



INTEROFFICE MEMO

To: Robert G. Rivera, Chairman
Cindy Fields, Commissioner
Mark A. Franz, Commissioner
Clark E. Smith, Commissioner
Jamey Steen, Commissioner

From: Bob Biard, General Counsel

A handwritten signature in blue ink, appearing to be "RB", with a long horizontal stroke extending to the right.

Date: April 18, 2024

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

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

Date: APRIL 18, 2024

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: APRIL 18, 2024

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. 24-0026

Date: APRIL 18, 2024

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 18TH day of APRIL 2024.

Entered this 18TH day of APRIL 2024.

ROBERT G. RIVERA, CHAIRMAN

CINDY FIELDS, COMMISSIONER

MARK A. FRANZ, COMMISSIONER

CLARK E. SMITH, COMMISSIONER

JAMES H. C. STEEN, COMMISSIONER

Date: **APRIL 18, 2024**

ATTACHMENT A

TAB NO.	SOAH DOCKET NO.	TICKET SALES AGENT NAME	TICKET SALES AGENT ADDRESS	LOTTERY LICENSE NO.
A.	362-24-04840	N.H.L. Group LLC d/b/a Quick Food Mart #2	6464 Savoy Dr., Ste. 670 Houston, TX 77036	144596
B.	362-24-07274	Sultan Grocery LLC d/b/a Sultan Food Mart	8302 Sultan Dr. Houston, TX 77078	189720
C.	362-24-07275	Caseres Waldo Enterprises LLC d/b/a The Country Mart	P.O. Box 334 D'Hanis, TX 78850	191350
D.	362-24-07690	Chang Badin Enterprise Inc. d/b/a Lucky Food Mart	6916 Ashcroft Dr. Houston, TX 77081	192608
E.	362-24-08271	Naeem El Baba Ltd. d/b/a Kwik Panther Food Mart	5682 Meadowbrook Dr. Fort Worth, TX 76112	190754
F.	362-24-08272	Nawras Inc. d/b/a M & W Market	1011 Cutting Horse Dr. Mansfield, TX 76063	191473
G.	362-24-08274	SPL Group Inc. d/b/a Ella Express 132	1323 W. Clay St. Houston, TX 77019	193509

FILED
362-24-04840
1/17/2024 1:14 PM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Brianna Flores, CLERK

ACCEPTED
362-24-04840
1/17/2024 1:21:17 pm
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Brianna Flores, CLERK

SOAH Docket No. 362-24-04840

Suffix: TLC

BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

**TEXAS LOTTERY COMMISSION,
PETITIONER
v.
N.H.L GROUP LLC DBA QUICK FOOD MART #2,
RESPONDENT**

DEFAULT DISMISSAL ORDER

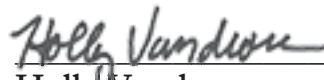
On December 21, 2023, the Administrative Law Judge (ALJ) convened a hearing on the merits in this matter via Zoom videoconference. Attorney Tyler Vance appeared on behalf of the staff (Staff) of the Texas Lottery Commission. N.H.L Group LLC DBA Quick Food Mart #2 (Respondent) did not appear and was not represented at the hearing. Staff Exhibits 1-3 are admitted, and the ALJ notes that Staff Exhibit 3 set the hearing by Zoom videoconference and provided instructions for participating in the hearing. Collectively, these exhibits showed proof of adequate notice to Respondent.¹ Upon establishing adequate notice, Staff

¹ 1 Tex. Admin. Code § 155.501(b).

moved for a default dismissal. Staff's motion was **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, or if the ALJ finds that a filed motion should be denied, the contested case will be remanded to the Board for informal disposition on a default basis in accordance with the Administrative Procedure Act.⁴

Signed January 17, 2024



Holly Vandrovec
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, .058(d-1).

FILED
362-24-07274
1/25/2024 3:00 PM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Brianna Flores, CLERK

ACCEPTED
362-24-07274
1/25/2024 3:05:28 pm
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Brianna Flores, CLERK

SOAH Docket No. 362-24-07274

**BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**TEXAS LOTTERY COMMISSION,
PETITIONER
V.
SULTAN GROCERY LLC D/B/A SULTAN FOOD MART,
RESPONDENT**

DEFAULT DISMISSAL ORDER

On January 25, 2024, the Administrative Law Judge (ALJ) convened a hearing on the merits in this matter via Zoom videoconference. Attorney Kyle Wolfe appeared on behalf of the staff (Staff) of the Texas Lottery Commission. Sultan Grocery LLC d/b/a Sultan Food Mart (Respondent) did not appear and was not represented at the hearing. Staff Exhibits 1, 2, and 3 were admitted. Collectively, these exhibits showed proof of adequate notice to Respondent.¹ Upon establishing adequate notice, Staff moved for a default dismissal. Staff's motion was

¹ 1 Tex. Admin. Code § 155.501(b).

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, or if the ALJ finds that a filed motion should be denied, the contested case will be remanded to the Board for informal disposition on a default basis in accordance with the Administrative Procedure Act.⁴

Signed JANUARY 25, 2024

ALJ Signature:



Dee Marlo Chico

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, .058(d-1).

FILED
362-24-07275
1/25/2024 2:58 PM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Julian Jaramillo, CLERK

ACCEPTED
362-24-07275
1/25/2024 3:04:30 pm
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Julian Jaramillo, CLERK

SOAH Docket No. 362-24-07275

**BEFORE THE
STATE OFFICE OF ADMINISTRATIVE
HEARINGS**

**TEXAS LOTTERY COMMISSION,
PETITIONER
V.
CASERES WALDO ENTERPRISES LLC
D/B/A THE COUNTRY MART,
RESPONDENT**

DEFAULT DISMISSAL ORDER

On January 25, 2024, the Administrative Law Judge (ALJ) convened a hearing on the merits in this matter via Zoom videoconference. Attorney Kyle Wolfe appeared on behalf of the staff (Staff) of the Texas Lottery Commission. Caseres Waldo Enterprises LLC d/b/a The Country Mart (Respondent) did not appear and was not represented at the hearing. Staff Exhibits 1, 2, and 3 were admitted. Collectively, these exhibits showed proof of adequate notice to Respondent.¹ Upon establishing adequate notice, Staff moved for a default dismissal. Staff's motion was

¹ 1 Tex. Admin. Code § 155.501(b).

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, or if the ALJ finds that a filed motion should be denied, the contested case will be remanded to the Board for informal disposition on a default basis in accordance with the Administrative Procedure Act.⁴

Signed JANUARY 25, 2024

ALJ Signature:



Dee Marlo Chico

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, .058(d-1).

SOAH Docket No. 362-24-07690

Suffix: TLC

BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

TEXAS LOTTERY COMMISSION,
PETITIONER
v.
CHANG BADIN ENTERPRISES INC DBA LUCKY FOOD
MART,
RESPONDENT

DEFAULT DISMISSAL ORDER

On February 1, 2024, the Administrative Law Judge (ALJ) convened a hearing on the merits in this matter via Zoom videoconference. Attorney Tyler Vance appeared on behalf of the staff (Staff) of the Texas Lottery Commission. Chang Badin Enterprises Inc. d/b/a Lucky Food Mart (Respondent) did not appear and was not represented at the hearing. Staff Exhibits 1-3 were admitted, and the ALJ took official notice of SOAH's file in this case, including specifically the January 9, 2024 Notice of Hearing which set the hearing by Zoom videoconference and provided instructions for participating in the hearing. Collectively, these

exhibits and orders showed proof of adequate notice to Respondent.¹ Upon establishing adequate notice, Staff moved for a default dismissal. Staff's motion was **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, or if the ALJ finds that a filed motion should be denied, the contested case will be remanded to the Board for informal disposition on a default basis in accordance with the Administrative Procedure Act.⁴

Signed FEBRUARY 1, 2024



AMY DAVIS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

¹ 1 Tex. Admin. Code § 155.501(b).

² 1 Tex. Admin. Code § 155.501(d)(1).

³ 1 Tex. Admin. Code § 155.501(e).

⁴ Tex. Gov't Code §§ 2001.056, .058(d-1).

ACCEPTED
362-24-08271
2/15/2024 2:51:18 pm
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Kevin Garza, CLERK

FILED
362-24-08271
2/15/2024 2:39 PM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Kevin Garza, CLERK

SOAH Docket No. 362-24-08271

Suffix: TLC

BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

**TEXAS LOTTERY COMMISSION,
PETITIONER
v.
NAEEM BABA LTD D/B/A KWIK PANTHER FOOD MART,
RESPONDENT**

DEFAULT DISMISSAL ORDER

On February 15, 2024, the Administrative Law Judge (ALJ) convened a hearing on the merits in this matter via Zoom videoconference. Attorney Tyler Vance appeared on behalf of the staff (Staff) of the Texas Lottery Commission (Commission). Naeem Baba Ltd d/b/a KWIK Panther Food Mart (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 detailed in the Notice of Hearing and the

¹ 1 Tex. Admin. Code § 155.501(b).

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 FEBRUARY 15, 2024.

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.

ACCEPTED
362-24-08272
2/15/2024 2:39:20 pm
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Kevin Garza, CLERK

FILED
362-24-08272
2/15/2024 2:34 PM
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Kevin Garza, CLERK

SOAH Docket No. 362-24-08272

Suffix: TLC

BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

**TEXAS LOTTERY COMMISSION,
PETITIONER
V.
NAWRAS INC D/B/A M & W MARKET,
RESPONDENT**

DEFAULT DISMISSAL ORDER

On February 15, 2024, the Administrative Law Judge (ALJ) convened a hearing on the merits in this matter via Zoom videoconference. Attorney Tyler Vance appeared on behalf of the staff (Staff) of the Texas Lottery Commission (Commission). Nawras Inc d/b/a M & W Market (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 detailed in the Notice of Hearing and the documents

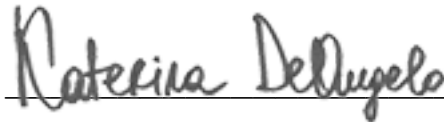
¹ 1 Tex. Admin. Code § 155.501(b).

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 FEBRUARY 15, 2024.

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.

SOAH Docket No. 362-24-08274

Suffix: TLC

BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS

TEXAS LOTTERY COMMISSION,
PETITIONER

V.

SPL GROUP INC D/B/A ELLA EXPRESS 132,
RESPONDENT

DEFAULT DISMISSAL ORDER

On February 15, 2024, the Administrative Law Judge (ALJ) convened a hearing on the merits in this matter via Zoom videoconference. Attorney Tyler Vance appeared on behalf of the staff (Staff) of the Texas Lottery Commission (Commission). SPL Group Inc d/b/a Ella Express 132 (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 detailed in the Notice of Hearing and the documents

¹ 1 Tex. Admin. Code § 155.501(b).

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 FEBRUARY 15, 2024.

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.

Commission Order No. 24-0027

Date: April 18, 2024

SOAH Docket No. 362-24-04785

IN THE MATTER OF	§	BEFORE THE TEXAS
	§	
EASTLINE ENTERPRISES INC.	§	
D/B/A SUNMART 422	§	
	§	
TEXAS LOTTERY TICKET SALES	§	
AGENT LICENSE NO. 178720	§	LOTTERY COMMISSION

MEMORANDUM OF AGREEMENT AND CONSENT ORDER

The Texas Lottery Commission (Commission) and Eastline Enterprises Inc. d/b/a Sunmart 422 (Sunmart) 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. Sunmart holds Texas Lottery Ticket Sales Agent License No. 178720.
2. Mubashir Khan is the president of Sunmart, which is located at 5709 Lyons Ave., Houston, TX 77020.
3. On August 8, 2022, the Commission received a Texas Lottery winner claim form and four Texas Lottery scratch tickets from Iqbal Esmail, a Sunmart employee. Mr. Esmail indicated on the form that he paid a customer \$200 for the tickets. The Commission initiated an investigation into this claim.
4. On November 4, 2022, Mr. Esmail admitted to a Commission investigator that he purchased the tickets from a store customer for \$200.
5. On November 14, 2022, Mr. Esmail purchased a Texas Lottery scratch ticket with a \$1,000 prize value from a Commission investigator for \$100.

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

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

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

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

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

A person commits an offense if the person:

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

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

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

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

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

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

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

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

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

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

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

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

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

necessary to fulfill the Commission's express duty to exercise strict control and close supervision over the lottery.

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

MEMORANDUM OF AGREEMENT

1. By signing this Memorandum of Agreement, Sunmart 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. Sunmart agrees that, as a result of its violation of Tex. Gov't Code §§ 466.310(a) and 466.402(b) and 16 Tex. Admin. Code §§ 401.158(b)(33), 401.360, and 401.366, its Ticket Sales Agent License will be suspended for a period of thirty (30) consecutive days. The suspension period will begin within seven (7) days from the date the Order is signed by the Commission. During the period of suspension, Sunmart 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, Sunmart 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 Sunmart's Ticket Sales Agent License is posted.

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

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

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

Eastline Enterprises Inc.
d/b/a Sunmart 422

Texas Lottery Commission
Lottery Operations Division

By: 

By: 

Mubashir Khan
President

1-24-24

DATE

1/29/2024

Robert Tirloni
Director

DATE

Commission Order No. 24-0027

Date: April 18, 2024

SOAH Docket No. 362-24-04785

IN THE MATTER OF	§	BEFORE THE TEXAS
	§	
EASTLINE ENTERPRISES INC.	§	
D/B/A SUNMART 422	§	
	§	
TEXAS LOTTERY TICKET SALES	§	
AGENT LICENSE NO. 178720	§	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 Eastline Enterprises Inc. d/b/a Sunmart 422 (Sunmart), 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 (Order) is signed by the Commission. During the period of suspension, Sunmart 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, Sunmart 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 Sunmart's Texas Lottery Ticket Sales Agent License is posted.

Commission Order No. 24-0027

Date: April 18, 2024

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

(4) IT IS FURTHER ORDERED by the Commission that Sunmart 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 Sunmart will be charged for the tickets sold on or before that date. Sunmart 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. 24-0027

Date: April 18, 2024

Passed and approved at the regular meeting of the Texas Lottery Commission in Austin, Texas, on the 18TH day of APRIL, 2024.

Entered this 18TH day of APRIL, 2024.

ROBERT G. RIVERA, CHAIRMAN

CINDY FIELDS, COMMISSIONER

MARK A. FRANZ, COMMISSIONER

CLARK E. SMITH, COMMISSIONER

JAMES H. C. STEEN, COMMISSIONER

Commission Order No. 24-0028

Date: April 18, 2024

Case No. 2024-32

IN THE MATTER OF	§	BEFORE THE TEXAS
	§	
NIRAJ SHRESTHA	§	
D/B/A EZZY MART	§	
	§	
TEXAS LOTTERY TICKET SALES	§	
AGENT LICENSE NO. 193321	§	LOTTERY COMMISSION

MEMORANDUM OF AGREEMENT AND CONSENT ORDER

The Texas Lottery Commission (Commission) and Niraj Shrestha d/b/a Ezzy Mart (Ezzy Mart) make the following Agreed Findings of Fact, Agreed Conclusions of Law, and Memorandum of Agreement, and enter into this Consent Order.

AGREED FINDINGS OF FACT

1. Ezzy Mart holds Texas Lottery Ticket Sales Agent License No. 193321.
2. Niraj Shrestha is the owner of Ezzy Mart, which is located at 815 50th St., Lubbock, TX 79404.
3. On April 18, 2023, the Commission received a complaint that Ezzy Mart charges a fee to purchase lottery tickets. The Commission initiated an investigation into this complaint.
4. On April 24, 2023, Mr. Shrestha admitted to a Commission investigator that he charges a fee for debit card purchases of lottery tickets.

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

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

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

...

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

4. Tex. Gov't Code §466.302(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.

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

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

...

(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.

6. 16 Tex. Admin. Code §401.366 states:

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

7. The Texas Lottery Ticket Sales Agent License of Ezzy Mart is subject to suspension or revocation pursuant to Tex. Gov't Code §466.155(a)(5), as a result of Ezzy Mart's violation of Tex. Gov't Code §466.302(a) and 16 Tex. Admin. Code §§ 401.158(b)(22) and (23) and 401.366.

MEMORANDUM OF AGREEMENT

1. By signing this Memorandum of Agreement, Ezzy Mart 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. Ezzy Mart agrees that, as a result of its violation of Tex. Gov't Code §466.302(a) and 16 Tex. Admin. Code §§ 401.158(b)(22) and (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, Ezzy Mart agrees that it will not sell Texas Lottery tickets of any kind, will not validate Texas Lottery tickets, and will not pay lottery prizes to customers.

4. During the entire period of suspension hereunder, Ezzy Mart is required to post a notice of suspension in the form and at the location prescribed by the Commission, visible to store customers, in the same area where Ezzy Mart's Ticket Sales Agent License is posted.

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

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

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

8. Ezzy Mart agrees to provide all active and settled tickets to the Commission or to an IGT representative on or before the date the suspension begins. It further agrees that these active tickets will settle on the date the suspension begins, and Ezzy Mart will be charged for tickets sold on or before that date. Ezzy Mart will be credited for any tickets that have been paid for in previous sweeps and that are returned to and received by the Commission on or before the date the suspension begins.

AGREED AS TO FORM AND SUBSTANCE:

Niraj Shrestha
d/b/a Ezzy Mart

By:

Niraj Shrestha
Owner

01/24/24

DATE

Texas Lottery Commission
Lottery Operations Division

By:

Robert Tirloni
Director

1/29/2024

DATE

Commission Order No. 24-0028

Date: April 18, 2024

Case No. 2024-32

IN THE MATTER OF	§	BEFORE THE TEXAS
	§	
NIRAJ SHRESTHA	§	
D/B/A EZZY MART	§	
	§	
TEXAS LOTTERY TICKET SALES	§	
AGENT LICENSE NO. 193321	§	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 Niraj Shrestha d/b/a Ezzy Mart (Ezzy Mart), the license is suspended for a period of ten (10) consecutive days. The suspension period will begin within seven (7) days from the date this Consent Order (Order) is signed by the Commission. During the period of suspension, Ezzy Mart shall not sell Texas Lottery tickets of any kind, shall not validate Texas Lottery tickets, and shall not pay lottery prizes to customers.

(2) IT IS FURTHER ORDERED by the Commission that, during the entire period of suspension, Ezzy Mart shall post a notice of suspension, in the form and at the location prescribed by the Commission, visible to store customers, in the same area where Ezzy Mart's Texas Lottery Ticket Sales Agent License is posted.

Commission Order No. 24-0028

Date: April 18, 2024

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

(4) IT IS FURTHER ORDERED by the Commission that Ezzy Mart shall provide all active and settled tickets to the Commission or to an IGT representative on or before the date the suspension begins, that these active tickets will settle on that date, and Ezzy Mart will be charged for the tickets sold on or before that date. Ezzy Mart will be credited for any tickets that have been paid for in previous sweeps and that are returned to and received by the Commission on or before the date the suspension begins.

Commission Order No. 24-0028

Date: April 18, 2024

Passed and approved at the regular meeting of the Texas Lottery Commission in Austin, Texas, on the 18TH day of APRIL, 2024.

Entered this 18TH day of APRIL, 2024.

ROBERT G. RIVERA, CHAIRMAN

CINDY FIELDS, COMMISSIONER

MARK A. FRANZ, COMMISSIONER

CLARK E. SMITH, COMMISSIONER

JAMES H. C. STEEN, COMMISSIONER

Commission Order No. 24-0029

Date: April 18, 2024

Case No. 2024-33

IN THE MATTER OF	§	BEFORE THE TEXAS
	§	
NIRAJ SHRESTHA	§	
D/B/A BREWSKI STOP	§	
	§	
TEXAS LOTTERY TICKET SALES	§	
AGENT LICENSE NO. 192664	§	LOTTERY COMMISSION

MEMORANDUM OF AGREEMENT AND CONSENT ORDER

The Texas Lottery Commission (Commission) and Niraj Shrestha d/b/a Brewski Stop (Brewski Stop) 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. Brewski Stop holds Texas Lottery Ticket Sales Agent License No. 192664.
2. Niraj Shrestha is the owner of Brewski Stop, which is located at 4302 Ave. Q, Lubbock, TX 79412.
3. On April 19, 2023, the Commission received a complaint that Brewski Stop charged a customer a fee to purchase lottery tickets. The Commission initiated an investigation into this complaint.
4. On April 24, 2023, Mr. Shrestha admitted to a Commission investigator that he charges a fee for debit card purchases of lottery tickets.

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

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

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

...

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

4. Tex. Gov't Code §466.302(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.

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

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

...

(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.

6. 16 Tex. Admin. Code §401.366 states:

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

7. The Texas Lottery Ticket Sales Agent License of Brewski Stop is subject to suspension or revocation pursuant to Tex. Gov't Code §466.155(a)(5), as a result of Brewski Stop's violation of Tex. Gov't Code §466.302(a) and 16 Tex. Admin. Code §§ 401.158(b)(22) and (23) and 401.366.

MEMORANDUM OF AGREEMENT

1. By signing this Memorandum of Agreement, Brewski Stop 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. Brewski Stop agrees that, as a result of its violation of Tex. Gov't Code §466.302(a) and 16 Tex. Admin. Code §§ 401.158(b)(22) and (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, Brewski Stop 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, Brewski Stop 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 Brewski Stop's Ticket Sales Agent License is posted.

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

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

8. Brewski Stop 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 Brewski Stop will be charged for tickets sold on or before that date. Brewski Stop 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:

Niraj Shrestha
d/b/a Brewski Stop

By:

Niraj Shrestha
Owner

01/24/24

DATE

Texas Lottery Commission
Lottery Operations Division

By:

Robert Tirloni
Director

DATE

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

8. Brewski Stop 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 Brewski Stop will be charged for tickets sold on or before that date. Brewski Stop 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:

Niraj Shrestha
d/b/a Brewski Stop

Texas Lottery Commission
Lottery Operations Division

By:

By:



1/29/2024

Niraj Shrestha
Owner

DATE

Robert Tirloni
Director

DATE

Commission Order No. 24-0029

Date: April 18, 2024

Case No. 2024-33

IN THE MATTER OF	§	BEFORE THE TEXAS
	§	
NIRAJ SHRESTHA	§	
D/B/A BREWSKI STOP	§	
	§	
TEXAS LOTTERY TICKET SALES	§	
AGENT LICENSE NO. 192664	§	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 Niraj Shrestha d/b/a Brewski Stop (Brewski Stop), 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, Brewski Stop 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, Brewski Stop 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 Brewski Stop's Texas Lottery Ticket Sales Agent License is posted.

Commission Order No. 24-0029

Date: April 18, 2024

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

(4) IT IS FURTHER ORDERED by the Commission that Brewski Stop 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 Brewski Stop will be charged for the tickets sold on or before that date. Brewski Stop 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. 24-0029

Date: April 18, 2024

Passed and approved at the regular meeting of the Texas Lottery Commission in Austin, Texas, on the 18TH day of APRIL, 2024.

Entered this 18TH day of APRIL, 2024.

ROBERT G. RIVERA, CHAIRMAN

CINDY FIELDS, COMMISSIONER

MARK A. FRANZ, COMMISSIONER

CLARK E. SMITH, COMMISSIONER

JAMES H. C. STEEN, COMMISSIONER

Commission Order No. 24-0030

Date: April 18, 2024

Case No. 2024-54

IN THE MATTER OF	§	BEFORE THE TEXAS
	§	
QT SOUTH LLC	§	
D/B/A QUIKTRIP #4018	§	
	§	
TEXAS LOTTERY TICKET SALES	§	
AGENT LICENSE NO. 605342	§	LOTTERY COMMISSION

MEMORANDUM OF AGREEMENT AND CONSENT ORDER

The Texas Lottery Commission (Commission) and QT South LLC d/b/a QuikTrip #4018 (QuikTrip) 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. QuikTrip holds Texas Lottery Ticket Sales Agent License No. 605342.
2. Robert Purnell III is a Vice President of QT South LLC and a member of the management team operating QuikTrip #4018 located at 11902 Blanco Rd., San Antonio, TX 78216.
3. On June 13, 2022, at the Austin Claim Center, Logan Pawelek, a QuikTrip employee, presented for payment a Texas Lottery scratch ticket that had been purchased from a store customer. The ticket had a prize value of \$50 and had been reported as stolen. Based on an internal review, the Commission initiated an investigation into this claim.
4. On October 27, 2022, Mr. Pawelek admitted to a Commission investigator that he purchased the ticket from a store customer.
5. QuikTrip asserts it maintained policies and procedures prohibiting the conduct Mr. Pawelek admitted committing.

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

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

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

...

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

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

A person commits an offense if the person:

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

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

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

5. 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:

...

(9) licensee fails to follow validation procedures, including, but not limited to, paying a claim without validating the ticket, failing to pay a valid prize after validating a customer's winning ticket, or retaining a customer's winning ticket that has not been validated.

...

(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.

6. 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.

7. 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.

8. 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).

9. 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.).

10. 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 close supervision over the lottery.

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

MEMORANDUM OF AGREEMENT

1. By signing this Memorandum of Agreement, QuikTrip 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. QuikTrip agrees that, as a result of its violation of Tex. Gov't Code §466.310(a) and 16 Tex. Admin. Code §§ 401.158(b)(9), (33), 401.360, and 401.366, its Ticket Sales Agent License will be suspended for a period of thirty (30) consecutive days. The suspension period will begin within seven (7) days from the date the Order is signed by the Commission. During the period of suspension, QuikTrip 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, QuikTrip 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 QuikTrip's Ticket Sales Agent License is posted.

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

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

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

QT South LLC
d/b/a QuikTrip #4018

Texas Lottery Commission
Lottery Operations Division


By:

By:


Robert Purnell III
Vice President

1/29/24

DATE


Robert Tirloni
Director

1/30/2024

DATE

Commission Order No. 24-0030

Date: April 18, 2024

Case No. 2024-54

IN THE MATTER OF	§	BEFORE THE TEXAS
	§	
QT SOUTH LLC	§	
D/B/A QUIKTRIP #4018	§	
	§	
TEXAS LOTTERY TICKET SALES	§	
AGENT LICENSE NO. 605342	§	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 QT South LLC d/b/a QuikTrip #4018 (QuikTrip), 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 (Order) is signed by the Commission. During the period of suspension, QuikTrip 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, QuikTrip 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 QuikTrip's Texas Lottery Ticket Sales Agent License is posted.

Commission Order No. 24-0030

Date: April 18, 2024

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

(4) IT IS FURTHER ORDERED by the Commission that QuikTrip 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 QuikTrip will be charged for the tickets sold on or before that date. QuikTrip 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. 24-0030

Date: April 18, 2024

Passed and approved at the regular meeting of the Texas Lottery Commission in Austin,
Texas, on the 18TH day of APRIL, 2024.

Entered this 18TH day of APRIL, 2024.

ROBERT G. RIVERA, CHAIRMAN

CINDY FIELDS, COMMISSIONER

MARK A. FRANZ, COMMISSIONER

CLARK E. SMITH, COMMISSIONER

JAMES H. C. STEEN, COMMISSIONER

Commission Order No. 24-0031

Date: April 18, 2024

Case No. 2024-55

IN THE MATTER OF	§	BEFORE THE TEXAS
	§	
TUFAIL M MALIK	§	
D/B/A CORNER STOP	§	
	§	
TEXAS LOTTERY TICKET SALES	§	
AGENT LICENSE NO. 122435	§	LOTTERY COMMISSION

MEMORANDUM OF AGREEMENT AND CONSENT ORDER

The Texas Lottery Commission (Commission) and Tufail M Malik d/b/a Corner Stop (Corner Stop) 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. Corner Stop holds Texas Lottery Ticket Sales Agent License No. 122435.
2. Tufail Malik is the owner of Corner Stop, which is located at 1304 St. Louis St., Gonzales, TX 78629.
3. On April 26, 2023, the Commission received a complaint that Corner Stop charged a fee for using a debit card to purchase Texas Lottery tickets. The Commission initiated an investigation into this complaint.
4. On May 11, 2023, a Commission investigator was charged an additional \$.50 by Corner Stop for a debit card purchase of a lottery ticket. Mr. Malik admitted to the Commission investigator that Corner Stop charges a fee for debit card purchases of lottery tickets.

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

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

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

...

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

4. Tex. Gov't Code §466.302(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.

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

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

...

(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.

6. 16 Tex. Admin. Code §401.366 states:

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

7. The Texas Lottery Ticket Sales Agent License of Corner Stop is subject to suspension or revocation pursuant to Tex. Gov't Code §466.155(a)(5), as a result of Corner Stop's violation of Tex. Gov't Code §466.302(a) and 16 Tex. Admin. Code §§ 401.158(b)(22) and (23) and 401.366.

MEMORANDUM OF AGREEMENT

1. By signing this Memorandum of Agreement, Corner Stop 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. Corner Stop agrees that, as a result of its violation of Tex. Gov't Code §466.302(a) and 16 Tex. Admin. Code §§ 401.158(b)(22) and (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, Corner Stop 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, Corner Stop 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 Corner Stop's Ticket Sales Agent License is posted.

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

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

8. Corner Stop 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 Corner Stop will be charged for tickets sold on or before that date. Corner Stop 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:

Tufail M Malik
d/b/a Corner Stop

Texas Lottery Commission
Lottery Operations Division

By:

Tufail Malik

1/20/2024

Tufail Malik
Owner

DATE

By:

Robert Tirloni

1/22/2024

Robert Tirloni
Director

DATE

Commission Order No. 24-0031

Date: April 18, 2024

Case No. 2024-55

IN THE MATTER OF	§	BEFORE THE TEXAS
	§	
TUFAIL M MALIK	§	
D/B/A CORNER STOP	§	
	§	
TEXAS LOTTERY TICKET SALES	§	
AGENT LICENSE NO. 122435	§	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 Tufail M Malik d/b/a Corner Stop (Corner Stop), 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, Corner Stop 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, Corner Stop 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 Corner Stop's Texas Lottery Ticket Sales Agent License is posted.

Commission Order No. 24-0031

Date: April 18, 2024

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

(4) IT IS FURTHER ORDERED by the Commission that Corner Stop 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 Corner Stop will be charged for the tickets sold on or before that date. Corner Stop 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. 24-0031

Date: April 18, 2024

Passed and approved at the regular meeting of the Texas Lottery Commission in Austin,
Texas, on the 18TH day of APRIL, 2024.

Entered this 18TH day of APRIL, 2024.

ROBERT G. RIVERA, CHAIRMAN

CINDY FIELDS, COMMISSIONER

MARK A. FRANZ, COMMISSIONER

CLARK E. SMITH, COMMISSIONER

JAMES H. C. STEEN, COMMISSIONER

Date: APRIL 18, 2024

DOCKET NO. 362-24-01662

TEXAS LOTTERY COMMISSION,	§	BEFORE THE TEXAS
<i>Petitioner,</i>	§	
	§	
v.	§	
	§	
B & M REX LLC	§	
D/B/A MAC'S	§	
RETAILER NO. 193081,	§	
<i>Respondent,</i>	§	LOTTERY COMMISSION

ORDER OF THE COMMISSION

TO: B & M Rex LLC
d/b/a Mac's
100 Damon Allen Way, Apt. 8103
Palestine, TX 75801

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 B & M Rex LLC d/b/a Mac's is hereby revoked.

Commission Order No. 24-0032

Date: APRIL 18, 2024

Passed and approved at the regular meeting of the Texas Lottery Commission in Austin, Texas, on the 18TH day of APRIL, 2024.

Entered this 18TH day of APRIL, 2024.

ROBERT G. RIVERA, CHAIRMAN

CINDY FIELDS, COMMISSIONER

MARK A. FRANZ, COMMISSIONER

CLARK E. SMITH, COMMISSIONER

JAMES H. C. STEEN, COMMISSIONER

State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

February 1, 2024

Kyle Wolfe, Texas Lottery Commission

VIA EFILE TEXAS

Muhammad Chandio
B & M Rex, LLC d/b/a Mac's
100 Damon Alley Way Apt. 8103
Palestine, TX 75801

VIA REGULAR MAIL

**RE: Docket Number 362-24-01662.TLC;
Texas Lottery Commission v. B & M Rex, LLC d/b/a Mac's**

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.
B & M REX LLC d/B/A MAC'S,
RESPONDENT**

PROPOSAL FOR DECISION

The staff of the Texas Lottery Commission (Staff) seeks to revoke a lottery sales agent's license held by B & M Rex, LLC d/b/a Mac's (Respondent) on the grounds that Respondent failed to have sufficient funds available to cover electronic funds transfers to the account of the Texas Lottery Commission (the Commission). The Administrative Law Judge (ALJ) recommends revocation of Respondent's license.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

Notice and jurisdiction were not disputed 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 September 21, 2023. On the same day, SOAH convened a preliminary hearing via Zoom videoconference on the summary suspension of Respondent's lottery sales agent license.¹ Respondent did not appear at the preliminary hearing, and an order was issued upholding the summary suspension of the license pending a final hearing.²

The final hearing was scheduled on November 2, 2023, and both parties appeared on that date. At Respondent's request, the hearing was continued to allow additional time for Respondent to pay the funds owed. On December 14, 2023, SOAH ALJ Sarah Starnes conducted the hearing on the merits. Kyle Wolfe, Assistant General Counsel, represented Staff. Respondent was represented by its owner, Muhammad Chandio. The hearing adjourned and the record closed the same day.

¹ See Tex. Gov't Code § 466.160.

² Order Upholding Summary Suspension (Sept. 22, 2023).

II. APPLICABLE LAW

Pursuant to the State Lottery Act,³ all money a sales agent or retailer receives from the sale of lottery tickets (less amounts retained for prizes and commissions) are held in trust for the benefit of the state.⁴ The Commission has adopted rules that require a lottery 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.⁵ Each lottery retailer or licensee is required to maintain an account balance sufficient to cover monies due to the Commission for lottery ticket sales during each established billing period.⁶ The monies are collected by electronic funds transfers that occur when the retailer's account is "swept" by the Commission.⁷

If a retailer fails to have sufficient funds available to cover an electronic funds transfer to the Commission's account, the retailer's license shall be summarily suspended.⁸ Additionally, if the retailer fails to pay the full amount of money owed to the Commission after a nonsufficient funds transfer, the Commission may suspend or revoke the retailer's license.⁹ The Commission has adopted a standard

³ Tex. Gov't Code ch. 466.

⁴ Tex. Gov't Code § 466.353; 16 Tex. Admin. Code § 401.351.

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

⁶ 16 Tex. Admin. Code § 401.353(b).

⁷ 16 Tex. Admin. Code § 401.353(a).

⁸ 16 Tex. Admin. Code § 401.353(e).

⁹ 16 Tex. Admin. Code § 401.158(b)(41); *see also* Tex. Gov't Code § 466.155(a)(5) (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 under that Act).

penalty chart designating such a violation as a “3rd Tier” violation that is subject to revocation of the license for the first occurrence.¹⁰ However, the penalty chart is not binding if mitigating circumstances are shown.¹¹

Respondent has the burden of proof to show by a preponderance of the evidence why its license should not be suspended or revoked.¹²

III. EVIDENCE AND ARGUMENT

Staff had eight exhibits¹³ admitted and offered the testimony of Joel Garza, a retailer services specialist with the Commission. Mr. Chandio testified for Respondent and did not offer any exhibits.

Mr. Chandio applied for Respondent’s license on December 12, 2022, and provided an electronic funds transfer authorization for the Commission to sweep Respondent’s account to collect funds for lottery tickets sold.¹⁴ For the week ending on September 2, 2023, Respondent owed the Commission \$2,683.07, the amount of lottery sales less credits for ticket validations and commissions.¹⁵ The Commission attempted to sweep that amount from Respondent’s designated account on September 7, 2023, but received a notice of insufficient funds (NSF) from

¹⁰ 16 Tex. Admin. Code § 401.160(h).

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

¹² Tex. Gov’t Code § 466.155(c).

¹³ Staff Exs. 1-8.

¹⁴ Staff Ex. 6.

¹⁵ Staff Ex. 4.

Respondent's bank.¹⁶ When the amount remained unpaid two weeks later, a NSF fee and five percent penalty were added to Respondent's balance, bringing the total owed to \$2,842.22.¹⁷

The Commission summarily suspended Respondent's license and retrieved all its lottery equipment and unsold tickets. After a final accounting and crediting Respondent for the value of the lottery tickets that were returned, Respondent owed the Commission a balance of \$6,660.30.¹⁸ Mr. Garza testified that, as of the date of the hearing, Respondent had made no payments to the Commission towards that balance. According to Mr. Garza, it is important for the Commission to protect the interests of the state lottery and minimize the loss of lottery funds, which are earmarked for education and veterans' groups. That is why revocation of Respondent's license is appropriate.

Mr. Chandio testified that he has held lottery retailer's licenses—for Respondent as well as two prior stores—for approximately four years and has never missed a payment to the Commission before. He expressed surprise that he was not given a chance to work out a payment plan before the Commission acted to suspend Respondent's license and remove its lottery equipment. Mr. Chandio admitted that he was unable to pay the Commission what Respondent owed, either at the time of the NSF sweep or as of the date of the hearing. He testified that he intended to pay the \$6,660.30 owed to the Commission (an amount he did not dispute) and was fine

¹⁶ Staff Exs. 3, 5.

¹⁷ Staff Ex. 4.

¹⁸ Staff Ex. 2.

with revocation of his license if he failed to do so. However, he asked to be allowed to pay over several months. Ultimately, he intends to pay what he owes the Commission, but he needs more time.

IV. ANALYSIS

There is no dispute that Respondent failed to have sufficient funds available to cover an electronic funds transfer to the Commission's account. The failure to pay the full amount of money owed to the Commission after an NSF transfer is a violation of the Commission's rules.¹⁹ As of the date of the hearing, which was over three months after the initial notice of insufficient funds, Respondent had not paid any amount toward the balance owed. The ALJ therefore finds that Respondent violated the Commission's rules. Under the Commission's standard penalty chart, the penalty for this violation is revocation.²⁰ Respondent did not present any mitigating evidence showing that the license should not be revoked.²¹ Accordingly, the ALJ recommends that the Commission revoke Respondent's lottery sales agent's license.

V. FINDINGS OF FACT

1. B & M Rex, LLC d/b/a Mac's (Respondent) is a lottery sales agent licensed by the Texas Lottery Commission (the Commission), holding license number 193081.

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

²⁰ 16 Tex. Admin. Code § 401.160(h).

²¹ See Tex. Gov't Code § 466.155(c); 16 Tex. Admin. Code § 401.160(e)-(g).

2. This case was docketed with the State Office of Administrative Hearings (SOAH) on September 21, 2023. On the same day, SOAH convened a preliminary hearing via Zoom videoconference on the summary suspension of Respondent's lottery sales agent license. Respondent 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 October 6, 2023, the Commission staff (Staff) sent a notice of final hearing to Respondent.
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 an attachment that incorporated by reference the factual matters asserted in the complaint or petition filed with the state agency.
5. At Respondent's request, the hearing was continued to December 14, 2023.
6. On December 14, 2023, SOAH Administrative Law Judge Sarah Starnes convened the hearing on the merits via Zoom videoconference. Staff was represented by attorney Kyle Wolfe. Respondent was represented by its owner and license holder, Muhammad Chandio. After the presentation of evidence and arguments, the hearing was adjourned, and the record closed later that same day after Staff filed its admitted exhibits.
7. On September 7, 2023, Respondent failed to have sufficient funds in the amount of \$2,683.07 available to cover an electronic funds transfer to the Commission's account.
8. The Commission retrieved all its lottery equipment and unsold tickets from Respondent. After a final accounting and crediting Respondent for the value of the lottery tickets that were returned, Respondent owed the Commission a balance of \$6,660.30.
9. As of the date of the hearing, Respondent had not paid any portion of the amount due to the Commission.

VI. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter under Texas Government Code section 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. Respondent had proper and timely notice of the hearing. Tex. Gov't Code §§ 466.155(b), 2001.051-.052; 16 Tex. Admin. Code § 401.205(4).
4. Respondent 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. Respondent's actions were in violation of Texas Government Code section 466.351 and the Commission's rules at 16 Texas Administrative Code sections 401.158(b)(41), 401.351, and 401.353(b).
6. Respondent's license should be revoked. Tex. Gov't Code § 466.155(a)(5); 16 Tex. Admin. Code §§ 401.158(a), (b)(41), .160(h), .352(a).

Signed February 1, 2024.

ALJ Signature:

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

Sarah Starnes

Presiding Administrative Law Judge