Division's Audit Manager, noted the following discrepancies were found during the audit:

- The Unit failed to deposit into the Unit's bingo account all funds derived from the conduct of bingo, less the amount awarded as cash prizes. The proceeds from bingo card paper sales (\$392,187), pull-tab games

¹² Ms. Weber (362-21-2282.B) objected to Staff exhibits 3 and 7 at the same hearing and the objection was sustained. As such, Staff exhibits 3 and 7 were not admitted into evidence.

¹³ Staff Ex. 4. Respondents were referred to collectively as "the Unit" in the audit.

(\$434,835.38), and voided electronic card-minding device sales (\$612,746) totaled \$1,439,768.38.¹⁴

- The Unit failed to pay prize fees in the amount of \$30,389.64.¹⁵
- The Unit did not maintain or provide receipts for voided sales transactions of electronic card-minding devices for the period of July 1, 2015, to December 31, 2018.¹⁶ Ms. Weber stated during the audit that she is the person who voided the card-minding device sales at the end of each occasion and that she did not maintain any voided receipts or attach any documentation regrading voided card-minding device transactions.¹⁷
- The Unit did not maintain a perpetual inventory of pull-tabs that contains all required information. Based on a sample of 16 occasion cash reports, 62 pull-tab serial numbers that were sold could not be located on the perpetual inventory logs.¹⁸ Ms. Weber stated during the audit that she could not locate the perpetual inventory logs.¹⁹
- The Unit did not record transactions of bingo gross receipts on a cash register or point of sale station on 12 of 16 sampled occasion cash reports.²⁰ Ms. Weber stated during the audit that the gross receipts should have been recorded on a point-of-sale system but did not know why the amounts were not recorded.²¹

¹⁴ Staff Ex. 4 at 93.

¹⁵ *Id.* at 95-97.

¹⁶ *Id.* at 97.

¹⁷ *Id.*

¹⁸ Staff Ex. 4at 98.

¹⁹ *Id.*

²⁰ *Id.* at 99.

²¹ *Id.*

2. Testimony of Agent Clint Johnson

Staff asserted that an investigation by the United States Department of Homeland Security (DHS) led to the Division's audit of Respondents. DHS agent Clint Johnson testified that he investigated Ms. Weber for allegations of money laundering between her, Respondents, and the Lucky Eagle Casino (the casino) in Eagle Pass, Texas. Agent Johnson testified that DHS investigated Ms. Weber due to reports of large cash deposits that were made into her personal bank account that far exceeded her salary. He testified that when he interviewed Ms. Weber on May 2, 2018, she stated that the large cash deposits were from winnings at the casino, which included jackpots of \$25,000 and \$50,000.²² Agent Johnson further testified that Ms. Weber stated that her son and other family members loaned her money when she did not win at the casino, but that she won money at the casino "substantially" more often than she lost.²³

Agent Johnson testified that he did not subpoena Ms. Weber's tax records from the Internal Revenue Service (IRS) to confirm whether she reported her casino winnings to the IRS. Additionally, he testified that he could not determine if the large cash deposits were connected to Ms. Weber's employment as a bookkeeper for Respondents.

²² Staff Ex. 10 at 182. Agent Johnson's report was partially admitted into evidence. The portions of the report that contained hearsay were not admitted into evidence pursuant to Respondent's objection.

²³ *Id.*

3. Testimony of Officer John Graham

John Graham is a licensed peace officer with the Commission and testified that he is familiar with the facts of this case. He stated that based on Agent Johnson's investigation, the Commission was concerned that Ms. Weber had laundered money by diverting funds from Respondents through the casino and eventually to her personal bank account in the form of large cash deposits. However, Mr. Graham testified that when he interviewed Ms. Weber, she stated that the large cash deposits were from casino winnings.²⁴

4. Testimony of Joy Bishop

Joy Bishop is a senior auditor for the Division who participated in the audit of the Unit's records.

a) Bingo proceeds

Ms. Bishop testified that according to the audit, Respondents failed to account for or deposit \$1,439,768.38 in funds derived from the conduct of bingo into their bingo bank accounts. The total amount of proceeds was based on sales of bingo cards/paper, pull-tab games, and voided sales of card-minding devices, according to Ms. Bishop.²⁵

Ms. Bishop testified that the formula for determining the amount of proceeds from the conduct of bingo is to identify a bingo hall's beginning inventory

²⁴ Staff Ex. 3. Mr. Graham's report was partially admitted into evidence. Portions of the report including attached bank records and statements from Ms. Weber's co-worker, Vanessa Reeves, were excluded as inadmissible hearsay.

²⁵ Staff Ex. 4 at 93-95. A calculation of proceeds that were not deposited by Respondents is found on this exhibit.

plus any purchased inventory, then subtract the reported sales. However, in this case, Ms. Bishop testified, Respondents' beginning inventory was estimated at zero because the amount of beginning inventory could not be confirmed based on records that were provided by Respondents during the audit. Ms. Bishop asserted that because the auditors estimated the beginning inventory at zero, the audit reflected less money that was undeposited by Respondents.

b) Prize fees

Ms. Bishop testified that according to the audit, Respondents failed to report an estimated \$1,267,816.62 in pull-tab prizes to the Commission.²⁶ Furthermore, based on the unreported prizes, Ms. Bishop stated Respondents failed to pay \$30,839.64 in prize fees to the Commission. Ms. Bishop concluded that Respondents must pay the prize fees to conduct bingo. On cross-examination, Ms. Bishop testified she did not know if Respondents have previously attempted to pay a portion of the prize fee.

c) Voided card-minding device receipts

According to Ms. Bishop, a card-minding device is an electronic or computerized device used by a player to monitor numbers called on bingo cards stored on the device.²⁷ In some cases when a large crowd is expected to attend a bingo occasion,²⁸ Ms. Bishop testified, an organization may pre-sell card-minding devices to bingo players to avoid long lines of bingo players who want to purchase

²⁶ Staff Ex. 4 at 95-97. A calculation of unpaid prize fees is found in this exhibit.

²⁷ See also 16 Tex. Admin. Code § 402.321(2)(A).

²⁸ Ms. Bishop referred to a bingo occasion as a set or sessions of bingo games that occur on any given day.

card-minding devices at the beginning of a bingo occasion. However, Ms. Bishop pointed out, a pre-sold card-minding device purchase that is voided must be done before the start of the second game of the bingo occasion.²⁹ Ms. Bishop testified this rule is in place to ensure that a person does not request a refund for the purchase of a card-minding device at the end of a bingo occasion after the person has used the card-minding device during the bingo occasion. She further testified that an organization must maintain a record of each voided transaction.³⁰

Ms. Bishop testified that the audit revealed Respondents did not maintain or provide receipts for voided sales transactions of card-minding devices for the period of July 1, 2015, to December 31, 2018. Based on her review of the card-minding reports for the audit period, Ms. Bishop stated the amount of voided card-minding device sales totaled \$612,746.³¹ Ms. Bishop further testified that during the audit, Ms. Weber stated that she was the person who voided the Unit's card-minding device sales at the end of each occasion and that she did not maintain any voided receipts or documentation of the voided card-minding device transactions.

d) Pull-tab games purchase log and perpetual inventory

Ms. Bishop testified that when the audit team reviewed 16 of Respondents' occasion cash reports for the audit period, it found that 62 pull-tab games were

²⁹ 16 Tex. Admin. Code § 402.325(e).

³⁰ 16 Tex. Admin. Code § 402.325(d)(4).

³¹ Although the card-minding device reports were not offered as evidence, the audit found that Respondents had \$612,746 in voided card-minding device transactions unaccounted for during the audit period. *See* Staff Ex. 4.

listed as being sold. Ms. Bishop testified that the audit team requested Respondents to produce their purchase log to confirm that all required information was contained on the log, such as the date of the purchase, the form number, and the corresponding serial number of the purchased pull-tab bingo ticket.³²

However, Ms. Bishop testified that during the audit, Ms. Weber stated she could not locate the purchase logs that may have contained the required information for the 62 pull-tab games in question. Ms. Bishop further testified that Ms. Weber could not produce Respondents' perpetual inventory for the audit period, which may have contained the 62 pull-tab games in question.³³

e) Recorded transactions

Ms. Bishop testified that for the audit period, Respondents did not maintain a record of sales of bingo products such as pull tabs, paper bingo cards, or card minding devices on a cash register or point of sale device. Specifically, Ms. Bishop contended that on 12 of 16 sampled occasion cash reports, Respondents did not record transactions of bingo gross receipts on a cash register or point of sale station.³⁴ Ms. Bishop asserted that Ms. Weber, as the bookkeeper and hall manager for Respondents, was responsible for ensuring that all sales were properly recorded. However, Ms. Bishop testified that during the audit, Ms. Weber admitted that a record of Respondents bingo gross receipts should have been kept but did not know why it was not maintained.

³² 16 Tex. Admin. Code § 402.300(g)(1), (2).

³³ 16 Tex. Admin. Code § 402.300(g)(3).

³⁴ See Staff Ex. 4. The occasion cash reports were referenced in the audit but were not offered as evidence.

C. RESPONDENTS' CASE

1. Testimony of Melissa Baxter-Kosub

Melissa Baxter-Kosub is employed by Staff Professionals in San Antonio, Texas, a firm that provides bookkeeping services for charitable bingo organizations. She testified that she has worked as a bookkeeper for Respondents since 2004, and that she is familiar with the audit that the Division conducted on Respondents. She further testified that Ms. Weber is currently a hall manager for Respondents and that Ms. Weber has been a bookkeeper for Respondents for the past 10 years, including at the time of the audit.

Ms. Baxter-Kosub primarily testified about her role as a bookkeeper for Respondents. In summary, Ms. Baxter-Kosub explained that she would normally receive the Door Sales Summary from Respondents³⁵ and upload the financial information into her accounting system. Ms. Baxter-Kosub stated she would then calculate the amount of each distribution check payable to Respondents based on gross sales amount and other figures such as operating expenses, repairs, and property taxes. According to Ms. Baxter-Kosub, each charity among Respondents would receive a distribution check at a quarterly meeting, and a balance sheet would be attached to each distribution check showing the calculated amount of expenses and distribution. Although the amounts would vary each quarter, each charity among Respondents would receive the same amount on their distribution

³⁵ Respondents Ex. 1 at 174-254.

check.³⁶

As for the Division's audit, Ms. Baxter-Kosub testified that her only involvement was to turn over documents in her possession to the Division, which she did upon request. She testified that she reviewed the results of the audit and has no reason to dispute the results of the audit.

2. Testimony of Sam Pantusa

Sam Pantusa is the Chief Operations Officer for District 2-2A Sight and Tissue Foundation, Inc., one of the charities among Respondents (362-21-2281.B). He testified that Ms. Weber has been a hall manager for 20 years and he did not know about the money laundering allegations against Ms. Weber prior to the Division's audit report.³⁷ He asserted that despite the allegations, the charity has retained Ms. Weber as an employee because the allegations against her are "complicated." He contended that if Ms. Weber's name is removed from the Registry, he will terminate Ms. Weber's employment with the charity. He further testified that the charity did not receive any payments other than the distribution checks noted by Ms. Baxter-Kosub.³⁸

³⁶ *Id.* at 1-173 (distribution checks and balance sheets).

³⁷ Staff Ex. 3.

³⁸ Respondents Ex. 1.

IV. ANALYSIS

Respondents offered no evidence to dispute any of Staff's allegations. Hence, the ALJ need only evaluate Staff's evidence. In this case, the ALJ finds the preponderant evidence establishes that Respondents failed to deposit proceeds, pay prize fees, and failed to maintain records and inventory connected with the conduct of bingo.³⁹

The audit's finding that Respondents failed to deposit \$1,439,768.38 in proceeds from the conduct of bingo and failed to pay \$30,839.64 in prize fees was uncontested. Respondents offered no evidence that it deposited the proceeds or that it paid the prize fees in question. The witnesses who testified on behalf of Respondents offered no testimony on whether the proceeds were deposited, or the prize fees were paid. The exhibit offered by Respondents similarly was unhelpful because it consisted only of copies of distribution checks, not documentation of deposits made of proceeds or receipts of payment for prize fees. Respondents failed to deposit all funds derived from the conduct of bingo, a violation of Texas Occupations Code section 2001.435(b). Respondents also failed to remit prize fees to the Commission, a violation of Texas Occupations Code section 2001.504(a).

The allegation that Respondents failed to maintain receipts of voided sales for card-minding devices for the audit period was also uncontested. The audit contained statements made by Ms. Weber, Respondents' bookkeeper, that she was responsible for voiding the card-minding device sales but that she failed to maintain

³⁹ Although the ALJ appreciates the testimony of DHS Agent Johnson and Officer Graham, the relevant testimony in this case was provided by Ms. Bishop and by the audit itself.

a record of the transactions. Ms. Bishop further testified that \$612,746 was the amount of card-minding device sales that were voided, and that Ms. Weber stated she did not maintain a record of the voided transactions. As such, Respondents failed to maintain records of these voided transactions, a violation of Texas Occupations Code section 2001.554(a)(2).

The evidence that Respondents failed to maintain a purchase log and perpetual inventory of pull-tab games was likewise uncontested. The audit revealed that 16 occasion cash reports reflected 62 pull-tab games were sold during the audit period but could not be located on Respondents' purchase log or within Respondents' perpetual inventory of pull-tab games because Respondents could not produce these items. Ms. Bishop further testified that Respondents' bookkeeper, Ms. Weber, stated to the audit team that she could not locate the requested purchase logs or perpetual inventory in question. Respondents' failure to maintain purchase logs is a violation of the Division's rule at 16 Texas Administrative Code section 402.300(g)(1) and (2). Respondents' failure to maintain a perpetual inventory of pull-tab games is a violation of the Division's rules at 16 Texas Administrative Code sections 402.300(g)(3) and 402.511(a)(2).

Respondents further did not dispute Staff's evidence that it failed to record transactions of bingo gross receipts on a cash register or point of sale station. According to Ms. Bishop's testimony, Ms. Weber admitted to the audit team that Respondents' bingo gross receipts should have been recorded and that she did not know why they were not recorded. Respondents' failure to record transactions of

bingo gross receipts on a cash register or point of sale station is a violation of Texas Occupations Code section 2001.414(b).

Based on the evidence presented and the applicable legal authorities, the ALJ concludes that Respondent: (1) failed to deposit \$1,439,768.38 in proceeds from the conduct of bingo; (2) failed to pay \$30,839.64 in prize fees; (3) failed to maintain receipts of voided sales of card-minding devices; (4) failed to maintain a purchase log and perpetual inventory of pull-tab games; and (5) failed to record transactions of bingo gross receipts on a cash register or point of sale station. For these reasons, the ALJ finds the Division is entitled to revoke the license to conduct bingo from each Respondent pursuant to Texas Occupations Code section 2001.554(a)(2).

V. FINDINGS OF FACT

1. The Alamo Hills Bingo Unit is comprised of six charities that hosted bingo games in San Antonio, Texas.
2. The charities are Terra-Genesis of San Antonio; Ella Austin Community Center; TG 106, Inc; Sav-Baby, Inc; Central Park Lions Club; and District 2-2A Sight and Tissue Foundation, Inc. (Respondents).
3. In 2019, Monica Weber was a bookkeeper and hall manager for Respondents.
4. On August 13, 2020, Staff of the Charitable Bingo Division of the Texas Lottery Commission (Commission) conducted an audit of the Respondents' records for the period between July 1, 2015, and September 9, 2019 (the audit period).
5. Respondents failed to deposit \$1,439,768.38 in proceeds from the conduct of bingo during the audit period.

6. Respondents failed to pay \$30,839.64 in prize fees to the Commission during the audit period.
7. Respondents failed to maintain receipts of the voided card-minding device transactions during the audit period.
8. Respondents' bookkeeper, Ms. Weber, was the person who voided the card-minding device sales at the end of each bingo occasion for Respondents.
9. The amount of voided card-minding device sales totaled \$612,746 during the audit period.
10. Respondents sold 62 pull-tab games during the audit period.
11. Respondents did not maintain a purchase log that should have contained required information for 62 pull-tab games that were sold during the audit period.
12. Respondents did not produce a perpetual inventory during the audit, which would have contained 62 pull-tab games that were sold during the audit period.
13. Respondents did not record bingo gross receipts for sales of bingo products such as pull-tabs, paper bingo cards, or card-minding devices on a cash register or point of sale device for the Unit on 12 of 16 sampled reports for the audit period.
14. Division Staff proposed to revoke the licenses to conduct bingo of each Respondent and Respondents timely requested a hearing on the merits.
15. On May 6, 2021, the Commission referred this matter to the State Office of Administrative Hearings (SOAH) for a hearing on the merits.
16. On May 11, 2021, a Notice of Final Hearing was sent to each Respondent.
17. The Notice of Final Hearing advised the parties that the matter would be subject to a hearing before a SOAH Administrative Law Judge (ALJ), contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was

to be held; a reference to the particular sections of the statutes and rules involved; and either a short, plain statement of the factual matters asserted or an attachment that incorporated by reference the factual matters asserted in the complaint or petition filed with the state agency.

18. On April 12, 2022, ALJ Steve Rivas convened a hearing on the merits by Zoom videoconference. Staff was represented by attorney Kristen Guthrie. Respondents were represented by attorney Kevin C. Oldham. The hearing was held jointly with 362-21-2282.B (Monica Weber).
19. The hearing adjourned and the record remained open until July 21, 2022, to allow the parties an opportunity to submit written closing arguments.
20. On July 18, 2022, before the record closed, Ms. Weber filed a Motion to Strike Attachment A of Staff's closing argument on the basis that it contained evidence that was not addressed at the hearing on the merits.
21. On July 20, 2022, Staff filed a response to the motion to strike.
22. On September 12, 2022, the ALJ issued an order granting the motion to strike Attachment A, and the record closed on that date.

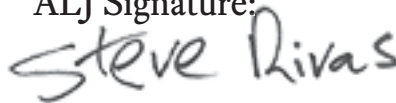
VI. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter. Tex. Occ. Code ch. 2001.
2. SOAH has jurisdiction over all matters relating to the conduct of a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003.
3. Staff has the burden of proving that the Commission is authorized to revoke Respondents' licenses. 1 Tex. Admin. Code § 155.427.
4. Adequate and timely notice of the hearing was provided. Tex. Gov't Code §§ 2001.051-.052.
5. Respondents failed to deposit all funds derived from the conduct of bingo. Tex. Occ. Code § 2001.435(b).

6. Respondents failed to pay prize fees to the Commission. Tex. Occ. Code § 2001.504(a).
7. Respondents failed to maintain records that fully and accurately recorded transactions connected with the conducting of bingo or the sale or distribution of bingo supplies or equipment, by failing to maintain records of voided sales of card-minding devices that totaled \$12,748. Tex. Occ. Code § 2001.554(a)(2).
8. Respondents failed to maintain a purchase log of pull-tab bingo tickets. 16 Tex. Admin. Code § 402.300(g)(1), (2).
9. Respondents failed to maintain a perpetual inventory of pull-tab bingo tickets. 16 Tex. Admin. Code § 402.511(a)(2).
10. Respondents failed to record on a cash register the transactions for which it receives bingo gross receipts in conformance with Commission rules relating to transaction recording specifications. Tex. Occ. Code § 2001.414(b).
11. Respondents' licenses to conduct bingo are subject to revocation for failure to maintain records that fully and accurately record each transaction connected with the conducting of bingo, the leasing of premises to be used for bingo, or the manufacture, sale, or distribution of bingo supplies or equipment. Tex. Occ. Code § 2001.554(a)(2).
12. Respondents' licenses to conduct bingo should be revoked by the Commission.

SIGNED NOVEMBER 4, 2022.

ALJ Signature:



Steve Rivas,
Presiding Administrative Law Judge

FILED
 362-21-2276
 1/23/2023 4:59 PM
 STATE OFFICE OF
 ADMINISTRATIVE HEARINGS
 Carol Hale, CLERK

SOAH DOCKET NO. 362-21-2276.B

TEXAS LOTTERY COMMISSION
Petitioner

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BEFORE THE STATE OFFICE

v.

OF

TERRA-GENESIS OF SAN ANTONIO
Respondent

ADMINISTRATIVE HEARINGS

ACCEPTED
 362-21-2276
 1/23/2023 5:35:56 pm
 STATE OFFICE OF
 ADMINISTRATIVE HEARINGS
 Carol Hale, CLERK

SOAH DOCKET NO. 362-21-2277.B

TEXAS LOTTERY COMMISSION
Petitioner

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BEFORE THE STATE OFFICE

v.

OF

ELLA AUSTIN COMMUNITY CENTER
Respondent

ADMINISTRATIVE HEARINGS**SOAH DOCKET NO. 362-21-2278.B**

TEXAS LOTTERY COMMISSION
Petitioner

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BEFORE THE STATE OFFICE

v.

OF

TG 106 INC.
Respondent

ADMINISTRATIVE HEARINGS**SOAH DOCKET NO. 362-21-2279.B**

TEXAS LOTTERY COMMISSION
Petitioner

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BEFORE THE STATE OFFICE

v.

OF

SAV-BABY INC.
Respondent

ADMINISTRATIVE HEARINGS

SOAH DOCKET NO. 362-21-2280.B

TEXAS LOTTERY COMMISSION	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
v.	§	OF
	§	
CENTRAL PARK LIONS CLUB	§	
Respondent	§	ADMINISTRATIVE HEARINGS

SOAH DOCKET NO. 362-21-2281.B

TEXAS LOTTERY COMMISSION	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
v.	§	
	§	OF
DISTRICT 2-2A SIGHT & TISSUE FOUNDATION INC.	§	
Respondent	§	ADMINISTRATIVE HEARINGS

RESPONDENTS' EXCEPTIONS TO PROPOSAL FOR DECISION

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE RIVAS:

On November 4, 2022, Your Honor issued a Proposal for Decision (the "Proposed Decision") in the above-styled matter. Respondents Terra-Genesis of San Antonio, Ella Austin Community Center, TG 106 Inc., Sav-Baby Inc., Central Park Lions Club, and District 2-2A Sight & Tissue Foundation Inc. (collectively, the "Charities" or the "Unit") filed a motion for extension to extend the deadlines to file exceptions, and by Order issued on December 20, 2022, Your Honor extended the exceptions period to January 21, 2022.

The Charities respectfully disagree with the findings and conclusions in the Proposed Decision and hereby file their Exceptions to Proposal for Decision.

Summary of the Proposed Decision

The Proposed Decision accepts all the allegations and adopts all the proposals in the Lottery Commission's (hereinafter, "Petitioner") August 2020 Audit Report (the "Audit Report"), which was admitted at the oral hearing as Petitioner's Ex. 4. The Proposed Decision specifically adopted the following substantive findings with which the Charities disagree:

- the Charities failed to deposit \$1,439,768.38 in proceeds from the conduct of bingo during the audit period;¹
- the Charities failed to pay \$30,839.64 in prize fees to the Commission during the audit period;²
- the Charities did not produce a perpetual inventory during the audit;³
- the Charities failed to deposit all funds derived from the conduct of bingo;⁴
- the Charities failed to pay prize fees to the Commission;⁵
- the Charities failed to maintain records that fully and accurately recorded transactions connected with the conducting of bingo or the sale or distribution of bingo supplies or equipment, by failing to maintain records of voided sales of card-minding devices that totaled \$[6]12,74[6];⁶
- the Charities failed to maintain a purchase log of pull-tab bingo tickets;⁷
- the Charities failed to maintain a perpetual inventory of pull-tab bingo tickets;⁸
- the Charities' licenses to conduct bingo are subject to revocation for failure to maintain records that fully and accurately record each transaction connected with the conducting of bingo, the leasing of premises to be used for bingo, or the manufacture, sale, or distribution of bingo supplies or equipment;⁹ and
- the Charities' licenses to conduct bingo should be revoked by the Commission.¹⁰

Exceptions

Petitioner simply has not met its evidentiary burden to support its claims—certainly not against the Charities, and certainly not to such a degree warranting the suspension or revocation of the Charities' licenses to conduct bingo.

The Revocation of the Charities' Licenses to Conduct Bingo is Unwarranted

The Charities disagree with the Proposed Decision on the bases that its findings and conclusions were unsupported by the evidence presented at hearing. But even if the findings were supported by the evidence, the revocation of the Charities' licenses is unwarranted because it is grossly disproportionate to their alleged failures. Indeed, the revocation of the Charities' licenses is not in the same universe as Petitioner's own established guidelines applicable to the alleged offenses, and as such, is both unwarranted and invalid.

Petitioner has enacted administrative rules governing the conduct of charitable bingo, including licensing, compliance, and enforcement. 16 Tex. Admin. Code §402.706, Schedule of

¹ Proposal for Decision at 16, Finding of Fact No. 5.

² *Id.* at 17, Finding of Fact No. 6.

³ *Id.*, Finding of Fact No. 12.

⁴ *Id.*, Conclusion of Law No. 5.

⁵ *Id.* at 18, Conclusion of Law No. 6.

⁶ *Id.* at 19, Conclusion of Law No. 7. Notwithstanding Respondents' disagreement with Conclusion of Law No. 7, please note that the amount should have been listed as \$612,476, not \$12,478.

⁷ *Id.*, Conclusion of Law No. 8.

⁸ *Id.*, Conclusion of Law No. 9.

⁹ *Id.*, Conclusion of Law No. 11.

¹⁰ *Id.*, Conclusion of Law No. 12.

Sanctions, provides guidelines relating to the handling of violations of the Bingo Enabling Act and the Charitable Bingo Administrative Rules. That rule provides, in relevant part:

(a) The purpose of this section is to provide guidance for administering sanctions to licensees and other persons that violate the Bingo Enabling Act and/or the Charitable Bingo Administrative Rules. The Schedule of Sanctions attached to §402.706(c) provides a list of the most common violations and the sanctions generally assessed for those violations, though the Commission may deviate from the schedule if it has a reasonable basis to do so. The objectives for applying sanctions are to protect the public, encourage compliance with the Bingo Enabling Act and the Charitable Bingo Administrative Rules, deter future violations, offer opportunities for rehabilitation as appropriate, punish violators, and deter others from committing violations. This section is intended to promote consistent sanctions for similar violations, facilitate timely resolution of cases and encourage, dsf settlements.

* * *

(f) Additional remedies may be imposed along with or in lieu of sanctions, which may include: a redeposit of funds to the bingo account; a removal of funds from the bingo account; or a disbursement of net proceeds in order to comply with the charitable distribution requirement.

* * *

(i) If a person is charged with a repeat violation within 36 months (3 years) of a previous violation, then the sanction for a repeat violation will be imposed according to the Schedule of Sanctions for repeat violations.

(j) The sanction(s) imposed will be determined by considering the following factors, as applicable:

(1) seriousness of the violation which includes the nature, circumstances, extent and gravity of the prohibited acts;

(2) history of previous violations which includes:

(A) the number of previous violations; and

(B) the number of repeated violations;

(3) the action(s) necessary to deter future violations;

(4) efforts to correct the violation after awareness of the violation through personal knowledge or notification by the commission;

* * *

(l) The Commission may impose lesser sanctions than those listed in the Schedule of Sanctions for a particular violation if mitigating circumstances exist, including mitigating circumstances described in §402.706(j)(5)(A) - (E).

The rule includes a specific schedule of specific violations and sanctions, attached as Exhibit A, that are particularly relevant here. The following violations and sanctions are particularly noteworthy:

No. 3 – A person falsified or made false entries in books and records.

\$0 (Warning) to \$1,000 for the 1st offense;¹¹ and
\$0 (Warning) to \$1,000 and/or license suspension, revocation or denial, or registry removal or denial for the 2nd offense

No. 21 – The organization or unit failed to deposit in the bingo account all funds derived from the conduct of bingo, less the amount awarded as cash prizes.

\$0 (Warning) to \$400 for the 1st offense;
\$0 (Warning) to \$600 for the 2nd offense; and
\$0 (Warning) to \$1,000 and/or license suspension, revocation or denial, or registry removal or denial for the 3rd offense

No. 25 – A person failed to maintain records that fully and truly record all transactions connected with the conduct of bingo...

\$0 (Warning) to \$400 for the 1st offense;
\$0 (Warning) to \$600 for the 2nd offense; and
\$0 (Warning) to \$800 for the 3rd offense

Until this audit and hearing, none of the Charities had faced a charge regarding a violation of the Bingo Enabling Act or Charitable Bingo Administrative Rules. Each Charity therefore faces its first charged offense and, if found in violation, should be sanctioned accordingly.¹² Those sanctions do not include license revocation; revoking the Charities' licenses is inconsistent with Petitioner's own administrative rules. Of course, if the Charities are ultimately found to be in violation of either No. 3 or No. 21 and are subsequently charged with the same violation within

¹¹ The scheduled sanctions provide for a potential license revocation for Violation No. 6 (conducting or allowing a game of chance at a bingo premises during a bingo occasion, except as permitted under Occupations Code §2001.416 and 16 TAC §402.211), **but not for Violation No. 3**. That is, the Commission drafted the rule to give itself the flexibility and power to revoke a person's license for a first offense involving Violation No. 6, which is not applicable here, but not Violation No. 3.

¹² Petitioner may argue that its allegations against the Charities constitute "repeated" offenses since they occurred throughout the audit period. This argument, however, would be wholly unreasonable and inconsistent with 16 Tex. Admin. Code §402.706(i), which explains that a person charged with a repeat violation occurring within three years of a previous violation will face the sanction for a repeat violation. There would be no point making a distinction of being "charged" with a violation if a repeat violation merely involved recurring violations without the due process of being provided with notice and a related finding regarding the charged violation.

three years, then they would rightly face a sanction up to the revocation of their licenses. But that is a future hypothetical occurrence, not the present case.

Petitioner may also argue that the sanctions in 16 Tex. Admin. Code §402.706 are simply guidelines that can be exceeded. However, a combined reading of subsections (f) and (l) dispositively addresses this argument in the Charities' favor. Subsection (f) provides that the Commission may impose remedies in addition to those listed in the schedule of sanctions. (Note: the schedule of sanctions already contemplates and addresses license revocations, and the additional remedies do not relate to the types listed in the sanctions.) Subsection (l) expressly provides that the Commission may impose lesser sanctions than those listed. The clear implication is that the Commission may impose lesser sanctions or additional remedies, but not greater sanctions than those listed in the schedule of sanctions. License revocation is specifically listed (and therefore contemplated) in the schedule of sanctions, but not in the additional remedies. Stated differently, had the Commission's administrative rules contemplated the revocation of a license in a case such as this, it would have expressly done so. (*See*, for example, the explanation in Footnote 11.)

Moreover, the revocation of the Charities' licenses for the alleged offense (effectively, failing to uncover theft against themselves) is entirely inconsistent with the Bingo Enabling Act and recent amendments thereto. The Bingo Enabling Act was established to, among other reasons, allow charitable organizations to earn fundraising income to support their missions of improving the lives of less fortunate individuals. To maximize the ways of accomplishing this, various parts of the Act have been modified and adjusted over the years.

One of the most significant changes has been to allow charities to organize as units in which up to six charities can consolidate all of the requirements needed to operate a successful bingo hall. The Bingo Enabling Act has also been amended to address the complications arising when multiple charities governed by multiple boards of directors try to function in a bingo hall conducting multiple events in a single 24-hour period. To do so effectively and efficiently, the charities comprising a Bingo Unit have been given the authority to assign oversight of the operations to professionals designated by the charities.

The day-to-day operation of bingo by a bingo unit is legally assigned to designated representatives of the charitable organization licensees. In practice, the oversight that can and is actually done by the licensees is typically a peripheral effort. In fact, the Act has been amended to the point that a charitable organization need not have a representative on site during a bingo event. To that end, it appears that Petitioner expects much more than the Act itself requires and holds charities, at least in this case, to a higher standard. But by any reasonable measure, it is outside even those bounds to revoke the Charities' licenses for failing to catch a manager who was—according to Petitioner's theory of the case—actively trying to deceive and steal from them.

The Evidence Does Not Support the Findings in the Proposed Decision

This entire case is rooted in the notion that the Charities are responsible for and should bear the maximum conceivable penalty for the alleged fraud *against them* by Monica Weber, the unit

manager, even if they were unaware of and ultimately the primary victims of such fraud.¹³ Petitioner argues that the revocation of the Charities' licenses is warranted; it believes that the evidence is so overwhelming and compelling that the only appropriate remedy is to kick them out of Bingo. The Proposed Decision adopts this notion without expressed reservation, which is succinctly articulated in the following passage:

Respondents offered no evidence to dispute any of Staff's allegations. Hence, the ALJ need only evaluate Staff's evidence. In this case, the ALJ finds the preponderant evidence establishes that Respondents failed to deposit proceeds, pay prize fees, and failed to maintain records and inventory connected with the conduct of bingo.¹⁴

The Proposed Decision seems to confound matters of evidentiary burden. On one hand, the Proposed Decision incorrectly and dismissively claims that the Charities submitted no evidence contesting proposed audit findings. On the other hand, it hastily accepts Petitioner's most significant and important allegations—that the Unit failed to report and deposit \$1,439,768.38 in receipts—**without Petitioner's having offered any proof or evidence substantiating the amount.**¹⁵ Both positions are flawed. Although the Proposed Decision correctly identifies the evidentiary standard in this matter, it instead effectively applies a *prima facie* standard. Perhaps Petitioner established a *prima facie* case against the Charities, and perhaps it did not. Regardless, that is not the standard, and Petitioner did not ultimately establish its case by a preponderance of the evidence.

Petitioner has not merely claimed (and the Proposed Decision merely ruled) that the Charities underreported bingo revenue during the audit period; it has claimed (and the Proposed Decision has ruled) that the Charities underreported the precise amount of at least \$1,439,768.38 in receipts. What was the offered proof? Petitioner presented an audit report that simply and summarily includes gross receipts amounts that, according to the same report, were “based on Purchased.” It presented nothing else.

To this end, the Charities believe it beneficial to inventory the offered evidence concerning Petitioner's audit estimate and analyze the cumulative weight:

¹³ To be clear, the ultimate victims of the alleged wrongdoings would be the groups and individuals that each charity serves. But among the parties in the current proceeding, the Charities would clearly be the party experiencing more harm (e.g., having \$1.4 million stolen from them) than others (e.g., the State's not receiving \$31,000 in prize fees and/or belief that this decision would serve as precedent and authority to hold bingo units accountable for allegations against them without having to prove those allegations).

¹⁴ See Proposal for Decision at 14.

¹⁵ The unjustness of the Proposed Decision's eagerness to accept Petitioner's unsupported and unexplained allegations is exacerbated by this paradox: Petitioner has asserted that the sheer volume of evidence pointing to massive fraud (against the Charities, no less) necessitates the revocation of the Charities' licenses, yet it did not offer any such evidence at hearing. Then, the Proposed Decision not only accepts Petitioner's unsubstantiated assertions, it does so in the same breath as it rules that the Charities offered no proof. This either seems disingenuous or demonstrates a misunderstanding of the facts and issues.

Testimony – Ms. Bishop was the only witness to provide testimony about Petitioner’s audit of the Unit. Ms. Bishop offered the following testimony, and nothing further, about Petitioner’s estimated calculation of gross sales that serves as the central issue in this hearing:

Kristen Guthrie: “And what was done to ensure that the missing records did not impact the calculation amount in the finding.”

Joy Bishop: “So the other three items in the calculation above [in Petitioner’s Ex. 4 at 94] are purchases, sales, and ending inventory. For inventory that was purchased, we used invoices and credit memos that we received directly from the distributors that were supplying these products to the unit members for reported sales...”

Kristen Guthrie: “And what were the other items in the calculation regarding reported sales?”

Joy Bishop: “So those other items are, like I said, the purchases, the sales and the ending inventory.”

Audit Report – The audit report provides two (and only two) references to basing the estimated gross receipts calculations on purchases: the first line of Table 1 provides that its calculation (i.e., estimate) of “Total Paper Gross Receipts based on Purchases” was \$2,397,000, and the first line of Table 2 provides its estimated amounts of “Total Gross Receipts and Prize Payout based on Purchases.”¹⁶ Moreover, the audit report lists in its appendix the scope of the audit and information and records that were reviewed. These sections also failed to contain a reference to vendor or distributor records.

That is it—the entirety of the evidence Petitioner presented at the hearing to support its calculation that the Unit underreported sales by at least an amount of precisely \$1,439,768.38. The conclusion that the evidence supports Petitioner’s claim and satisfies its burden of proof is simply flawed. Setting aside the reality that the **best evidence** (i.e., the referenced vendor invoices, spreadsheets tabulating the products listed in those invoices, and the calculations based on that data) **was not offered**, no meaningful evidence was offered to substantiate the claimed amount of underreported receipts.

For additional context, the audit report’s appendix provides in part:

Scope

The scope of the review covered the financial records, perpetual inventory records, and supporting documentation from July 1, 2015 (20153) through June 30, 2019 (20192). The review of bingo card/paper and pull-tab was extended to 9/9/2019 to incorporate all necessary information through the date of the physical inventory count by audit staff.

¹⁶ See Petitioner’s hearings exhibit at 000094.

Methodology

The methodologies included collecting information and documentation, conducting interviews with unit and organization staff, observing processes, researching applicable laws and regulations, and analyzing and evaluating the results of testing.

Information collected and reviewed included the following:

- Bingo bank account records including the banks statements and reconciliations, bank signature cards, cancelled checks, deposit slips, and check register.
- Occasion records including: daily cash reports, floor sales by usher, schedule of prizes, cash register tapes, and game schedules.
- Inventory records.
- Sales journal.
- Bingo quarterly reports.

Procedures and tests conducted included the following:

- Interviewed unit/organization staff.
- Reviewed the unit's and organizations' processes.
- Tested and analyzed sales, prizes paid and prize fees.
- Tested and analyzed the accuracy of the quarterly reports.¹⁷

Glaringly absent from the scope and methodology sections of the audit report is any reference to distributor or supplier records or the review thereof. Yet this information is seemingly the underlying basis for Petitioner's claim that the Unit underreported at least \$1,439,768.38 in sales during the period. On the other hand, perhaps distributor records did not serve as the basis for the claimed underreported amount. But then how did Petitioner determine that the Unit underreported sales, much less an actual amount of underreported sales? Notably, the Proposed Decision does not address this issue in any manner.

Indeed, the Proposed Decision does not once mention vendor or distributor records, naturally because Petitioner failed to appropriately address the issue through documentary evidence or testimony. Petitioner certainly did not present sufficient evidence (particularly the best evidence) to substantiate its claims.¹⁸ Ultimately, Petitioner's claims must fail because they are mere assertions, unsupported by the evidence.

¹⁷ *Id.* at 000101.

¹⁸ At most, Petitioner's evidence still does not address the following fundamental questions:

- where did the auditors obtain the purchase records;
- what did those purchase records show;
 - what were the quantities (even if just a cumulative total) of products listed in the purchase records;
 - did they reflect any credits for damaged, defective, or returned products;
 - were they exclusive of any other bingo hall; and
 - did the auditor reconcile the Unit's bank records with these purchase records to determine if they were accepted and paid for by the Unit;
- were the purchase records summaries from the suppliers or actual invoices; and
- how were the purchase records used to calculate estimated sales?

The Proposed Decision Incorrectly Holds That the Unit Offered No Evidence at Hearing

On the other side of the scale, the Proposed Decision holds that the Charities provided no evidence to support their arguments. This claim is simply untrue. The Charities presented evidence that they deposited amounts that corresponded to the amounts reported on their quarterly filings. Those amounts, which were listed on the second lines of Tables 1 and 2 in Petitioner's Exhibit 4, are the amounts that the Charities have claimed to be accurate—absent Petitioner's evidence to the contrary. (Petitioner certainly did not present at hearing such evidence to the contrary.) Moreover, the Charities cannot prove a negative (i.e., that they did not receive additional bingo proceeds), nor are they required to do so.

Of course, the undersigned did not cross examine Ms. Bishop about the calculations in the audit, but there was no reason to do so. Petitioner did not attempt to explain how it calculated the gross receipts estimate that serves as the foundation of its entire case. There is no reason to attack that which is not there, and there was nothing to attack here.¹⁹

To better illustrate their points, the Charities feel that the following passages in the Proposed Decision underscore the confusion about the presentation of evidence:

1. The audit's finding that Respondents failed to deposit \$1,439,768.38 in proceeds from the conduct of bingo and failed to pay \$30,839.64 in prize fees was uncontested. Respondents offered no evidence that it deposited the proceeds or that it paid the prize fees in question.²⁰

[Charities' Response – There should be no confusion that the central issue in this case is whether Respondents underreported sales by \$1,439,768.38. It is equally clear that Respondents did not deposit the alleged underreported amount and did not pay \$30,839.64 in corresponding prize fees. It is therefore bewildering to mention Respondents' failure to produce evidence relating to deposits that would not be due if Petitioner did not prove its case.]

2. The allegation that Respondents failed to maintain receipts of voided sales for card-minding devices for the audit period was also uncontested...Ms. Bishop further testified that \$612,746 was the amount of card-minding device sales that were voided, and that Ms. Weber stated she did not maintain a record of the voided transactions. As such, Respondents failed to maintain records of these voided transactions, a violation of Texas Occupations Code section 2001.554(a)(2).²¹

¹⁹ To be clear, the undersigned could have cross examined Ms. Bishop about her statement that "we used invoices and credit memos that we received directly from the distributors that were supplying these products to the unit members for reported sales" because it seems to inaccurately indicate that each member of the unit, instead of the unit itself, purchases bingo supplies. But ultimately, Ms. Bishop's testimony offered no material explanatory value in substantiating the gross receipts calculation, regardless of the exact intent and meaning of her statement regarding "supplying these products to unit members."

²⁰ Proposal for Decision at p. 14.

²¹ *Id.* at 14 and 15.

[Charities' Response – Respondents did keep records relating to the voided transactions. In fact, Petitioner's calculation of \$612,746 is derived entirely from Respondents' records and no others.]

3. The evidence that Respondents failed to maintain a purchase log and perpetual inventory of pull-tab games was likewise uncontested. The audit revealed that 16 occasion cash reports reflected 62 pull-tab games were sold during the audit period but could not be located on Respondents' purchase log or within Respondents' perpetual inventory of pull-tab games because Respondents could not produce these items.²²

[Charities' Response – The Proposed Decision first states that Respondents did not contest the proposition that it failed to maintain a purchase log and perpetual inventory of pull-tab games. Respondents did not need to address such proposition. It is, in fact, answered in the second quoted sentence, as well as throughout the audit report. That is, the second sentence acknowledges the existence of both Respondents' purchase log and perpetual inventory of pull-tab games. Respondent therefore had no need to prove the existence of two items that are already acknowledged by the Proposed Decision and audit report.²³]

The bottom line is that Petitioner failed to prove its assertion that the Unit underreported their bingo sales by \$1,439,768.38. Petitioner did not have to prove that this amount was stolen from the Unit or even provide a theory regarding where the claimed amount went. Petitioner merely had to present an explanation of how the estimated underreported amount was calculated, as well as documentary evidence sufficiently supporting that precise amount. Yet, Petitioner did not offer a single piece of evidence supporting the asserted audit estimate; it offered only the audit report²⁴ and testimony of *one of four* auditors who produced the report, both of which/whom make assertions without providing the documentary evidence on which those assertions were either derived or based. Accordingly, the amount by which Petitioner asserts that the Unit underreported sales during the Audit Period remains just that: a mere, unproven assertion. In turn, Petitioner's assertion that the Unit's reports contained inaccurate sales proceeds amounts also remains a mere, unproven assertion.

Conclusion

Based on the foregoing, the Charities respectfully request that the Proposed Decision be amended to rule that Petitioner did not prove by a preponderance of the evidence that the Unit underreported receipts from the conduct of bingo. In the alternative, the Charities request that the Proposed Decision be amended to hold that the Charities should be responsible for paying the prize fees associated with the prizes on the alleged amount of underreported receipts, as well as an additional monetary penalty consistent with the schedule of sanctions in 16 Tex. Admin. Code §402.706, but should not have their licenses to conduct bingo revoked.

²² *Id.* at 15.

²³ The audit report also contains multiple statements that Respondents maintained purchase logs and perpetual inventory records, but that they did not contain all information required by Petitioner.

²⁴ See Limited Scope Review Report, Petitioner's Exhibit 4 at Bate Stamps 000092 – 000102.

Respectfully,

Duggins Wren Mann & Romero, LLP
600 Congress Avenue
Suite 1900
Austin, Texas 78701

/s/ Kevin Oldham

Kevin Oldham
Texas State Bar No. 24037208
Drew McEwen
Texas State Bar No. 24032720

ATTORNEYS FOR RESPONDENTS

CERTIFICATE OF SERVICE

Pursuant to 1 Tex. Admin. Code § 155.105, I hereby certify that a true and correct copy of the foregoing Respondents' Written Closing Arguments was provided to Ms. Kristen Guthrie by electronic mail on this 23rd day of January, 2023.

/s/ Drew McEwen
Drew McEwen

TEXAS LOTTERY COMMISSION,

Petitioner,

v.

**TERRA-GENESIS OF SAN ANTONIO,
ELLA AUSTIN COMMUNITY CENTER,
TG 106 INC., SAV-BABY INC.,
CENTRAL PARK LIONS CLUB, AND
DISTRICT 2-A2 SIGHT & TISSUE
FOUNDATION INC.,**

Respondents.

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

(without repeating them), and with that in mind, will briefly address the disarrayed arguments raised in Respondents' Exceptions.

II. The ALJ Correctly Determined That Respondents Committed the Violations Alleged by the Commission.

The ALJ properly found that:

- a. Respondents failed to deposit all funds derived from the conduct of bingo, in violation of Tex. Occ. Code. §2001.435(b).
- b. Respondents failed to pay prize fees to the Commission, in violation of Tex. Occ. Code §2001.504(a).
- c. Respondents failed to maintain records that fully and accurately recorded transactions connected with the conduct of bingo; or the sale or distribution of bingo supplies or equipment, by failing to maintain records of voided sales of card-minding devices that totaled \$12,748, in violation of Tex. Occ. Code §2001.554(a)(2).
- d. Respondents failed to maintain a purchase log of pull-tab bingo tickets, in violation of 16 Tex. Admin. Code §§ 402.300(g)(1), (2).
- e. Respondents failed to maintain a perpetual inventory of pull-tab bingo tickets, in violation of 16 Tex. Admin. Code §402.511(a)(2).
- f. Respondents failed to record on a cash register the transactions for which it receives bingo gross receipts in conformance with Commission rules relating to transaction recording specifications, in violation of Tex. Occ. Code §2001.414(b).

Without offering any specific exceptions, Respondents complain that the Commission failed to meet its evidentiary burden to prove each of its allegations by a preponderance of the evidence. To the contrary, all the evidence in the record supports the allegations that Respondents failed to provide required records and failed to pay prize fees. Through Commission Auditor Joy Bishop's testimony and introduction of the Commission's Limited Scope Review of the Unit (Audit), the evidence showed that Respondents failed to maintain records to account for sales

during the time period of July 1, 2015 to June 30, 2019 (Audit Period) in three specific areas: bingo card/paper, pull-tabs, and voided card-minders.¹

Respondents failed to meet the record keeping requirements of the Act and Rules. Respondents are required to create and maintain accurate sales and inventory records.² When the Commission asked for those records, Respondents could not provide them. Thus, the preponderance of the evidence leads to the conclusion that those records were either never made or not properly maintained. Consequently, the PFD rightly determined the violations were committed by Respondents.

III. The ALJ Correctly Determined That Respondents Offered No Evidence at Hearing to Dispute the Commission's Allegations.

Again, without offering any specific exceptions, Respondents take issue with the ALJ's determination that Respondents offered no evidence at hearing to dispute the Commission's allegations. Yet, the record establishes that Respondents were unable to account for funds in the amount of \$1,439,768.38 from the conduct of bingo during the Audit Period.³ Respondents failed to deposit all funds derived from the conduct of bingo, less the amount awarded as cash prizes, in the Unit's bingo account, in violation of sections 2001.435(b) and 2001.451 of the Act.

Respondents correctly assert that the Commission did not have to prove if the funds were stolen or where the funds went at all.⁴ Nevertheless, the Commission proved that over \$1.4 million was unaccounted for by Respondents.⁵

Respondents further acknowledge that they failed to cross-examine the Commission's Auditor, Ms. Bishop, or otherwise criticize the Audit at hearing when they had the opportunity to

¹ Audio at 2:10; Pet. Ex. 4.

² 16 Tex. Admin. Code §402.500.

³ Audio at 2:10; Pet. Ex. 4.

⁴ Respondents' Exceptions to the Proposal for Decision P. 11.

⁵ Audio at 2:10; Pet. Ex. 4.

do so.⁶ But now, after the record is closed, Respondents through their Exceptions seek to criticize the methodologies of the Audit and offer evidence not admitted at hearing by suggesting the bases of the Audit were flawed.⁷ Respondents attempt to justify their failure to raise these issues at hearing by saying the Commission should have explained the calculations in the Audit. To the contrary, the Audit was evidence admitted at hearing that stood on its own merit because none of the parties disputed the Audit until now. Respondents are unable to point to any evidence admitted at hearing to show any of the source documents of the Audit, including distributor records, were flawed or should not have been considered. Thus, the preponderance of the evidence of record supports the validity and integrity of the Audit.

Given that Respondents provided no evidence to contradict or even mitigate the findings in the Audit, Respondents thereby failed to provide any evidence as to why the missing funds were not deposited in the Unit's bingo account. Respondents provided no evidence or arguments to contradict the Commission's position; they only attempted to muddle the issues by saying Respondents were unable to prove a negative.

Respondents had the opportunity to address the findings of the Audit in this case and completely failed to account for the discrepancies that were identified.⁸ The Commission's Auditor testified that Respondents failed to pay prize fees and Respondents did not provide any evidence to contest the amount owed or to show that they attempted to pay it.⁹ Respondents did not provide any evidence at all to show the findings in the Audit were incorrect or the allegations against Respondents were false. The preponderance of the evidence, therefore, shows that Respondents failed to adhere to the regulatory requirements of their licenses.

⁶ Respondents' Exceptions to the Proposal for Decision P. 10.

⁷ Respondents' Exceptions to the Proposal for Decision P. 10.

⁸ Pet. Ex. 4 at 103-106; Audio at 2:23.

⁹ Pet. Ex. 4 at 95-96.

IV. Revocation of Respondents' Licenses is the Appropriate Penalty.

Once again, without offering any specific exceptions, Respondents protest that even if the allegations were proven, that license revocation is disproportionate to the violations alleged. Respondents continue to object that they should not be punished for failing to properly supervise their employee to prevent her from deceiving and stealing from them.

Ms. Bishop testified that Respondents failed to take any remedial action in this case. Ms. Bishop pointed to examples of other bingo licensees who immediately fired problematic employees and implemented segregation of duties and oversight to ensure violations would not happen again.¹⁰ Here, Respondents have neither removed Bingo Worker Monica Weber from her position of employment, nor have they taken any action to ensure that she, or any other employee, does not continue to misplace funds and violate the laws and rules related to record keeping.¹¹ To the contrary, Respondents have stood by Ms. Weber and seem to have no concern that their standard operating procedures have resulted in years of missing records and the loss of over \$1.4 million in bingo proceeds, which should have gone to their charitable purposes.

Separate and apart from the legal issues in this case, the entire policy underlying the charitable bingo program in Texas is undermined not just by Ms. Weber's actions but by Respondents' failure to take responsibility for their employee's actions to divert a disturbingly large sum of bingo proceeds to some yet unknown purpose other than a charitable one.

The Commission may revoke a bingo conductor's license for a failure to comply with the Act or Rules, and in this case, there are many such failures. The number of records missing and the amount of money missing in this case is extraordinary, and Respondents' years-long failure to

¹⁰ Audio at 2:36.

¹¹ Audio at 2:36.

comply with the law or to take any remedial action indicates they are not sufficiently responsible to hold licenses to conduct bingo. Therefore, their licenses should be revoked.

V. Conclusion

The Proposal for Decision's recommendation for revocation is warranted under Tex. Occ. Code §2001.554(a)(2) because of Respondents' failure to maintain records that fully and accurately record each transaction connected with the conduct of bingo. The preponderance of the evidence supports the Commission's allegations. Respondents provided no evidence or arguments to contradict the Commission's position.

Accordingly, the ALJ should reject Respondents' Exceptions as discussed herein.

Respectfully submitted,

/s/ Kristen Guthrie
KRISTEN GUTHRIE
Assistant General Counsel
Texas Lottery Commission
P.O. Box 16630
Austin, TX 78761
Tel. 512-344-5475
Fax 512-344-5189

CERTIFICATE OF SERVICE

I certify that on March 1, 2023, a true and correct copy of the *Texas Lottery Commission's Reply to Respondents' Exceptions to the Administrative Law Judge's Proposal for Decision* was served on the following individual(s) at the location and in the manner indicated below.

Mr. Kevin Oldham
Duggins Wren Mann & Romero, LLP
600 Congress Ave., Suite 1900
Austin, TX 78701

*via email at koldham@dwmrlaw.com
and jprice@dwmrlaw.com*

Mr. Drew McEwen
Duggins Wren Mann & Romero, LLP
600 Congress Ave., Suite 1900
Austin, TX 78701

via email at dmcewen@dwmrlaw.com

Mr. Leslie Sachanowicz
Les Law Group PLLC
508 Canterbury Hill
San Antonio, TX 78209

via email at les.law@hotmail.com

Mr. Stephen Fenoglio
Attorney and Counselor at Law
P.O. Box 301525
Austin, TX 78703

via email at jsfenoglio@fenogliolaw.com

/s/ Kristen Guthrie
KRISTEN GUTHRIE
Assistant General Counsel

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

March 3, 2023

Kevin Oldham
Les Sachanowicz
Kristen Guthrie

VIA EFILE TEXAS
VIA EFILE TEXAS
VIA EFILE TEXAS

RE: Docket Number 362-21-2276.B; Texas Lottery Commission No. 2021-197; Texas Lottery Commission v. Terra-Genesis of San Antonio

Dear Parties:

The undersigned Administrative Law Judge (ALJ) has reviewed the exceptions to the Proposal for Decision (PFD) and response to exceptions filed in this matter and recommends no changes be made to the PFD. The ALJ's reasoning is outlined in the PFD.

Therefore, the ALJ recommends that the PFD be adopted as written. Because SOAH has concluded its involvement in the matter, the case is being returned to the Texas Lottery Commission. *See* Tex. Gov't Code § 2003.051(a).

ALJ Signature(s):

Exceptions Letter

March 3, 2023

Page 2 of 2

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Steve RIVAS,

Presiding Administrative Law Judge

CC: Service List

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

March 3, 2023

Kevin Oldham
Les Sachanowicz
Kristen Guthrie

VIA EFILE TEXAS
VIA EFILE TEXAS
VIA EFILE TEXAS

RE: Docket Number 362-21-2277.B; Texas Lottery Commission No. 2021-196; Texas Lottery Commission v. Ella Austin Community Center

Dear Parties:

The undersigned Administrative Law Judge (ALJ) has reviewed the exceptions to the Proposal for Decision (PFD) and response to exceptions filed in this matter and recommends no changes be made to the PFD. The ALJ's reasoning is outlined in the PFD.

Therefore, the ALJ recommends that the PFD be adopted as written. Because SOAH has concluded its involvement in the matter, the case is being returned to the Texas Lottery Commission. *See* Tex. Gov't Code § 2003.051(a).

ALJ Signature(s):

Exceptions Letter

March 3, 2023

Page 2 of 2

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Steve RIVAS,

Presiding Administrative Law Judge

CC: Service List

FILED
362-21-2278
3/6/2023 12:08 PM
STATE OFFICE OF
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Crystal Rosas, CLERK

ACCEPTED
362-21-2278
3/6/2023 12:13:28 pm
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State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

March 3, 2023

Kevin Oldham
Les Sachanowicz
Kristen Guthrie

VIA EFILE TEXAS
VIA EFILE TEXAS
VIA EFILE TEXAS

RE: Docket Number 362-21-2278.B; Texas Lottery Commission No. 2021-195; Texas Lottery Commission v. TG106 Inc.

Dear Parties:

The undersigned Administrative Law Judge (ALJ) has reviewed the exceptions to the Proposal for Decision (PFD) and response to exceptions filed in this matter and recommends no changes be made to the PFD. The ALJ's reasoning is outlined in the PFD.

Therefore, the ALJ recommends that the PFD be adopted as written. Because SOAH has concluded its involvement in the matter, the case is being returned to the Texas Lottery Commission. *See* Tex. Gov't Code § 2003.051(a).

ALJ Signature(s):

Exceptions Letter

March 3, 2023

Page 2 of 2

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Steve RIVAS,

Presiding Administrative Law Judge

CC: Service List

ACCEPTED
362-21-2279
3/6/2023 12:12:52 pm
STATE OFFICE OF
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Pegah Nasrollahzadeh, CLERK

State Office of Administrative Hearings

FILED
362-21-2279
3/6/2023 12:10 PM
STATE OFFICE OF
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Kristofer S. Monson
Chief Administrative Law Judge

March 3, 2023

Kevin Oldham
Les Sachanowicz
Kristen Guthrie

VIA EFILE TEXAS
VIA EFILE TEXAS
VIA EFILE TEXAS

RE: Docket Number 362-21-2279.B; Texas Lottery Commission No. 2021-194; Texas Lottery Commission v. Sav-Baby Inc.

Dear Parties:

The undersigned Administrative Law Judge (ALJ) has reviewed the exceptions to the Proposal for Decision (PFD) and response to exceptions filed in this matter and recommends no changes be made to the PFD. The ALJ's reasoning is outlined in the PFD.

Therefore, the ALJ recommends that the PFD be adopted as written. Because SOAH has concluded its involvement in the matter, the case is being returned to the Texas Lottery Commission. *See* Tex. Gov't Code § 2003.051(a).

ALJ Signature(s):

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

Exceptions Letter

March 3, 2023

Page 2 of 2

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Steve RIVAS,

Presiding Administrative Law Judge

CC: Service List

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362-21-2280
3/6/2023 12:13 PM
STATE OFFICE OF
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Crystal Rosas, CLERK

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362-21-2280
3/6/2023 12:14:10 pm
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Kristofer S. Monson
Chief Administrative Law Judge

March 3, 2023

Kevin Oldham
Les Sachanowicz
Kristen Guthrie

VIA EFILE TEXAS
VIA EFILE TEXAS
VIA EFILE TEXAS

RE: Docket Number 362-21-2280.B; Texas Lottery Commission No. 2021-193; Texas Lottery Commission v. Central Park Lions Club

Dear Parties:

The undersigned Administrative Law Judge (ALJ) has reviewed the exceptions to the Proposal for Decision (PFD) and response to exceptions filed in this matter and recommends no changes be made to the PFD. The ALJ's reasoning is outlined in the PFD.

Therefore, the ALJ recommends that the PFD be adopted as written. Because SOAH has concluded its involvement in the matter, the case is being returned to the Texas Lottery Commission. *See* Tex. Gov't Code § 2003.051(a).

ALJ Signature(s):

Exceptions Letter

March 3, 2023

Page 2 of 2

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Steve RIVAS,

Presiding Administrative Law Judge

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FILED
362-21-2281
3/6/2023 12:15 PM
STATE OFFICE OF
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Crystal Rosas, CLERK

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362-21-2281
3/6/2023 12:16:30 pm
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Kristofer S. Monson
Chief Administrative Law Judge

March 3, 2023

Kevin Oldham
Les Sachanowicz
Kristen Guthrie

VIA EFILE TEXAS
VIA EFILE TEXAS
VIA EFILE TEXAS

RE: Docket Number 362-21-2281.B; Texas Lottery Commission No. 2021-192; Texas Lottery Commission v. District 2-A2 Sight & Tissue Foundation Inc.

Dear Parties:

The undersigned Administrative Law Judge (ALJ) has reviewed the exceptions to the Proposal for Decision (PFD) and response to exceptions filed in this matter and recommends no changes be made to the PFD. The ALJ's reasoning is outlined in the PFD.

Therefore, the ALJ recommends that the PFD be adopted as written. Because SOAH has concluded its involvement in the matter, the case is being returned to the Texas Lottery Commission. *See* Tex. Gov't Code § 2003.051(a).

ALJ Signature(s):

Exceptions Letter

March 3, 2023

Page 2 of 2

A handwritten signature in black ink that reads "Steve Rivas". The signature is written in a cursive, slightly slanted style. Below the signature is a solid horizontal line.

Steve RIVAS,

Presiding Administrative Law Judge

CC: Service List