

Date: APRIL 6, 2017

2017-651

IN THE MATTER OF THE	§	BEFORE THE TEXAS
	§	
APPLICATION OF	§	
	§	
NANCY DURAN	§	
	§	
TO BE LISTED ON THE REGISTRY	§	
	§	
OF BINGO WORKERS	§	LOTTERY COMMISSION

MEMORANDUM OF AGREEMENT AND CONSENT ORDER

The parties, the Texas Lottery Commission, Charitable Bingo Operations Division (Commission) and Nancy Duran, Bingo Worker Applicant, make the following Agreed Findings of Fact, Agreed Conclusions of Law and Memorandum of Agreement and enter into this Consent Order (Order).

AGREED FINDINGS OF FACT

1. Nancy Duran submitted an application (Application) to be listed on the Registry of Approved Bingo Workers (Registry) on November 28, 2016.

2. The Commission initially denied the Application based on Ms. Duran's criminal history. Specifically:

On January 29, 2013, in the County Court at Law No. Five, Hidalgo County, Texas, in Cause No. CR-13-01325-E, Nancy Duran was found guilty of burglary of a vehicle, specifically, breaking and entering a vehicle with intent to commit theft, and sentenced to three hundred sixty-five (365) days confinement in the Hidalgo County Jail. Imposition of sentence was suspended and Ms. Duran was placed on Community Supervision for a period of two (2) years. The date of the offense was February 8, 2011.

3. Nancy Duran successfully completed her community supervision in the above cited case. Ms. Duran has not been charged with any further criminal activity.

4. Nancy Duran has provided the Commission letters of recommendation, including a letter from the manager of the bingo hall where she intends to work if her Application to be listed on the Registry is approved, and another from an officer of several of the charities that conduct bingo at the bingo hall where she intends to work.

AGREED CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to the Bingo Enabling Act, TEX. OCC. CODE ANN., Chapter 2001; TEX. GOV'T CODE ANN., Chapter 467; and 16 TEX. ADMIN. CODE, Chapter 402.

2. TEX. OCC. CODE ANN. § 2001.0541 provides that the Commission shall adopt rules and guidelines as necessary to comply with Occupations Code Chapter 53 when using criminal history record information under the Bingo Enabling Act to issue or renew a bingo license or to list or renew the listing of an individual in the Registry.

3. TEX. OCC. CODE ANN. § 53.021(a) provides that a licensing authority may suspend or revoke a license, disqualify a person from receiving a license, or deny to a person the opportunity to take a licensing examination on the grounds that the person has been convicted of:

- (1) an offense that directly relates to the duties and responsibilities of the licensed occupation;
- (2) an offense that does not directly relate to the duties and responsibilities of the licensed occupation and that was committed less than five years before the date the person applies for the license;
- (3) an offense listed in Section 3g, Article 42.12, Code of Criminal Procedure; or
- (4) a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure.

4. TEX. OCC. CODE ANN. § 53.022 provides that, in determining whether a criminal conviction directly relates to an occupation, the licensing authority shall consider:

- (1) the nature and seriousness of the crime;
- (2) the relationship of the crime to the purposes for requiring a license to engage in the occupation;

- (3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and
- (4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.

5. TEX. OCC. CODE ANN. § 53.023(a) provides that in determining the fitness to perform the duties and discharge the responsibilities of the licensed occupation of a person who has been convicted of a crime, the licensing authority shall consider, in addition to the factors listed in Section 53.022:

- (1) the extent and nature of the person's past criminal activity;
- (2) the age of the person when the crime was committed;
- (3) the amount of time that has elapsed since the person's last criminal activity;
- (4) the conduct and work activity of the person before and after the criminal activity;
- (5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release; and
- (6) other evidence of the person's fitness, including letters of recommendation from:
 - (A) prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;
 - (B) the sheriff or chief of police in the community where the person resides; and
 - (C) any other person in contact with the convicted person.

6. In accordance with TEX. OCC. CODE ANN. §§ 53.021(a) and 53.022, the Commission has discretionary authority to approve or deny Nancy Duran's Application to be listed on the Registry.

MEMORANDUM OF AGREEMENT

1. By signing this Memorandum of Agreement, Nancy Duran agrees to its terms, acknowledges her understanding of it, and waives her right to all procedural requirements for the entry of the Order, 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 this Order.

2. The effective date of this Order shall be the date it is signed by the Commission.

3. Nancy Duran agrees to not act as a bingo chairperson, manager, operator, bookkeeper, or designated agent for any licensed bingo conductor organization for a period of three (3) years following the effective date of this Order.

4. The Commission agrees to add Nancy Duran to the Registry subject to the agreed restrictions in paragraph 3 above.

5. Nancy Duran agrees that this Memorandum of Agreement and Consent Order, and the Agreed Findings of Fact and Agreed Conclusions of Law contained herein, can be admitted in any future administrative action initiated against her by the Commission.

6. Nancy Duran acknowledges and agrees that if, after a hearing conducted in accordance with TEX. GOV'T CODE ANN. Chapter 2001 on the sole issue of compliance with the Order, it is found that Nancy Duran has failed to comply with the terms of the Order, the Commission may seek any and all available sanctions and remedies, including the removal of Nancy Duran from the Registry and administrative monetary penalties.

AGREED AS TO FORM AND SUBSTANCE:

NANCY DURAN

By: Nancy Duran
Nancy Duran

TEXAS LOTTERY COMMISSION,
CHARITABLE BINGO OPERATIONS
DIVISION

By: Alfonso D. Royal III
Alfonso D. Royal III, Director
Charitable Bingo Operations Division

Date: 3-7-2017

Date: 3-7-17

Date: APRIL 6, 2017

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IN THE MATTER OF THE

APPLICATION OF

NANCY DURAN

TO BE LISTED ON THE REGISTRY

OF BINGO WORKERS

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BEFORE THE TEXAS

LOTTERY COMMISSION

CONSENT ORDER

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

(1) IT IS ORDERED by the Texas Lottery Commission that, in lieu of denying the Application of Nancy Duran to be listed on the Registry of Approved Bingo Workers (Registry), Nancy Duran shall not act as a bingo chairperson, manager, operator, bookkeeper, or designated agent for any licensed bingo conductor for a period of three (3) years following the date this Consent Order is signed by the Commission.

(2) IT IS FURTHER ORDERED by the Texas Lottery Commission that if, after a hearing on the sole issue of compliance with this Consent Order, it is found that Nancy Duran has failed to comply with the terms of the Consent Order, the Commission may seek removal of Nancy Duran from the Registry, together with administrative monetary penalties and any other remedies and sanctions authorized by law.

Commission Order No. 17-0039

Date: APRIL 6, 2017

Passed and approved at the regular meeting of the Commission at Austin, Texas, on the 6TH day of APRIL, 2017.

Entered on this the 6TH day of APRIL, 2017.



J. WINSTON KRAUSE, CHAIRMAN

CARMEN ARRIETA-CANDELARIA, COMMISSIONER

PEGGY A. HZEG, COMMISSIONER

DOUG LOWE, COMMISSIONER

ROBERT RIVERA, COMMISSIONER