



## INTEROFFICE MEMO

*Gary Grief, Executive Director*

*Alfonso D. Royal III, Charitable Bingo Operations Director*

**To:** J. Winston Krause, Chairman  
Carmen Arrieta-Candelaria, Commissioner  
Peggy A. Heeg, Commissioner  
Doug Lowe, Commissioner  
Robert Rivera, Commissioner

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

**Date:** July 11, 2016

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

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

**Commission Order No. 16-0035**

**Date: JULY 11, 2016**

DOCKET NO. 362-16-1202 *et al.*

IN THE MATTER OF	§	BEFORE THE TEXAS
	§	
THE REVOCATION OF CERTAIN	§	
LOTTERY RETAILER LICENSES	§	LOTTERY COMMISSION

ORDER OF THE COMMISSION

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

The Texas Lottery Commission, after review and due consideration of the Proposals for Decision, and exceptions and replies filed, if any, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judges as if fully set out and separately stated herein, except for the following item. The Proposal for Decision in reference to State Line Oil Co. D/B/A State Line Oil Co., Docket Number 362-16-2444, contained a technical error in that the insufficient funds amount in Finding of Fact 6(a) is incorrectly stated as \$6,208.37. The correct amount is \$6,208.63. The insufficient funds amount in Finding of Fact 6(a) is hereby changed to note the correct amount as \$6,208.63. Tex. Gov't Code Ann. § 2001.058(e)(3) authorizes a state agency to change technical errors in a Proposal for Decision's Findings of Fact. All proposed Findings of Fact and Conclusions of Law not specifically adopted herein are hereby denied.

**Commission Order No. 16-0035**

**Date: JULY 11, 2016**

NOW, THEREFORE, IT IS ORDERED that the licenses for the Lottery Retailers listed on Attachment A, which is incorporated into this Order for all purposes, are hereby revoked.

Passed and approved at the regular meeting of the Texas Lottery Commission at Austin, Texas, on the 11<sup>TH</sup> day of JULY, 2016.

Entered this 11<sup>TH</sup> day of JULY, 2016.

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J. WINSTON KRAUSE, CHAIRMAN

---

CARMEN ARRIETA-CANDELARIA,  
COMMISSIONER

---

PEGGY A. HEEG, COMMISSIONER

---

DOUG LOWE, COMMISSIONER

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ROBERT RIVERA, COMMISSIONER

Commission Order No. 16-0035

Date: JULY 11, 2016

**ATTACHMENT A**

<b>Tab NO.</b>	<b>SOAH DOCKET NO.</b>	<b>LOTTERY RETAILER</b>	<b>LOTTERY LICENSE NO.</b>
A.	362-16-1202	Bhatti's Grocery, LLC D/B/A S & A Grocery	177655
B.	362-16-2444	State Line Oil Co. D/B/A State Line Oil Co.	298200
C.	362-16-2443	SSJ Fuel, Inc. D/B/A Handi Stop #102	177018
D.	362-16-2636	Oxnoble, LLC D/B/A Oxnoble Liquor	153115
E.	362-16-2637	Raya Trading Inc. D/B/A Sunmart #194	173479
F.	362-16-2638	D & H Food Mart Inc. D/B/A Bengal Mart	178078
G.	362-16-2639	JB Super Stop Inc. D/B/A Tiger's Den	178370
H.	362-16-2640	Campos Guerrero LLC D/B/A Campos Meat Market	178486
I.	362-16-2641	First Interactive Inc. D/B/A I-35 Texaco	180073
J.	362-16-3265	Keyaan Enterprise Inc. D/B/A La Viva Grocery	178381
K.	362-16-3590	GSA C-Stores Inc. D/B/A Saving Food Store	151465



# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

April 4, 2016

RECEIVED  
2016 APR -4 PM 3:47  
GENERAL SERVICES  
GENERAL COUNSEL

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

VIA E-MAIL

**RE: Docket No. 362-16-1202; Texas Lottery Commission v. Bhatti's Grocery, LLC, Agent, d/b/a S & A Grocery, License No. 177655**

Dear Mr. Grief:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with Texas Administrative Code title 1, § 155.507(c), a SOAH rule found at <[www.soah.state.tx.us](http://www.soah.state.tx.us)>.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary W. Elkins".

Gary W. Elkins  
Administrative Law Judge  
State Office of Administrative Hearings

GWE/Ls

cc: Stephen White, Assistant General Counsel, Texas Lottery Commission, 611 E. 6<sup>th</sup>, Austin Texas 78701 - VIA E-MAIL  
Bhatti's Grocery, LLC, 2498 Calder Street, Beaumont, TX 77702 - VIA REGULAR MAIL

300 W. 15<sup>th</sup> Street, Suite 502, Austin, Texas 78701/P.O. Box 13025, Austin, Texas 78711-3025  
512.475.4993 (Main) 512.475.3445 (Docketing) 512.322.2061 (Fax)  
[www.soah.state.tx.us](http://www.soah.state.tx.us)

2016-223 06

SOAH DOCKET NO. 362-16-1202

TEXAS LOTTERY COMMISSION,  
Petitioner

v.

BHATTI'S GROCERY LLC, AGENT,  
DBA S&A GROCERY,  
Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff (Staff) of the Texas Lottery Commission (Commission) seeks the revocation of the Texas Lottery Sales Agent license of Bhatti's Grocery, LLC, d/b/a S&A Grocery (S&A) based on its conclusion that S&A's license was summarily suspended four times in a 12-month period for insufficient funds or non-transfer of funds, and because S&A still owes the State approximately \$1600 from lottery sales. Based on the evidence, the Administrative Law Judge (ALJ) concludes that Staff proved its allegations and that S&A's license should be revoked.

I. DISCUSSION

A. Evidence

Pursuant to 16 Texas Administrative Code § 401.353(b), each lottery retailer shall maintain an account balance sufficient to cover moneys due the Commission for the established billing period. The moneys are collected by electronic funds transfers that occur when the account is "swept" by the Commission. In the event a retailer fails to maintain a sufficient account balance to cover an electronic sweep for the established billing period, the retailer's license shall be summarily suspended. If a retailer's license is summarily suspended four times in a 12-month period for insufficient funds or non-transfer of funds, the retailer's license shall be revoked.

On four occasions from May 13, 2015, to October 21, 2015, the Commission unsuccessfully swept the bank account dedicated to S&A's lottery sales. S&A's retailer's license was summarily suspended on each occasion. Fred Petri, an Account Manager IV for the Commission, affirmed that neither the applicable statute nor the Commission's rules address any circumstances that would absolve a retailer of responsibility from an unsuccessful account sweep. Nonetheless, he acknowledged, the Commission has adopted the informal practice of not holding the retailer responsible in the event of bank error. The Commission has a form letter that the appropriate bank representative may complete and submit to the Commission in the event an error prevented the Commission's sweep. Despite being given the option of having its bank submit such a letter, Mr. Petri explained, S&A failed to do so.

Fatehali Marchant, S&A's store manager who appeared on S&A's behalf, acknowledged that the retailer's bank account was on hold at times. He insisted, however, that the account had funds in it around the times it was swept. In support of the assertion, he submitted bank statements into evidence that reflected positive account balances around the time of the two sweeps in October 2015. In regard to Commission records that designated the October 2015 sweeps as "Uncollected," Mr. Marchant asked Mr. Petri whether the Commission had any records indicating that S&A's bank account had insufficient funds at the time of the sweeps. He was told that, although the records did not specify that the account contained insufficient funds, there was no legally significant distinction between whether the attempted sweep of S&A's account was unsuccessful because of insufficient funds or another problem.

Staff argued that, ultimately, it is the retailer's obligation to ensure both that it has sufficient funds in its account at the time of an electronic sweep, and that no other circumstances would preclude a successful sweep, such as a hold being placed on the account. Mr. Marchant asserted that, notwithstanding Staff's assertions, S&A should prevail because it had enough money in its account at the time of the sweeps.



**B. Analysis and Conclusion**

S&A's lottery sales agent license should be revoked. Although S&A may have had funds in its account around the time of the two unsuccessful sweeps by the Commission in October 2015, the Commission was unable to access the account. Even though the Commission was able to access the account during sweeps attempted on May 13, 2015, and June 17, 2015, the account did not have sufficient funds to cover the sweep on those dates. In response to Mr. Marchant's repeated inquiry into whether the Commission could show that S&A did not contain sufficient funds in its account during the two attempted October sweeps, Staff pointed out that it does not have access to retailer's account balances when funds are uncollectible. Notwithstanding the reason the Commission is unable to collect funds during a sweep, Staff correctly pointed out that it is not the Commission's responsibility to determine why it is unable to collect funds during an attempted sweep. Instead, it is required to show only that an attempt was unsuccessful. At 16 Texas Administrative Code § 401.352(a), the Commission's rules address the retailer's responsibilities regarding funds collected from lottery sales:

(a) The commission may require a retailer to establish a single separate electronic funds transfer account, where available, for the purpose of receiving monies from ticket sales, making payments to the commission and receiving payments from the commission. Failure to have sufficient funds available to cover an electronic funds transfer to the commission's account shall be cause for suspension, summary suspension and revocation of a retailer's license at each location where such retailer is licensed. Further, if a check or electronic transfer of funds to the commission is dishonored, the commission may take any and all actions authorized by law, including requiring the retailer to pay a service charge and collection and litigation expenses.

Although S&A was given the opportunity to provide a letter from its bank explaining that bank error was the cause of the failed sweeps, it did not do so. Based on this failure, combined with Mr. Marchant's concession that there were times when S&A's account was placed "on-hold," the ALJ concludes that S&A violated § 401.353(b) of the Commission's rules by failing to transfer funds due the Commission during each of the attempted sweeps. Because its retailer's license was summarily suspended for non-transfer of funds four times in a 12-month period, the license should be revoked as provided in § 401.353(e).

## II. FINDINGS OF FACT

1. Bhatti's Grocery, LLC, d/b/a S&A Grocery (S&A) is a lottery sales agent licensed by the Texas Lottery Commission (the Commission). S&A holds license number 177655.
2. On November 19, 2015, the Commission's staff (Staff) issued a notice of hearing informing S&A of the hearing date, the location of the hearing, the allegations it intended to prove, and the law applicable to the allegations. S&A received the notice.
3. The hearing convened and closed before Administrative Law Judge Gary Elkins on February 4, 2016, at the State Office of Administrative Hearings, located in the William P. Clements Building, 300 West 15<sup>th</sup> Street in Austin, Texas.
4. Fatehali Marchant appeared at the hearing on behalf of S&A. Staff appeared and was represented by Stephen White, assistant general counsel.
5. On the following dates, Respondent failed to electronically transfer funds to the Commission and owed the Commission the amounts listed below for the sale of lottery tickets:
  - (a) May 13, 2015, in the amount of \$166.90;
  - (b) June 17, 2015, in the amount of \$514.00;
  - (c) October 15, 2015, in the amount of \$92.87;
  - (d) October 21, 2015, in the amount of \$467.00.
6. Respondent's retailer license was summarily suspended for non-transfer of funds four times within a 12-month period.

## III. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to the Texas Lottery Act (the Act), Texas Government Code § 466.155.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a Proposal for Decision with Findings of Fact and Conclusions of Law, as provided by Texas Government Code chapter 2003.
3. Proper and timely notice of the hearing was effected upon S&A pursuant to Texas Government Code §§ 2001.051-2001.052, § 466.155(b) of the Act, and 16 Texas Administrative Code § 401.205(a)(4).

4. S&A violated 16 Texas Administrative Code § 401.352, which requires a lottery retailer to have sufficient funds on deposit to cover electronic sweeps conducted by the Commission.
5. Pursuant to § 466.155 of the Act and 16 Texas Administrative Code §§ 401.158 and 401.352(a), the Commission has authority to suspend or revoke a lottery sales agent's license for the violations described in the Findings of Fact and Conclusions of Law.
6. Because S&A's retailer license was summarily suspended for non-transfer of funds four times within a 12-month period, the license should be revoked as provided at 16 Texas Administrative Code § 401.158(b)(10).

**SIGNED April 4, 2016.**



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**GARY W. ELKINS**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**



# State Office of Administrative Hearings



RECEIVED  
2016 MAR 23 AM 9:35  
GENERAL COUNSEL

Cathleen Parsley  
Chief Administrative Law Judge

March 23, 2016

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

VIA E-MAIL

**RE: SOAH Docket No. 362-16-2444; *Texas Lottery Commission v. State Line Oil Co., Agent d/b/a State Line Oil Co., Sales Agent License No. 298200***

Dear Mr. Grief:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with Texas Administrative Code title 1, § 155.507(c), a SOAH rule found at <[www.soah.state.tx.us](http://www.soah.state.tx.us)>.

Sincerely,

A handwritten signature in cursive script, appearing to read "Howard S. Seitzman".

Howard S. Seitzman  
Administrative Law Judge

HSS/vg  
Enclosure

cc: Kristen Guthrie, Assistant General Counsel, Texas Lottery Commission, 611 E. 6<sup>th</sup>, Austin Texas 78701 - VIA E-MAIL  
State Line Oil Co., Agent d/b/a State Line Oil Co., P.O. Box 2201, Hobbs, NM 88240-VIA REGULAR MAIL

300 W. 15<sup>th</sup> Street, Suite 502, Austin, Texas 78701/P.O. Box 13025, Austin, Texas 78711-3025  
512.475.4993 (Main) 512.475.3445 (Docketing) 512.322.2061 (Fax)  
[www.soah.state.tx.us](http://www.soah.state.tx.us)

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SOAH DOCKET NO. 362-16-2444

<b>TEXAS LOTTERY COMMISSION</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>LOTTERY OPERATIONS DIVISION,</b>	§	
<b>Petitioner</b>	§	
	§	
<b>V.</b>	§	
	§	<b>OF</b>
<b>STATE LINE OIL CO., AGENT</b>	§	
<b>D/B/A STATE LINE OIL CO.</b>	§	
<b>SALES AGENT LICENSE NO. 298200,</b>	§	
<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

The staff of the Texas Lottery Commission (Staff) seeks the revocation of a lottery sales agent’s license held by State Line Oil Co., Agent d/b/a State Line Oil Co. (Licensee) on the grounds that it 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 the license.

On March 3, 2016, a hearing to consider Staff’s allegations was conducted by ALJ Howard S. Seitzman, at the State Office of Administrative Hearings, William P. Clements Building, 300 W. 15<sup>th</sup> Street, Fourth Floor, Austin, Texas. Staff appeared through Kristen Guthrie, Assistant General Counsel for the Commission. Licensee did not appear and was not represented at the hearing. After Staff established jurisdiction and notice as required by law, the hearing proceeded on a default basis. Therefore, the allegations and applicable law are discussed only in the Findings of Fact and Conclusions of Law below.

**I. FINDINGS OF FACT**

1. State Line Oil Co., Agent d/b/a State Line Oil Co. (Licensee), Hobbs, NM, is a lottery sales agent licensed by the Texas Lottery Commission (the Commission). Licensee holds license number 298200.
2. On February 11, 2016, staff of the Commission sent notice of hearing informing Licensee of the final hearing date, location of the hearing, and the allegations it intended to prove at the hearing; the notice was sent by certified mail, return receipt requested to Licensee’s address as it appears in the Commission’s records.

3. The notice of hearing advised Licensee in 12-point bold face type that failure to appear at the hearing would result in the factual allegations in the notice being admitted as true, and that the relief sought in the notice may be granted by default.
4. The hearing described in Finding of Fact No. 2 was held on March 3, 2016, in the William P. Clements Building, 300 W. 15<sup>th</sup> Street, Fourth Floor, Austin, Texas.
5. Licensee did not appear and was not represented at the hearing.
6. On the following dates Licensee failed to have sufficient funds available to cover an electronic transfer of funds to the Commission's account and owed the Commission the amounts listed below for the sale of lottery tickets:
  - (a) December 23, 2015, in the amount of \$6,208.37; and
  - (b) January 21, 2016, in the amount of \$15,133.44.
7. The amounts described in Finding of Fact No. 6 were for the sale of lottery tickets less Licensee's commissions and credits for the amounts of cash prizes Licensee paid.

## II. CONCLUSIONS OF LAW

1. The Texas Lottery Commission (the Commission) has jurisdiction over this matter pursuant to the Texas Lottery Act (the Act), Tex. Gov't Code Ann. § 466.155.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to Tex. Gov't Code Ann. ch. 2003.
3. Based upon Findings of Fact Nos. 2 and 3, proper and timely notice of the hearing was effected upon Licensee pursuant to the Administrative Procedure Act, Tex. Gov't Code Ann. §§ 2001.051-2001.052, § 466.155(b) of the Act, and 16 Tex. Admin. Code § 401.205(a)(4).
4. Based on Findings of Fact Nos. 3 and 5, and Conclusion of Law No. 3, a default should be entered against Respondent pursuant to 1 Tex. Admin. Code § 155.501.
5. Based on Findings of Fact Nos. 6 and 7, Licensee violated § 466.351 of the Act and 16 Tex. Admin. Code § 401.351, which require the timely deposit of lottery ticket sales proceeds into a bank account to be held in trust for and owed to the Commission.
6. Based on Findings of Fact Nos. 6 and 7, Licensee violated 16 Tex. Admin. Code § 401.352, which requires a licensee to have sufficient funds on deposit to cover electronic transfers of funds to the Commission.
7. Pursuant to the Act and 16 Tex. Admin. Code §§ 401.158 and 401.352, the Commission has authority to suspend or revoke a lottery sales agent's license for the violations described in

the foregoing Conclusions of Law.

8. Based on the foregoing Conclusions of Law, the Commission is warranted in revoking Texas Lottery Sales Agent License Number 298200, issued to State Line Oil Co., Agent d/b/a State Line Oil Co. of Hobbs, NM.

SIGNED March 23, 2016.

  
HOWARD S. SEITZMAN  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS





# State Office of Administrative Hearings

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2016 MAR 23 AM 9:35  
LIFE SERVICES  
GENERAL COUNSEL



Cathleen Parsley  
Chief Administrative Law Judge

March 23, 2016

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

VIA E-MAIL

RE: **SOAH Docket No. 362-16-2443; *Texas Lottery Commission v. SSJ Fuel, Inc., Agent d/b/a Handi Stop #102, Sales Agent License No. 177018***

Dear Mr. Grief:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with Texas Administrative Code title 1, § 155.507(c), a SOAH rule found at <[www.soah.state.tx.us](http://www.soah.state.tx.us)>.

Sincerely,

A handwritten signature in black ink that reads "Howard S. Seitzman".

Howard S. Seitzman  
Administrative Law Judge

HSS/vg  
Enclosure

cc: Kristen Guthrie, Assistant General Counsel, Texas Lottery Commission, 611 E. 6<sup>th</sup>, Austin Texas 78701 - VIA E-MAIL  
SSJ Fuel, Inc., Agent d/b/a Handi Stop #102, 300 E. Villa Maria Road, Bryan, Texas 77801-VIA REGULAR MAIL

300 W. 15<sup>th</sup> Street, Suite 502, Austin, Texas 78701/ P.O. Box 13025, Austin, Texas 78711-3025  
512.475.4993 (Main) 512.475.3445 (Docketing) 512.322.2061 (Fax)  
[www.soah.state.tx.us](http://www.soah.state.tx.us)

2016 - 480 00  
365447

SOAH DOCKET NO. 362-16-2443

TEXAS LOTTERY COMMISSION	§	BEFORE THE STATE OFFICE
LOTTERY OPERATIONS DIVISION,	§	
Petitioner	§	
	§	
V.	§	
	§	OF
SSJ FUEL, INC., AGENT	§	
D/B/A HANDI STOP #102	§	
SALES AGENT LICENSE NO. 177018,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

The staff of the Texas Lottery Commission (Staff) seeks the revocation of a lottery sales agent's license held by SSJ Fuel, Inc., Agent d/b/a Handi Stop #102 (Licensee) on the grounds that it 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 the license.

On March 3, 2016, a hearing to consider Staff's allegations was conducted by ALJ Howard S. Seitzman, at the State Office of Administrative Hearings, William P. Clements Building, 300 W. 15<sup>th</sup> Street, Fourth Floor, Austin, Texas. Staff appeared through Kristen Guthrie, Assistant General Counsel for the Commission. Licensee did not appear and was not represented at the hearing. After Staff established jurisdiction and notice as required by law, the hearing proceeded on a default basis. Therefore, the allegations and applicable law are discussed only in the Findings of Fact and Conclusions of Law below.

**I. FINDINGS OF FACT**

1. SSJ Fuel, Inc., Agent d/b/a Handi Stop #102 (Licensee), Bryan, Texas, is a lottery sales agent licensed by the Texas Lottery Commission (the Commission). Licensee holds license number 177018.
2. On February 11, 2016, staff of the Commission sent notice of hearing informing Licensee of the final hearing date, location of the hearing, and the allegations it intended to prove at the hearing; the notice was sent by certified mail, return receipt requested to Licensee's address as it appears in the Commission's records.

3. The notice of hearing advised Licensee in 12-point bold face type that failure to appear at the hearing would result in the factual allegations in the notice being admitted as true, and that the relief sought in the notice may be granted by default.
4. The hearing described in Finding of Fact No. 2 was held on March 3, 2016, in the William P. Clements Building, 300 W. 15<sup>th</sup> Street, Fourth Floor, Austin, Texas.
5. Licensee did not appear and was not represented at the hearing.
6. On the following dates Licensee failed to have sufficient funds available to cover an electronic transfer of funds to the Commission's account and owed the Commission the amounts listed below for the sale of lottery tickets:
  - (a) December 23, 2015, in the amount of \$2,902.37;
  - (b) December 30, 2015, in the amount of \$4,518.32;
  - (c) January 13, 2016, in the amount of \$7,553.72; and
  - (d) January 21, 2016, in the amount of \$5,421.60.
7. The amounts described in Finding of Fact No. 6 were for the sale of lottery tickets less Licensee's commissions and credits for the amounts of cash prizes Licensee paid.

## II. CONCLUSIONS OF LAW

1. The Texas Lottery Commission (the Commission) has jurisdiction over this matter pursuant to the Texas Lottery Act (the Act), Tex. Gov't Code Ann. § 466.155.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to Tex. Gov't Code Ann. ch. 2003.
3. Based upon Findings of Fact Nos. 2 and 3, proper and timely notice of the hearing was effected upon Licensee pursuant to the Administrative Procedure Act, Tex. Gov't Code Ann. §§ 2001.051-2001.052, § 466.155(b) of the Act, and 16 Tex. Admin. Code § 401.205(a)(4).
4. Based on Findings of Fact Nos. 3 and 5, and Conclusion of Law No. 3, a default should be entered against Respondent pursuant to 1 Tex. Admin. Code § 155.501.
5. Based on Findings of Fact Nos. 6 and 7, Licensee violated § 466.351 of the Act and 16 Tex. Admin. Code § 401.351, which require the timely deposit of lottery ticket sales proceeds into a bank account to be held in trust for and owed to the Commission.
6. Based on Findings of Fact Nos. 6 and 7, Licensee violated 16 Tex. Admin. Code § 401.352, which requires a licensee to have sufficient funds on deposit to cover electronic transfers of funds to the Commission.

7. Pursuant to the Act and 16 Tex. Admin. Code §§ 401.158 and 401.352, the Commission has authority to suspend or revoke a lottery sales agent's license for the violations described in the foregoing Conclusions of Law.
8. Based on the foregoing Conclusions of Law, the Commission is warranted in revoking Texas Lottery Sales Agent License Number 177018, issued to SSJ Fuel, Inc., Agent d/b/a Handi Stop #102 of Bryan, Texas.

**SIGNED March 23, 2016.**

  
HOWARD S. SEITZMAN  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS



# State Office of Administrative Hearings



RECEIVED

2016 MAY -5 PM 2:35

LEGISLATIVE SERVICES  
GENERAL COUNSEL

Lesli G. Ginn  
Chief Administrative Law Judge

May 5, 2016

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

VIA E-MAIL

**RE: Docket No. 362-16-2636; Texas Lottery Commission v. Oxnoble, LLC,  
Agent, d/b/a Oxnoble Liquor, License No. 153115**

Dear Mr. Grief:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with Texas Administrative Code title 1, § 155.507(c), a SOAH rule found at <[www.soah.state.tx.us](http://www.soah.state.tx.us)>.

Sincerely,

A handwritten signature in black ink, appearing to read "H. D. Card".

Henry D. Card  
Administrative Law Judge

HDC/lg

cc: Stephen White, Assistant General Counsel, Texas Lottery Commission, 611 E. 6<sup>th</sup>, Austin Texas 78701 - VIA E-MAIL  
Oxnoble, LLC, Agent, d/b/a Oxnoble Liquor, 3234 Fondren Rd., Houston, TX 77063 - VIA REGULAR MAIL

**SOAH DOCKET NO. 362-16-2636**

**TEXAS LOTTERY COMMISSION  
LOTTERY OPERATIONS DIVISION,  
Petitioner**

**v.**

**OXNOBLE, LLC, AGENT  
D/B/A OXNOBLE LIQUOR  
SALES AGENT LICENSE NO. 153115,  
Respondent**

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**BEFORE THE STATE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**PROPOSAL FOR DECISION**

The staff of the Texas Lottery Commission (Staff) seeks the revocation of a lottery sales agent's license held by Ox noble, LLC, Agent d/b/a Ox noble Liquor (Licensee) on the grounds that it 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 the license.

On March 17, 2016, a hearing to consider Staff's allegations was conducted by ALJ Henry D. Card, at the State Office of Administrative Hearings, William P. Clements Building, 300 W. 15<sup>th</sup> Street, Fourth Floor, Austin, Texas. Staff appeared through Stephen White, Assistant General Counsel for the Commission. Licensee did not appear and was not represented at the hearing. After Staff established jurisdiction and notice as required by law, the hearing proceeded on a default basis. Therefore, the allegations and applicable law are discussed only in the Findings of Fact and Conclusions of Law below.

**I. FINDINGS OF FACT**

1. Ox noble, LLC, Agent d/b/a Ox noble Liquor (Licensee), Houston, Texas, is a lottery sales agent licensed by the Texas Lottery Commission (the Commission). Licensee holds license number 153115.



2. On February 25, 2016, staff of the Commission sent a notice of hearing informing Licensee of the final hearing date, location of the hearing, and the allegations it intended to prove at the hearing; the notice was sent by certified mail, return receipt requested to Licensee's address as it appears in the Commission's records.
3. The notice of hearing advised Licensee in 12-point bold face type that failure to appear at the hearing would result in the factual allegations in the notice being admitted as true, and that the relief sought in the notice may be granted by default.
4. The hearing described in Finding of Fact No. 2 was held on March 17, 2016, in the William P. Clements Building, 300 W. 15<sup>th</sup> Street, Fourth Floor, Austin, Texas.
5. Licensee did not appear and was not represented at the hearing.
6. On the following dates Licensee failed to have sufficient funds available to cover an electronic transfer of funds to the Commission's account and owed the Commission the amounts listed below for the sale of lottery tickets:
  - (a) **October 21, 2015, in the amount of \$1,873.54;**
  - (b) **December 30, 2015, in the amount of \$510.85;**
  - (c) **January 27, 2016, in the amount of \$298.65;**
  - (d) **February 3, 2016, in the amount of \$1,168.89; and**
  - (e) **February 3, 2016, in the amount of \$683.75.**
7. The amounts described in Finding of Fact No. 6 were for the sale of lottery tickets less Licensee's commissions and credits for the amounts of cash prizes Licensee paid.

## II. CONCLUSIONS OF LAW

1. The Texas Lottery Commission (the Commission) has jurisdiction over this matter pursuant to the Texas Lottery Act (the Act), Tex. Gov't Code Ann. § 466.155.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to Tex. Gov't Code Ann. ch. 2003.
3. Based upon Findings of Fact Nos. 2 and 3, proper and timely notice of the hearing was effected upon Licensee pursuant to the Administrative Procedure Act, Tex. Gov't Code Ann. §§ 2001.051-2001.052, § 466.155(b) of the Act, and 16 Tex. Admin. Code § 401.205(a)(4).
4. Based on Findings of Fact Nos. 3 and 5, and Conclusion of Law No. 3, a default should be entered against Respondent pursuant to 1 Tex. Admin. Code § 155.501.

5. Based on Findings of Fact Nos. 6 and 7, Licensee violated § 466.351 of the Act and 16 Tex. Admin. Code § 401.351, which require the timely deposit of lottery ticket sales proceeds into a bank account to be held in trust for and owed to the Commission.
6. Based on Findings of Fact Nos. 6 and 7, Licensee violated 16 Tex. Admin. Code § 401.352, which requires a licensee to have sufficient funds on deposit to cover electronic transfers of funds to the Commission.
7. Pursuant to the Act and 16 Tex. Admin. Code §§ 401.158 and 401.352, the Commission has authority to suspend or revoke a lottery sales agent's license for the violations described in the foregoing Conclusions of Law.
8. Based on the foregoing Conclusions of Law, the Commission is warranted in revoking Texas Lottery Sales Agent License Number 153115, issued to Oxnable, LLC, Agent d/b/a Oxnable Liquor of Houston, Texas.

**SIGNED May 5, 2016.**



**HENRY D. CARD**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**



# State Office of Administrative Hearings



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LEGAL SERVICES  
GENERAL COUNSEL

Lesli G. Ginn  
Chief Administrative Law Judge

May 5, 2016

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

VIA E-MAIL

**RE: Docket No. 362-16-2637; Texas Lottery Commission v. Raya Trading Inc., Agent, d/b/a Sunmart #194, License No. 173479**

Dear Mr. Grief:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with Texas Administrative Code title 1, § 155.507(c), a SOAH rule found at <[www.soah.state.tx.us](http://www.soah.state.tx.us)>.

Sincerely,

A handwritten signature in black ink, appearing to read "H. D. Card".

Henry D. Card  
Administrative Law Judge

HDC/lg

cc: Stephen White, Assistant General Counsel, Texas Lottery Commission, 611 E. 6<sup>th</sup>, Austin Texas 78701 - VIA E-MAIL  
Raya Trading Inc., Agent, d/b/a Sunmart #194, 660 Sawdust Rd., Spring, TX 77380 - VIA REGULAR MAIL

SOAH DOCKET NO. 362-16-2637

TEXAS LOTTERY COMMISSION  
LOTTERY OPERATIONS DIVISION,  
Petitioner

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BEFORE THE STATE OFFICE

v.

RAYA TRADING, INC., AGENT  
D/B/A SUNMART #194  
SALES AGENT LICENSE NO. 173479,  
Respondent

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Lottery Commission (Staff) seeks the revocation of a lottery sales agent’s license held by Raya Trading, Inc., Agent d/b/a Sunmart #194 (Licensee) on the grounds that it 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 the license.

On March 17, 2016, a hearing to consider Staff’s allegations was conducted by ALJ Henry D. Card, at the State Office of Administrative Hearings, William P. Clements Building, 300 W. 15<sup>th</sup> Street, Fourth Floor, Austin, Texas. Staff appeared through Stephen White, Assistant General Counsel for the Commission. Licensee did not appear and was not represented at the hearing. After Staff established jurisdiction and notice as required by law, the hearing proceeded on a default basis. Therefore, the allegations and applicable law are discussed only in the Findings of Fact and Conclusions of Law below.

I. FINDINGS OF FACT

1. Raya Trading, Inc., Agent d/b/a Sunmart #194 (Licensee), Spring, Texas, is a lottery sales agent licensed by the Texas Lottery Commission (the Commission). Licensee holds license number 173479.


2. On February 25, 2016, staff of the Commission sent a notice of hearing informing Licensee of the final hearing date, location of the hearing, and the allegations it intended to prove at the hearing; the notice was sent by certified mail, return receipt requested to Licensee's address as it appears in the Commission's records.
3. The notice of hearing advised Licensee in 12-point bold face type that failure to appear at the hearing would result in the factual allegations in the notice being admitted as true, and that the relief sought in the notice may be granted by default.
4. The hearing described in Finding of Fact No. 2 was held on March 17, 2016, in the William P. Clements Building, 300 W. 15<sup>th</sup> Street, Fourth Floor, Austin, Texas.
5. Licensee did not appear and was not represented at the hearing.
6. On **January 21, 2016**, Licensee failed to have sufficient funds in the amount of **\$5,576.87** available to cover an electronic transfer of funds to the Commission's account and owed the Commission that amount for the sale of lottery tickets.
7. The amounts described in Finding of Fact No. 6 were for the sale of lottery tickets less Licensee's commissions and credits for the amounts of cash prizes Licensee paid.

## II. CONCLUSIONS OF LAW

1. The Texas Lottery Commission (the Commission) has jurisdiction over this matter pursuant to the Texas Lottery Act (the Act), Tex. Gov't Code Ann. § 466.155.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to Tex. Gov't Code Ann. ch. 2003.
3. Based upon Findings of Fact Nos. 2 and 3, proper and timely notice of the hearing was effected upon Licensee pursuant to the Administrative Procedure Act, Tex. Gov't Code Ann. §§ 2001.051-2001.052, § 466.155(b) of the Act, and 16 Tex. Admin. Code § 401.205(a)(4).
4. Based on Findings of Fact Nos. 3 and 5, and Conclusion of Law No. 3, a default should be entered against Respondent pursuant to 1 Tex. Admin. Code § 155.501.
5. Based on Findings of Fact Nos. 6 and 7, Licensee violated § 466.351 of the Act and 16 Tex. Admin. Code § 401.351, which require the timely deposit of lottery ticket sales proceeds into a bank account to be held in trust for and owed to the Commission.
6. Based on Findings of Fact Nos. 6 and 7, Licensee violated 16 Tex. Admin. Code § 401.352, which requires a licensee to have sufficient funds on deposit to cover electronic transfers of funds to the Commission.

7. Pursuant to the Act and 16 Tex. Admin. Code §§ 401.158 and 401.352, the Commission has authority to suspend or revoke a lottery sales agent's license for the violations described in the foregoing Conclusions of Law.
8. Based on the foregoing Conclusions of Law, the Commission is warranted in revoking Texas Lottery Sales Agent License Number 173479, issued to Raya Trading, Inc., Agent d/b/a Sunmart #194 of Spring, Texas.

**SIGNED May 5, 2016.**



**HENRY D. CARD**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**





# State Office of Administrative Hearings



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LEGAL SERVICES  
GENERAL COUNSEL

Lesli G. Ginn  
Chief Administrative Law Judge

May 5, 2016

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

VIA E-MAIL

**RE: Docket No. 362-16-2638; Texas Lottery Commission v. D & H Food Mart Inc., Agent, d/b/a, Bengel Mart, License No. 178078**

Dear Mr. Grief:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with Texas Administrative Code title 1, § 155.507(c), a SOAH rule found at <[www.soah.state.tx.us](http://www.soah.state.tx.us)>.

Sincerely,

A handwritten signature in black ink, appearing to read "H. D. Card".

Henry D. Card  
Administrative Law Judge

HDC/lg

cc: Stephen White, Assistant General Counsel, Texas Lottery Commission, 611 E. 6<sup>th</sup>, Austin Texas 78701 - VIA E-MAIL  
D & H Food Mart Inc., Agent d/b/a Bengel Mart, 7915 Chatham Spring, Cypress, TX 77433 - VIA REGULAR MAIL

300 W. 15<sup>th</sup> Street, Suite 502, Austin, Texas 78701/P.O. Box 13025, Austin, Texas 78711-3025  
512.475.4993 (Main) 512.475.3445 (Docketing) 512.322.2061 (Fax)  
[www.soah.state.tx.us](http://www.soah.state.tx.us)

**SOAH DOCKET NO. 362-16-2638**

**TEXAS LOTTERY COMMISSION  
LOTTERY OPERATIONS DIVISION,  
Petitioner**

**v.**

**D & H FOOD MART, INC., AGENT  
D/B/A BENGAL MART  
SALES AGENT LICENSE NO. 178078,  
Respondent**

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**BEFORE THE STATE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**PROPOSAL FOR DECISION**

The staff of the Texas Lottery Commission (Staff) seeks the revocation of a lottery sales agent's license held by D & H Food Mart, Inc., Agent d/b/a Bengal Mart (Licensee) on the grounds that it 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 the license.

On March 17, 2016, a hearing to consider Staff's allegations was conducted by ALJ Henry D. Card, at the State Office of Administrative Hearings, William P. Clements Building, 300 W. 15<sup>th</sup> Street, Fourth Floor, Austin, Texas. Staff appeared through Stephen White, Assistant General Counsel for the Commission. Licensee did not appear and was not represented at the hearing. After Staff established jurisdiction and notice as required by law, the hearing proceeded on a default basis. Therefore, the allegations and applicable law are discussed only in the Findings of Fact and Conclusions of Law below.

**I. FINDINGS OF FACT**

1. D & H Food Mart, Inc., Agent d/b/a Bengal Mart (Licensee), Cypress, Texas, is a lottery sales agent licensed by the Texas Lottery Commission (the Commission). Licensee holds license number 178078.


2. On February 25, 2016, staff of the Commission sent a notice of hearing informing Licensee of the final hearing date, location of the hearing, and the allegations it intended to prove at the hearing; the notice was sent by certified mail, return receipt requested to Licensee's address as it appears in the Commission's records.
3. The notice of hearing advised Licensee in 12-point bold face type that failure to appear at the hearing would result in the factual allegations in the notice being admitted as true, and that the relief sought in the notice may be granted by default.
4. The hearing described in Finding of Fact No. 2 was held on March 17, 2016, in the William P. Clements Building, 300 W. 15<sup>th</sup> Street, Fourth Floor, Austin, Texas.
5. Licensee did not appear and was not represented at the hearing.
6. On the following dates Licensee failed to have sufficient funds available to cover an electronic transfer of funds to the Commission's account and owed the Commission the amounts listed below for the sale of lottery tickets:
  - (a) **November 12, 2015, in the amount of \$928.05; and**
  - (b) **January 21, 2016, in the amount of \$1,342.00.**
7. The amounts described in Finding of Fact No. 6 were for the sale of lottery tickets less Licensee's commissions and credits for the amounts of cash prizes Licensee paid.

## II. CONCLUSIONS OF LAW

1. The Texas Lottery Commission (the Commission) has jurisdiction over this matter pursuant to the Texas Lottery Act (the Act), Tex. Gov't Code Ann. § 466.155.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to Tex. Gov't Code Ann. ch. 2003.
3. Based upon Findings of Fact Nos. 2 and 3, proper and timely notice of the hearing was effected upon Licensee pursuant to the Administrative Procedure Act, Tex. Gov't Code Ann. §§ 2001.051-2001.052, § 466.155(b) of the Act, and 16 Tex. Admin. Code § 401.205(a)(4).
4. Based on Findings of Fact Nos. 3 and 5, and Conclusion of Law No. 3, a default should be entered against Respondent pursuant to 1 Tex. Admin. Code § 155.501.
5. Based on Findings of Fact Nos. 6 and 7, Licensee violated § 466.351 of the Act and 16 Tex. Admin. Code § 401.351, which require the timely deposit of lottery ticket sales proceeds into a bank account to be held in trust for and owed to the Commission.

6. Based on Findings of Fact Nos. 6 and 7, Licensee violated 16 Tex. Admin. Code § 401.352, which requires a licensee to have sufficient funds on deposit to cover electronic transfers of funds to the Commission.
7. Pursuant to the Act and 16 Tex. Admin. Code §§ 401.158 and 401.352, the Commission has authority to suspend or revoke a lottery sales agent's license for the violations described in the foregoing Conclusions of Law.
8. Based on the foregoing Conclusions of Law, the Commission is warranted in revoking Texas Lottery Sales Agent License Number 178078, issued to D & H Food Mart, Inc., Agent d/b/a Bengal Mart of Cypress, Texas.

**SIGNED May 5, 2016.**



**HENRY D. CARD**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**



# State Office of Administrative Hearings



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LEGAL SERVICES  
GENERAL COUNSEL

Lesli G. Ginn  
Chief Administrative Law Judge

May 5, 2016

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

VIA E-MAIL

**RE: Docket No. 362-16-2639; Texas Lottery Commission v. JB Super Stop Inc., Agent, d/b/a Tiger's Den, License No. 178370**

Dear Mr. Grief:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with Texas Administrative Code title 1, § 155.507(c), a SOAH rule found at <[www.soah.state.tx.us](http://www.soah.state.tx.us)>.

Sincerely,

A handwritten signature in black ink, appearing to read "H. D. Card".

Henry D. Card  
Administrative Law Judge

HDC/lg

cc: Stephen White, Assistant General Counsel, Texas Lottery Commission, 611 E. 6<sup>th</sup>, Austin Texas 78701 - VIA E-MAIL  
JB Super Stop Inc., Agent, d/b/a Tiger's Den, 1108 Discovery St., Plano, TX 75094-4611 - VIA REGULAR MAIL

SOAH DOCKET NO. 362-16-2639

TEXAS LOTTERY COMMISSION  
LOTTERY OPERATIONS DIVISION,  
Petitioner

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BEFORE THE STATE OFFICE

v.

JB SUPER STOP, INC. AGENT  
D/B/A TIGER'S DEN  
SALES AGENT LICENSE NO. 178370,  
Respondent

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The staff of the Texas Lottery Commission (Staff) seeks the revocation of a lottery sales agent's license held by JB Super Stop, Inc., Agent d/b/a Tiger's Den (Licensee) on the grounds that it 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 the license.

On March 17, 2016, a hearing to consider Staff's allegations was conducted by ALJ Henry D. Card, at the State Office of Administrative Hearings, William P. Clements Building, 300 W. 15<sup>th</sup> Street, Fourth Floor, Austin, Texas. Staff appeared through Stephen White, Assistant General Counsel for the Commission. Licensee did not appear and was not represented at the hearing. After Staff established jurisdiction and notice as required by law, the hearing proceeded on a default basis. Therefore, the allegations and applicable law are discussed only in the Findings of Fact and Conclusions of Law below.

I. FINDINGS OF FACT

1. JB Super Stop, Inc., Agent d/b/a Tiger's Den (Licensee), Plano, Texas, is a lottery sales agent licensed by the Texas Lottery Commission (the Commission). Licensee holds license number 178370.

2. On February 25, 2016, staff of the Commission sent a notice of hearing informing Licensee of the final hearing date, location of the hearing, and the allegations it intended to prove at the hearing; the notice was sent by certified mail, return receipt requested to Licensee's address as it appears in the Commission's records.
3. The notice of hearing advised Licensee in 12-point bold face type that failure to appear at the hearing would result in the factual allegations in the notice being admitted as true, and that the relief sought in the notice may be granted by default.
4. The hearing described in Finding of Fact No. 2 was held on March 17, 2016, in the William P. Clements Building, 300 W. 15<sup>th</sup> Street, Fourth Floor, Austin, Texas.
5. Licensee did not appear and was not represented at the hearing.
6. On the following dates Licensee failed to have sufficient funds available to cover an electronic transfer of funds to the Commission's account and owed the Commission the amounts listed below for the sale of lottery tickets:
  - (a) **June 3, 2015, in the amount of \$1,153.97;**
  - (b) **June 24, 2015, in the amount of \$3,847.20;**
  - (c) **November 18, 2015, in the amount of \$3,082.10;**
  - (d) **January 21, 2016, in the amount of \$7,954.45; and**
  - (e) **January 27, 2016, in the amount of \$2,085.42.**
7. The amounts described in Finding of Fact No. 6 were for the sale of lottery tickets less Licensee's commissions and credits for the amounts of cash prizes Licensee paid.

## II. CONCLUSIONS OF LAW

1. The Texas Lottery Commission (the Commission) has jurisdiction over this matter pursuant to the Texas Lottery Act (the Act), Tex. Gov't Code Ann. § 466.155.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to Tex. Gov't Code Ann. ch. 2003.
3. Based upon Findings of Fact Nos. 2 and 3, proper and timely notice of the hearing was effected upon Licensee pursuant to the Administrative Procedure Act, Tex. Gov't Code Ann. §§ 2001.051-2001.052, § 466.155(b) of the Act, and 16 Tex. Admin. Code § 401.205(a)(4).
4. Based on Findings of Fact Nos. 3 and 5, and Conclusion of Law No. 3, a default should be entered against Respondent pursuant to 1 Tex. Admin. Code § 155.501.



5. Based on Findings of Fact Nos. 6 and 7, Licensee violated § 466.351 of the Act and 16 Tex. Admin. Code § 401.351, which require the timely deposit of lottery ticket sales proceeds into a bank account to be held in trust for and owed to the Commission.
6. Based on Findings of Fact Nos. 6 and 7, Licensee violated 16 Tex. Admin. Code § 401.352, which requires a licensee to have sufficient funds on deposit to cover electronic transfers of funds to the Commission.
7. Pursuant to the Act and 16 Tex. Admin. Code §§ 401.158 and 401.352, the Commission has authority to suspend or revoke a lottery sales agent's license for the violations described in the foregoing Conclusions of Law.
8. Based on the foregoing Conclusions of Law, the Commission is warranted in revoking Texas Lottery Sales Agent License Number 178370, issued to JB Super Stop, Inc., Agent d/b/a Tiger's Den of Plano, Texas.

**SIGNED May 5, 2016.**



**HENRY D. CARD**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**



# State Office of Administrative Hearings



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LEGAL SERVICES  
GENERAL COUNSEL

Lesli G. Ginn  
Chief Administrative Law Judge

May 5, 2016

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

VIA E-MAIL

**RE: Docket No. 362-16-2640; Texas Lottery Commission v. Campos  
Guerrero LLC, Agent, d/b/a Campos Meat Market, License No.  
178486**

Dear Mr. Grief:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with Texas Administrative Code title 1, § 155.507(c), a SOAH rule found at <[www.soah.state.tx.us](http://www.soah.state.tx.us)>.

Sincerely,

A handwritten signature in black ink, appearing to read "HDC", written over a light blue horizontal line.

Henry D. Card  
Administrative Law Judge

HDC/lg

cc: Stephen White, Assistant General Counsel, Texas Lottery Commission, 611 E. 6<sup>th</sup>, Austin Texas 78701 - VIA E-MAIL  
Campos Guerrero LLC, Agent, d/b/a Campos Meat Market, 14045 FM 2100 RD, Suite 170, Crosby, TX 77532-6669 -  
VIA REGULAR MAIL

300 W. 15<sup>th</sup> Street, Suite 502, Austin, Texas 78701/P.O. Box 13025, Austin, Texas 78711-3025  
512.475.4993 (Main) 512.475.3445 (Docketing) 512.322.2061 (Fax)  
[www.soah.state.tx.us](http://www.soah.state.tx.us)

**SOAH DOCKET NO. 362-16-2640**

<b>TEXAS LOTTERY COMMISSION</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>LOTTERY OPERATIONS DIVISION,</b>	§	
<b>Petitioner</b>	§	
	§	
<b>v.</b>	§	
	§	<b>OF</b>
<b>CAMPOS GUERRERO, LLC, AGENT</b>	§	
<b>D/B/A CAMPOS MEAT MARKET</b>	§	
<b>SALES AGENT LICENSE NO. 178486,</b>	§	
<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

The staff of the Texas Lottery Commission (Staff) seeks the revocation of a lottery sales agent’s license held by Campos Guerrero, LLC, Agent d/b/a Campos Meat Market (Licensee) on the grounds that it 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 the license.

On March 17, 2016, a hearing to consider Staff’s allegations was conducted by ALJ Henry D. Card, at the State Office of Administrative Hearings, William P. Clements Building, 300 W. 15<sup>th</sup> Street, Fourth Floor, Austin, Texas. Staff appeared through Stephen White, Assistant General Counsel for the Commission. Licensee did not appear and was not represented at the hearing. After Staff established jurisdiction and notice as required by law, the hearing proceeded on a default basis. Therefore, the allegations and applicable law are discussed only in the Findings of Fact and Conclusions of Law below.

**I. FINDINGS OF FACT**

1. Campos Guerrero, LLC, Agent d/b/a Campos Meat Market (Licensee), Crosby, Texas, is a lottery sales agent licensed by the Texas Lottery Commission (the Commission). Licensee holds license number 178486.

2. On February 25, 2016, staff of the Commission sent a notice of hearing informing Licensee of the final hearing date, location of the hearing, and the allegations it intended to prove at the hearing; the notice was sent by certified mail, return receipt requested to Licensee's address as it appears in the Commission's records.
3. The notice of hearing advised Licensee in 12-point bold face type that failure to appear at the hearing would result in the factual allegations in the notice being admitted as true, and that the relief sought in the notice may be granted by default.
4. The hearing described in Finding of Fact No. 2 was held on March 17, 2016, in the William P. Clements Building, 300 W. 15<sup>th</sup> Street, Fourth Floor, Austin, Texas.
5. Licensee did not appear and was not represented at the hearing.
6. On the following dates Licensee failed to have sufficient funds available to cover an electronic transfer of funds to the Commission's account and owed the Commission the amounts listed below for the sale of lottery tickets:
  - (a) **July 29, 2015, in the amount of \$214.65;**
  - (b) **August 12, 2015, in the amount of \$2.75;**
  - (c) **September 16, 2015, in the amount of \$342.90; and**
  - (b) **January 21, 2016, in the amount of \$669.00.**
7. The amounts described in Finding of Fact No. 6 were for the sale of lottery tickets less Licensee's commissions and credits for the amounts of cash prizes Licensee paid.

## II. CONCLUSIONS OF LAW

1. The Texas Lottery Commission (the Commission) has jurisdiction over this matter pursuant to the Texas Lottery Act (the Act), Tex. Gov't Code Ann. § 466.155.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to Tex. Gov't Code Ann. ch. 2003.
3. Based upon Findings of Fact Nos. 2 and 3, proper and timely notice of the hearing was effected upon Licensee pursuant to the Administrative Procedure Act, Tex. Gov't Code Ann. §§ 2001.051-2001.052, § 466.155(b) of the Act, and 16 Tex. Admin. Code § 401.205(a)(4).
4. Based on Findings of Fact Nos. 3 and 5, and Conclusion of Law No. 3, a default should be entered against Respondent pursuant to 1 Tex. Admin. Code § 155.501.
5. Based on Findings of Fact Nos. 6 and 7, Licensee violated § 466.351 of the Act and 16 Tex. Admin. Code § 401.351, which require the timely deposit of lottery ticket sales proceeds into a bank account to be held in trust for and owed to the Commission.

6. Based on Findings of Fact Nos. 6 and 7, Licensee violated 16 Tex. Admin. Code § 401.352, which requires a licensee to have sufficient funds on deposit to cover electronic transfers of funds to the Commission.
7. Pursuant to the Act and 16 Tex. Admin. Code §§ 401.158 and 401.352, the Commission has authority to suspend or revoke a lottery sales agent's license for the violations described in the foregoing Conclusions of Law.
8. Based on the foregoing Conclusions of Law, the Commission is warranted in revoking Texas Lottery Sales Agent License Number 178486, issued to Campos Guerrero, LLC, Agent d/b/a Campos Meat Market of Crosby, Texas.

**SIGNED May 5, 2016.**



**HENRY D. CARD**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**



# State Office of Administrative Hearings



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LEGAL SERVICES  
GENERAL COUNSEL

Lesli G. Ginn  
Chief Administrative Law Judge

May 5, 2016

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

VIA E-MAIL

**RE: Docket No. 362-16-2641; Texas Lottery Commission v. First Interactive Inc., Agent, d/b/a I-35 Texaco, License No. 180073**

Dear Mr. Grief:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with Texas Administrative Code title 1, § 155.507(c), a SOAH rule found at <[www.soah.state.tx.us](http://www.soah.state.tx.us)>.

Sincerely,

A handwritten signature in black ink, appearing to read "H. D. Card".

Henry D. Card  
Administrative Law Judge

HDC/lg

cc: Stephen White, Assistant General Counsel, Texas Lottery Commission, 611 E. 6<sup>th</sup>, Austin Texas 78701 - VIA E-MAIL  
First Interactive Inc., Agent, d/b/a I-35 Texaco, 6005 SRL Thornton Freeway, Dallas, TX 75232 - VIA REGULAR MAIL



**SOAH DOCKET NO. 362-16-2641**

<b>TEXAS LOTTERY COMMISSION</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>LOTTERY OPERATIONS DIVISION,</b>	§	
<b>Petitioner</b>	§	
	§	
<b>v.</b>	§	
	§	<b>OF</b>
<b>FIRST INTERACTIVE, INC., AGENT</b>	§	
<b>D/B/A I 35 TEXACO</b>	§	
<b>SALES AGENT LICENSE NO. 180073,</b>	§	
<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

The staff of the Texas Lottery Commission (Staff) seeks the revocation of a lottery sales agent’s license held by First Interactive, Inc., Agent d/b/a I 35 Texaco (Licensee) on the grounds that it 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 the license.

On March 17, 2016, a hearing to consider Staff’s allegations was conducted by ALJ Henry D. Card, at the State Office of Administrative Hearings, William P. Clements Building, 300 W. 15<sup>th</sup> Street, Fourth Floor, Austin, Texas. Staff appeared through Stephen White, Assistant General Counsel for the Commission. Licensee did not appear and was not represented at the hearing. After Staff established jurisdiction and notice as required by law, the hearing proceeded on a default basis. Therefore, the allegations and applicable law are discussed only in the Findings of Fact and Conclusions of Law below.

**I. FINDINGS OF FACT**

1. First Interactive, Inc., Agent d/b/a I 35 Texaco (Licensee), Dallas, Texas, is a lottery sales agent licensed by the Texas Lottery Commission (the Commission). Licensee holds license number 180073.

2. On February 25, 2016, staff of the Commission sent a notice of hearing informing Licensee of the final hearing date, location of the hearing, and the allegations it intended to prove at the hearing; the notice was sent by certified mail, return receipt requested to Licensee's address as it appears in the Commission's records.
3. The notice of hearing advised Licensee in 12-point bold face type that failure to appear at the hearing would result in the factual allegations in the notice being admitted as true, and that the relief sought in the notice may be granted by default.
4. The hearing described in Finding of Fact No. 2 was held on March 17, 2016, in the William P. Clements Building, 300 W. 15<sup>th</sup> Street, Fourth Floor, Austin, Texas.
5. Licensee did not appear and was not represented at the hearing.
6. On **January 21, 2016**, Licensee failed to have sufficient funds in the amount of **\$3,429.30** available to cover an electronic transfer of funds to the Commission's account and owed the Commission that amount for the sale of lottery tickets.
7. The amounts described in Finding of Fact No. 6 were for the sale of lottery tickets less Licensee's commissions and credits for the amounts of cash prizes Licensee paid.

## II. CONCLUSIONS OF LAW

1. The Texas Lottery Commission (the Commission) has jurisdiction over this matter pursuant to the Texas Lottery Act (the Act), Tex. Gov't Code Ann. § 466.155.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to Tex. Gov't Code Ann. ch. 2003.
3. Based upon Findings of Fact Nos. 2 and 3, proper and timely notice of the hearing was effected upon Licensee pursuant to the Administrative Procedure Act, Tex. Gov't Code Ann. §§ 2001.051-2001.052, § 466.155(b) of the Act, and 16 Tex. Admin. Code § 401.205(a)(4).
4. Based on Findings of Fact Nos. 3 and 5, and Conclusion of Law No. 3, a default should be entered against Respondent pursuant to 1 Tex. Admin. Code § 155.501.
5. Based on Findings of Fact Nos. 6 and 7, Licensee violated § 466.351 of the Act and 16 Tex. Admin. Code § 401.351, which require the timely deposit of lottery ticket sales proceeds into a bank account to be held in trust for and owed to the Commission.
6. Based on Findings of Fact Nos. 6 and 7, Licensee violated 16 Tex. Admin. Code § 401.352, which requires a licensee to have sufficient funds on deposit to cover electronic transfers of funds to the Commission.

7. Pursuant to the Act and 16 Tex. Admin. Code §§ 401.158 and 401.352, the Commission has authority to suspend or revoke a lottery sales agent's license for the violations described in the foregoing Conclusions of Law.
  
8. Based on the foregoing Conclusions of Law, the Commission is warranted in revoking Texas Lottery Sales Agent License Number 180073, issued to First Interactive, Inc., Agent d/b/a I 35 Texaco of Dallas, Texas.

**SIGNED May 5, 2016.**



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**HENRY D. CARD**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**



# State Office of Administrative Hearings



RECEIVED  
2016 MAY 16 AM 11:43  
LEGAL SERVICES  
GENERAL COUNSEL

Lesli G. Ginn  
Chief Administrative Law Judge

May 16, 2016

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

VIA E-MAIL

**RE: Docket No. 362-16-3265; Texas Lottery Commission v. Keyaan Enterprise Inc., Agent, d/b/a La Viva Grocery, License No. 178381**

Dear Mr. Grief:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with Texas Administrative Code title 1, § 155.507(c), a SOAH rule found at <[www.soah.state.tx.us](http://www.soah.state.tx.us)>.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary W. Elkins".

Gary W. Elkins  
Administrative Law Judge  
State Office of Administrative Hearings

GWE/lis

cc: Kristen Guthrie, Assistant General Counsel, Texas Lottery Commission, 611 E. 6<sup>th</sup>, Austin Texas 78701 - VIA E-MAIL  
Keyaan Enterprise Inc., 1307 Kyle Hill Lane, Sugar Land, TX 77479 - VIA REGULAR MAIL

TEXAS LOTTERY COMMISSION  
LOTTERY OPERATIONS DIVISION,  
Petitioner

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BEFORE THE STATE OFFICE

V.

KEYAAN ENTERPRISE, INC., AGENT  
D/B/A LA VIVA GROCERY  
SALES AGENT LICENSE NO. 178381,  
Respondent

OF

ADMINISTRATIVE HEARINGS

**PROPOSAL FOR DECISION**

The staff of the Texas Lottery Commission (Staff) seeks the revocation of a lottery sales agent’s license held by Keyaan Enterprise, Inc., Agent d/b/a La Viva Grocery (Licensee) on the grounds that it 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 the license.

On April 14, 2016, a hearing to consider Staff’s allegations was conducted by ALJ Gary W. Elkins, at the State Office of Administrative Hearings, William P. Clements Building, 300 W. 15<sup>th</sup> Street, Fourth Floor, Austin, Texas. Staff appeared through Kristen Guthrie, Assistant General Counsel for the Commission. Licensee did not appear and was not represented at the hearing. After Staff established jurisdiction and notice as required by law, the hearing proceeded on a default basis. Therefore, the allegations and applicable law are discussed only in the Findings of Fact and Conclusions of Law below.

**I. FINDINGS OF FACT**

1. Keyaan Enterprise, Inc., Agent d/b/a La Viva Grocery (Licensee), Sugar Land, Texas, is a lottery sales agent licensed by the Texas Lottery Commission (the Commission). Licensee holds license number 178381.
2. On March 24, 2016, staff of the Commission sent notice of hearing informing Licensee of the final hearing date, location of the hearing, and the allegations it intended to prove at the hearing; the notice was sent by certified mail, return receipt requested to Licensee’s address

as it appears in the Commission's records.

3. The notice of hearing advised Licensee in 12-point bold face type that failure to appear at the hearing would result in the factual allegations in the notice being admitted as true, and that the relief sought in the notice may be granted by default.
4. The hearing described in Finding of Fact No. 2 was held on April 14, 2016, in the William P. Clements Building, 300 W. 15<sup>th</sup> Street, Fourth Floor, Austin, Texas.
5. Licensee did not appear and was not represented at the hearing.
6. On the following dates Licensee failed to have sufficient funds available to cover an electronic transfer of funds to the Commission's account and owed the Commission the amounts listed below for the sale of lottery tickets:
  - (a) **December 16, 2015, in the amount of \$187.00; and**
  - (b) **February 18, 2016, in the amount of \$320.60.**
7. The amounts described in Finding of Fact No. 6 were for the sale of lottery tickets less Licensee's commissions and credits for the amounts of cash prizes Licensee paid.

## II. CONCLUSIONS OF LAW

1. The Texas Lottery Commission (the Commission) has jurisdiction over this matter pursuant to the Texas Lottery Act (the Act), Tex. Gov't Code Ann. § 466.155.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with proposed findings of fact and conclusions of law, pursuant to Tex. Gov't Code Ann. ch. 2003.
3. Proper and timely notice of the hearing was effected upon Licensee pursuant to the Administrative Procedure Act, Tex. Gov't Code Ann. §§ 2001.051-2001.052, § 466.155(b) of the Act, and 16 Tex. Admin. Code § 401.205(a)(4).
4. A default should be entered against Respondent pursuant to 1 Tex. Admin. Code § 155.501.
5. Licensee violated § 466.351 of the Act and 16 Tex. Admin. Code § 401.351, which require the timely deposit of lottery ticket sales proceeds into a bank account to be held in trust for and owed to the Commission.
6. Licensee violated 16 Tex. Admin. Code § 401.352, which requires a licensee to have sufficient funds on deposit to cover electronic transfers of funds to the Commission.
7. Pursuant to the Act and 16 Tex. Admin. Code §§ 401.158 and 401.352, the Commission has authority to suspend or revoke a lottery sales agent's license for the violations described in the foregoing Conclusions of Law.



8. The Commission is warranted in revoking Texas Lottery Sales Agent License Number 178381, issued to Keyaan Enterprise, Inc., Agent d/b/a La Viva Grocery of Sugar Land, Texas.

**SIGNED May 16, 2016.**



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**GARY W. BELKINS  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**



# State Office of Administrative Hearings



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2016 MAY 11 PM 2:39

STATE SERVICES  
GENERAL COUNSEL

Lesli G. Ginn  
Chief Administrative Law Judge

May 11, 2016

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

VIA E-MAIL

**RE: Docket No. 362-16-3590; Texas Lottery Commission v. GSA C-Stores Inc., Agent, d/b/a Saving Food Store; License No.151465**

Dear Mr. Grief:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with Texas Administrative Code title 1, § 155.507(c), a SOAH rule found at <[www.soah.state.tx.us](http://www.soah.state.tx.us)>.

Sincerely,

A handwritten signature in black ink, appearing to read "H. D. Card".

Henry D. Card  
Administrative Law Judge

HDC/lg

cc: Kristen Guthrie, Assistant General Counsel, Texas Lottery Commission, 611 E. 6<sup>th</sup>, Austin Texas 78701 - VIA E-MAIL  
Respondent Agent, address, zip -VIA REGULAR MAIL

**SOAH DOCKET NO. 362-16-3590**

<b>TEXAS LOTTERY COMMISSION</b>	<b>§</b>	<b>BEFORE THE STATE OFFICE</b>
	<b>§</b>	
<b>v.</b>	<b>§</b>	<b>OF</b>
	<b>§</b>	
<b>GSA C-STORES, INC., AGENT</b>	<b>§</b>	
<b>D/B/A SAVING FOOD STORE</b>	<b>§</b>	
<b>SALES AGENT LICENSE NO. 151465</b>	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

The staff of the Texas Lottery Commission (Staff) requested the revocation of a lottery sales agent’s license held by GSA C-Stores, Inc., Agent d/b/a Saving Food Store (Licensee) on the grounds that Licensee 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 the license.

On April 28, 2016, in Austin, Texas, ALJ Henry Card conducted a hearing to consider Staff’s allegations. Kristen Guthrie, Assistant General Counsel, represented the Commission. Licensee did not appear and was not represented at the hearing. After Staff established jurisdiction and notice, the hearing proceeded on a default basis. Therefore, the allegations and applicable law are discussed only in the Findings of Fact and Conclusions of Law below.

**I. FINDINGS OF FACT**

1. GSA C-Stores, Inc., Agent d/b/a Saving Food Store (Licensee), Houston, Texas, is a lottery sales agent licensed by the Texas Lottery Commission (the Commission). Licensee holds license number 151465.
2. On April 7, 2016, staff of the Commission (Staff) sent notice of hearing informing Licensee of the final hearing date, location of the hearing, and the allegations it intended to prove at the hearing. The notice was sent by certified mail, return receipt requested, to Licensee’s address as it appears in the Commission’s records.

3. The notice of hearing informed Licensee in 12-point, bold face type that failure to appear at the hearing would result in the factual allegations in the notice of hearing being admitted as true, and that the relief sought in the notice may be granted by default.
4. The hearing described in Finding of Fact No. 2 was held on April 28, 2016, at the State Office of Administrative Hearings, located in the William P. Clements Building at 300 West 15<sup>th</sup> Street, Austin, Texas.
5. Licensee did not appear and was not represented at the hearing.
6. On **March 2, 2016**, Licensee failed to have sufficient funds available to cover an electronic transfer of funds to the Commission's account and owed the Commission **\$792.54** for the sale of lottery tickets.

## II. CONCLUSIONS OF LAW

1. The Texas Lottery Commission (the Commission) has jurisdiction over this matter pursuant to the Texas Lottery Act (the Act), Texas Government Code § 466.155.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a Proposal for Decision with proposed Findings of Fact and Conclusions of Law, as provided by Texas Government Code Chapter 2003.
3. Proper and timely notice of the hearing was effected upon Licensee pursuant to the Administrative Procedure Act, Texas Government Code §§ 2001.051-2001.052; § 466.155(b) of the Act; and 16 Texas Administrative Code § 401.205(4).
4. A default should be entered against Licensee, pursuant to 1 Texas Administrative Code § 155.501.
5. Licensee violated § 466.351 of the Act and 16 Texas Administrative Code § 401.351, which require the timely deposit of lottery ticket sales proceeds into a bank account to be held in trust for and owed to the Commission.
6. Licensee violated 16 Texas Administrative Code §401.352, which requires a licensee to have sufficient funds on deposit to cover electronic transfers of funds to the Commission.
7. Pursuant to § 466.155 of the Act and 16 Texas Administrative Code §§ 401.158 and 401.352(a), the Commission has authority to suspend or revoke a lottery sales agent's license for the violations described in the foregoing Findings of Fact and Conclusions of Law.

8. The Commission is warranted in revoking Texas Lottery Sales Agent License No. 151465, issued to GSA C-Stores, Inc., Agent d/b/a Saving Food Store of Houston, Texas.

**SIGNED May 11, 2016.**



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**HENRY D. CARD**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

















**Commission Order No. 16-0042**

**Date: JULY 11, 2016**

DOCKET NO. 362-16-0981.B

TEXAS LOTTERY COMMISSION	§	BEFORE THE TEXAS
PETITIONER	§	
	§	
VS.	§	
	§	
CAMILLE BERMEJO	§	
RESPONDENT	§	LOTTERY COMMISSION

**ORDER OF THE COMMISSION**

TO: Ms. Camille Bermejo  
3131 Gordon Ave.  
Fort Worth, TX 76110-3708

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

The Texas Lottery Commission, after review and due consideration of the Proposal for Decision, and exceptions and replies filed, if any, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge as if fully set out and separately stated herein. All proposed Findings of Fact and Conclusions of Law not specifically adopted herein are hereby denied.

**Commission Order No. 16-0042**

**Date: JULY 11, 2016**

NOW, THEREFORE, IT IS ORDERED that the Respondent's renewal application for inclusion on the Registry is denied and her name should be removed from the Registry of Approved Bingo Workers.

Passed and approved at the regular meeting of the Texas Lottery Commission at Austin, Texas, on the 11<sup>TH</sup> day of JULY, 2016.

Entered this 11<sup>TH</sup> day of JULY, 2016.

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J. WINSTON KRAUSE, CHAIRMAN

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CARMEN ARRIETA-CANDELARIA,  
COMMISSIONER

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PEGGY A. HEEG, COMMISSIONER

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DOUG LOWE, COMMISSIONER

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ROBERT RIVERA, COMMISSIONER

# State Office of Administrative Hearings



**Cathleen Parsley**  
**Chief Administrative Law Judge**

March 22, 2016

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

VIA E-MAIL

**RE: Docket No. 362-16-0981.B; Texas Lottery Commission v. Camille Bermejo**

Dear Mr. Grief:

Please find enclosed a Proposal for Decision in this case. It contains my recommendation and underlying rationale.

Exceptions and replies may be filed by any party in accordance with Texas Administrative Code title 1, § 155.507(c), a SOAH rule found at <[www.soah.state.tx.us](http://www.soah.state.tx.us)>.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary W. Elkins".

**Gary W. Elkins**  
**Administrative Law Judge**  
**State Office of Administrative Hearings**

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2016 MAR 22 AM 9:29  
GENERAL COUNSEL

GWE/Ls

cc: Stephen White, Assistant General Counsel, Texas Lottery Commission, 611 E. 6<sup>th</sup>, Austin Texas 78701 - VIA E-MAIL  
Camille Bermejo, 3131 Gordon Avenue, Fort Worth, TX 76110-3708 - VIA REGULAR MAIL

300 W. 15<sup>th</sup> Street, Suite 502, Austin, Texas 78701/ P.O. Box 13025, Austin, Texas 78711-3025  
512.475.4993 (Main) 512.475.3445 (Docketing) 512.322.2061 (Fax)  
[www.soah.state.tx.us](http://www.soah.state.tx.us)



**SOAH DOCKET NO. 362-16-0981.B**

**TEXAS LOTTERY COMMISSION,  
Petitioner**

**V.**

**CAMILLE BERMEJO,  
Respondent**

§  
§  
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§

**BEFORE THE STATE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**PROPOSAL FOR DECISION**

The staff (Staff) of the Texas Lottery Commission (Commission) seeks to remove Camille Bermejo (Respondent) from the Commission's Registry of Approved Bingo Workers (Registry) because Respondent pleaded guilty to the offense of aggravated assault with a deadly weapon, for which she was sentenced to deferred adjudication with community supervision for a period of 6 years. The Administrative Law Judge (ALJ) recommends that the Commission remove Respondent's name from the Registry.

**I. JURISDICTION AND NOTICE**

Neither jurisdiction nor notice was disputed, and they are addressed in the Findings of Fact and Conclusions of Law.

**II. PROCEDURAL HISTORY**

On November 10, 2016, Staff issued a notice of hearing informing Respondent that a hearing would be convened to consider allegations that she violated the Bingo Enabling Act.

The hearing convened and closed on January 25, 2016, before the State Office of Administrative Hearings (SOAH) in Austin, Texas. ALJ Gary W. Elkins presided. Staff was represented by Stephen White, Assistant General Counsel for the Commission. Respondent did not appear at the hearing. After evidence of notice and jurisdiction was taken, Staff moved for a default pursuant to 1 Texas Administrative Code § 155.501 based on Respondent's failure to appear. The ALJ granted the motion, and the allegations were deemed admitted.

### III. FINDINGS OF FACT

1. Camille Bermejo (Respondent) is on the Registry of Approved Bingo Workers (Registry).
2. On January 21, 2015, Respondent signed and submitted to the Commission a renewal application for the purpose of remaining on the Registry.
3. The Charitable Bingo Operations Division of the Texas Lottery Commission (Commission) opposes Respondent's application and seeks to remove her from the Registry.
4. On September 21, 2015, the Commission's staff (Staff) sent Respondent a notice of the Commission's intent to remove her from the Registry based on her plea of guilty to the criminal offense of Aggravated Assault with a Deadly Weapon, a second degree felony, and her placement on community supervision for a period of 6 years. The notice was sent to Respondent at her last known address as shown in the Commission's records: 3131 Gordon Ave., Fort Worth, Texas 76110, by both United States first class mail and certified mail, return receipt requested. The notice was delivered to Respondent on September 24, 2015.
5. On November 10, 2015, Staff sent Respondent a Notice of Hearing via United States first class mail and by certified mail, return receipt requested, to her address reflected in Finding of Fact No. 4. The notice contained a statement of the time, place, and nature of the hearing, a statement of matters asserted, and a statement of the legal authority and jurisdiction under which the hearing was to be held. The Notice of Hearing also informed Respondent that her failure to appear at the hearing could result in the allegations set forth in the Notice of Hearing being deemed admitted and the relief sought by Staff being granted by default.
6. The hearing convened on January 25, 2016, before the State Office of Administrative Hearings (SOAH), with Administrative Law Judge (ALJ) Gary W. Elkins presiding.
7. Staff appeared at the hearing and was represented by Stephen White, Assistant General Counsel. Respondent did not appear. Based on Respondent's failure to appear, the hearing proceeded on a default basis, and the hearing closed the same day.
8. On September 4, 2013, in Cause No. 1314186D before the 371<sup>st</sup> District Court of Tarrant County, Texas, Respondent pleaded guilty to the second degree felony offense of Aggravated Assault with a Deadly Weapon. Respondent received deferred adjudication and was placed on mandatory community supervision for a period of 6 years.
9. Respondent has not completed her period of community supervision.

**IV. CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over this matter pursuant to the Bingo Enabling Act (the Act), Texas Occupations Code §§ 2001.051 and .353; Texas Government Code § 467.101.
2. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a proposal for decision with findings of fact and conclusions of law, pursuant to Texas Government Code ch. 2003.
3. Proper and timely notice of the hearing was effected upon Respondent. Tex. Gov't Code ch. 2001.
4. The allegations in the Commission's Notice of Hearing were deemed admitted based on Respondent's failure to appear at the hearing. 1 Tex. Admin. Code § 155.501.
5. A registrant on the Registry is a licensee within the meaning of 16 Texas Administrative Code § 401.227(6) and is therefore subject to the provisions of Texas Occupations Code § 2001.554.
6. Pursuant to Texas Occupations Code § 53.021(d)(1)(B)(i), a licensing authority may consider a person to have been convicted of an offense, regardless of whether the proceedings were dismissed and the person was discharged, if the person has not completed the period of community supervision or the person completed the period of supervision less than 5 years before the date the person applied for the license.
7. Respondent's renewal application for inclusion on the Registry should be denied, and her name should be removed from the Registry.

**SIGNED March 22, 2016.**

  
\_\_\_\_\_  
**GARY W. ELKINS**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**



**Commission Order No. 16-0043**

**Date: JULY 11, 2016**

DOCKET NO. 362-15-5571.B

TEXAS LOTTERY COMMISSION	§	BEFORE THE TEXAS
PETITIONER	§	
	§	
VS.	§	
	§	
HABITABLE SPACES	§	
APPLICANT	§	LOTTERY COMMISSION

ORDER OF THE COMMISSION

TO: Mr. Christopher Heinemeier  
Habitable Spaces  
3050 FM 1104  
Kingsbury, TX 78638-2533

Mr. Eddie Heinemeier  
3239-1 Rustic Oak  
San Antonio, TX 78261

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

The Texas Lottery Commission, after review and due consideration of the Proposal for Decision, and exceptions and replies filed, if any, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge as if fully set out and separately stated herein. All proposed Findings of Fact and Conclusions of Law not specifically adopted herein are hereby denied.

**Commission Order No. 16-0043**

**Date: JULY 11, 2016**

NOW, THEREFORE, IT IS ORDERED that the Habitable Spaces's application should be denied.

Passed and approved at the regular meeting of the Texas Lottery Commission at Austin, Texas, on the 11<sup>TH</sup> day of JULY, 2016.

Entered this 11<sup>TH</sup> day of JULY, 2016.

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J. WINSTON KRAUSE, CHAIRMAN

---

CARMEN ARRIETA-CANDELARIA,  
COMMISSIONER

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PEGGY A. HEEG, COMMISSIONER

---

DOUG LOWE, COMMISSIONER

---

ROBERT RIVERA, COMMISSIONER



## CASE SUMMARY

**PARTY NAME:** Texas Lottery Commission Staff  
**DOCKET NO./CASE NAME:** 362-15-5571.B; Habitable Spaces

### **ISSUE(S):**

- 1.) Did the Bingo Division properly deny the Application because Applicant did not have 501(c) tax-exempt status for three years prior to its application date?
- 2.) Did the Bingo Division properly deny the Application because Applicant failed to show it has been organized as a fraternal organization in Texas for at least three years with a bona fide membership that was actively and continuously engaged in furthering its charitable purpose?

### **KEY FACTS:**

The SOAH Judge found at least two independent reasons for denial of the application. First, the SOAH Judge determined an organization can only meet the three-year eligibility requirement as a fraternal organization if it has been a nonprofit organization having 501(c) tax-exempt status for at least three years. It is undisputed that Applicant did not have tax-exempt status from the IRS until March of 2014. Because the Applicant did not have the 501(c) tax-exempt status for at least three years prior, the application was denied. Second, the SOAH Judge determined that the Applicant failed to show it has been organized as a fraternal organization in Texas for at least three years with a bona fide membership that was actively and continuously engaged in furthering its charitable purpose. Applicant did not file its Certificate of Formation with the Secretary of State's Office until March 2014, and did not have voting members until March 2015.

### **LEGAL PRINCIPLES INVOLVED:**

TEX. OCC. CODE ANN. § 2001.002(11) defines "fraternal organization" as: "A **nonprofit organization** organized to perform and engaged primarily in performing charitable, benevolent, patriotic, employment-related, or educational functions that meet the other requirements of this chapter." (emphasis added)

TEX. OCC. CODE ANN. § 2001.002(19) defines "nonprofit organization" as: "An unincorporated association or a corporation that is incorporated or holds a certificate of authority under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes). The organization:

(A) may not distribute any of its income to its members, officers, or governing body, other than as reasonable compensation for services; and

(B) must **have obtained tax exempt status under Section 501(c), Internal Revenue Code of 1986.**" (emphasis added)

TEX. OCC. CODE ANN. § 2001.101(b)(1) and (2) state, in part: "(b) **A fraternal organization:**

(1) **must have been organized in this state for at least three years;**

(2) must have had during the three year period a bona fide membership actively and continuously engaged as an organization in furthering its charitable purposes." (emphasis added)

**ACTION REQUESTED:** Approve the Proposal for Decision and deny Applicant's original license application.



## CASE SUMMARY

**PARTY NAME/STATUS:** Habitable Spaces

**DOCKET NO./CASE NAME:** 362-15-5571.B: Habitable Spaces

**ISSUE(S):**

The license was denied for two reasons:

1. The Bingo Division alleged that Habitable Spaces did not have tax exempt status for 3 consecutive years preceding the filing of the application
2. The Bingo Division alleged that Habitable wasn't organized for at least 3 years and didn't have a membership for those 3 years.

**KEY FACTS:**

The Bingo Division has issued licenses in instances where the organization didn't have tax exempt status for a 3-year period and Habitable Spaces tried to have witnesses testify to that fact. But, the ALJ wouldn't let Habitable Spaces because Habitable Spaces didn't disclose them as expert witnesses. Habitable Spaces is requesting the Commission remand the case back to SOAH so two witnesses, Stephen Fenoglio and Phil Sanderson can testify as to the Commission's long standing interpretation. Habitable Spaces was organized in Texas for at least 3 years and did have a membership. Habitable Spaces whether incorporated or in the form it was in prior to incorporation was still organized to perform its charitable mission for at least 3 years before and did have an active membership.

**LEGAL PRINCIPLES INVOLVED:** Bingo Enabling Act Section 2001.002(11) & (19). Rule 402.420 (This rule does not require three years)

**ACTION REQUESTED:** Habitable Spaces is requesting to have the Commission remand the case back to SOAH so Habitable Spaces can have Stephen Fenoglio and Phil Sanderson testify as to the Commission's interpretation. Habitable Spaces did not have an attorney at the hearing since they could not afford it and Habitable Spaces didn't know that these two witnesses, testimony would be "expert" versus "fact". Habitable Spaces did disclose both of them as people with knowledge of facts. Habitable Spaces had trouble raising the \$3300 application fee that the organization can't get back and had they known of the "new" interpretation they wouldn't have applied. The Bingo Division shouldn't change an interpretation without putting people on notice. This is a "fairness" issue because it is not fair that the Division changed its interpretation and did not publicize it and, as a result, Habitable Spaces was adversely impacted because it paid the \$3300 application fee.



SOAH DOCKET NO. 362-15-5571.B

TEXAS LOTTERY COMMISSION,  
Petitioner

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§

BEFORE THE STATE OFFICE

v.

OF

HABITABLE SPACES,  
CONDUCTOR TAXPAYER NO.  
14655567643,  
Applicant

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

In this case, the staff (Staff) of the Charitable Bingo Operations Division of the Texas Lottery Commission (Commission) proposes to deny the application of Habitable Spaces (Applicant) for a license to conduct charitable bingo operations. The Administrative Law Judge (ALJ) concludes Habitable Spaces failed to prove it was entitled to have its application granted and recommends that the Commission deny the application.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

The Commission has jurisdiction over this matter pursuant to the Bingo Enabling Act (Act).<sup>1</sup> The State Office of Administrative Hearings (SOAH) has jurisdiction over all matters relating to the conduct of a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to Texas Government Code chapter 2003.

On February 9, 2015, Habitable Spaces filed an application to obtain a license to conduct bingo as a fraternal organization.<sup>2</sup> In a letter dated August 7, 2015, Staff notified Habitable Spaces that it was proposing to deny its application to conduct bingo.<sup>3</sup> On August 25, 2015,

<sup>1</sup> Tex. Occ. Code chapter 2001.

<sup>2</sup> Staff Ex. 9.

<sup>3</sup> Staff Ex. 1.

Habitable Spaces appealed the proposed denial and requested a hearing.<sup>4</sup> A second amended notice of the hearing was sent to Habitable Spaces on October 27, 2015.<sup>5</sup> The adequacy of the notice is not in dispute.

The hearing was convened before ALJ Beth Bierman on February 16, 2016. Assistant General Counsel Kristen Guthrie represented Staff. Eddie Heinemeier, Director of Habitable Spaces, represented Habitable Spaces. The hearing was adjourned and the record closed the same day.

## II. APPLICABLE LAW

Habitable Spaces applied for a license to conduct bingo as a fraternal organization. A fraternal organization is defined in the Act as “... a nonprofit organization organized to perform and engaged primarily in performing charitable, benevolent, patriotic, employment-related, or educational functions that meet the other requirements of [the Act.]”<sup>6</sup>

A nonprofit organization is defined as:

... an unincorporated association or a corporation that is incorporated or holds a certificate of authority under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes). The organization:

- (A) may not distribute any of its income to its members, officers, or governing body, other than as reasonable compensation for services; and
- (B) must have obtained tax exempt status under Section 501(c), Internal Revenue Code of 1986.<sup>7</sup>

A fraternal organization seeking a license to conduct bingo must show that it has been organized as a fraternal organization in the State of Texas for at least three years prior to

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<sup>4</sup> Staff Ex. 2.

<sup>5</sup> Staff Ex. 3.

<sup>6</sup> Tex. Occ. Code § 2001.002(11)(A).

<sup>7</sup> Tex. Occ. Code § 2001.002(19); 16 Tex. Admin. Code § 402.420.

submitting its application for a license to conduct bingo. During that three-year period, the fraternal organization must show that it has a bona fide membership that is actively and continuously engaged in furthering its charitable purpose.<sup>8</sup>

Staff seeks to deny Habitable Space's application because it contends:

1. Habitable Space has not demonstrated that it has been organized as a fraternal organization in Texas for at least three years prior to submitting its application;
2. The stated purpose of Habitable Spaces, as found in its bylaws, does not comport with the definition of a fraternal organization in the Act;
3. Habitable Spaces only acquired tax-exempt status from the Internal Revenue Service (IRS) in March 2014, which is less than three years prior to submitting its application; and
4. Habitable Spaces failed to show that during the three-year period prior to submitting its application it had a bona fide membership actively and continuously engaged as an organization in furthering its authorized purpose.

Habitable Spaces argues that it has been a fraternal organization performing charitable work since 2012. It believes it meets the definition of a fraternal organization and should be granted a license. Habitable Spaces alleges other fraternal organizations have been granted a license without having the tax-exempt status for three years. As the applicant, Habitable Spaces has the burden of proof by a preponderance of the evidence to show that its application should be granted.<sup>9</sup>

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<sup>8</sup> Tex. Occ. Code § 2001.101(b).

<sup>9</sup> Tex. Occ. Code § 2001.352(b).

### III. DISCUSSION

At the hearing, Staff had 11 exhibits admitted into evidence and presented the testimony of two Commission employees: Desira Glenn, Licensing and Accounting Services Manager; and Michelle Metzler, Licensing and Permit Specialist.

Habitable Spaces had one exhibit admitted. Christopher Shane Heinemeier, founding director and President for Habitable Spaces;<sup>10</sup> and Alison Ward Heinemeier, founding director; testified for Habitable Spaces. Alice Banks, a former employee for the Commission, and Alfonso Royal III, the current Charitable Bingo Director for the Commission, were subpoenaed to testify by Habitable Spaces. Philip Sanderson, the former deputy director and director of the Charitable Bingo Division, and Stephen Fenoglio, an attorney who has previously practiced in front of the Commission, were called as expert witnesses on behalf of Habitable Spaces, but were not allowed to testify, along with Ms. Banks, because Habitable Spaces had not designated them as expert witnesses prior to the hearing in response to Staff's request for disclosure of expert witnesses.

#### A. Staff's Testimony and Evidence

Ms. Glenn has been the Licensing and Accounting Services Manager for the Commission for four months. She oversees all of the licensing and accounting processes for the Commission and had reviewed the application and file in this case.

Ms. Glenn testified that Habitable Spaces did not have tax-exempt status for three years prior to its application because its application was filed in February 2015 and it did not receive tax-exempt status from the IRS until March 2014. Ms. Glenn further noted that Habitable Spaces did not show that it had been organized in Texas as a fraternal organization for three years, and did not have a bona fide membership for those three years. Habitable Spaces initially

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<sup>10</sup> Mr. Heinemeier currently works for the Briscoe Western Art Museum in San Antonio, Texas, as the museum preparator, or steward of the arts.

had no voting members when it filed its Certificate of Formation in March 2014.<sup>11</sup> This was corrected by filing a Certificate of Amendment with the Texas Secretary of State's Office in March 2015, which stated that the corporation would have voting members.<sup>12</sup>

Finally, Ms. Glenn testified that the stated purpose of Habitable Spaces, as listed in its bylaws, did not meet the definition of a fraternal organization.<sup>13</sup> The bylaws state in relevant part:

The Corporation is organized exclusively for charitable and educational purposes as defined in Section 501(c)(3) of the Internal Revenue Code. These activities will include, but not be limited to[,] artist residency program, promoting public interest in the arts, supporting, encouraging, and educating public in both visual and performing arts, as well as providing a venue for public appreciation for the arts.<sup>14</sup>

According to Ms. Glenn, the information received from Habitable Spaces indicated that the organization was involved in the arts, farming, and gardening, which Staff contended did not meet the requirements of the Act.<sup>15</sup> Ms. Glenn testified that education about art would not be considered a fraternal purpose because Staff received no evidence regarding the student/teacher environment or what was taught by Habitable Spaces.

Michelle Metzler is a Licensing and Permit Specialist in the Commission's Charitable Bingo Division. She has worked for the Commission for 17 years. Ms. Metzler testified that the application was initially denied because Habitable Spaces did not have tax-exempt status for three years prior to its application, and because it had not been organized in Texas for at least three years. Ms. Metzler testified she checked the tax-exempt status and found that the IRS had designated Habitable Spaces as "A20," which means Habitable Spaces is tax-exempt because of

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<sup>11</sup> Staff Ex. 7 at 2.

<sup>12</sup> Staff Ex. 7 at 15-17.

<sup>13</sup> Staff cited Tex. Att'y Gen. LO-88-78 (1988) for the proposition that promotion of the performing arts is not a purpose for which a fraternal organization may be eligible for a license to conduct bingo. This will be discussed below in greater detail.

<sup>14</sup> Staff Ex. 7 at 1.

<sup>15</sup> Staff Exs. 7, 9.

its arts classification, not because of an educational purpose.<sup>16</sup> In response to questions by Mr. Heinemeier, Ms. Metzler testified that she was not aware of any change in Commission policy with regard to the Commission enforcing the requirement that fraternal organizations must have three years of tax-exempt status prior to filing an application.

## **B. Habitable Spaces's Testimony and Evidence**

Mr. Heinemeier testified that Habitable Spaces is a sustainable farm and artist in residence program whose sole purpose is education for the surrounding community. The entity puts on lectures, seminars, and workshops regarding art to facilitate this purpose. Mr. Heinemeier testified that the mayor of Kingsbury, Texas, the city's attorney, and the local chamber of commerce supported Habitable Spaces and its charitable purpose.<sup>17</sup>

He testified that beginning in 2012, Habitable Spaces became the designated nonprofit host of the local annual Fall Harvest Festival. According to Mr. Heinemeier, the rural, agricultural, and arts communities come together at the festival; there are lectures and workshops. The local community can also sell and barter their crafts at the festival. He stated that Habitable Spaces does not engage in any performing arts. Mr. Heinemeier testified that the first charitable event put on by Habitable Spaces occurred in 2012. Mr. Heinemeier agreed that the art was taking place on his father's land, and that improvements to that land would, at least at this point, benefit his father.

Mr. Royal has been the Director of the Charitable Bingo Division since July 2014. He testified he was not aware of any change in policy with regard to whether a fraternal organization had to have a tax-exempt status for three years prior to the application for a license. He stated it was a long-standing interpretation of the division that an organization had to have the 501(c)(3) tax-exempt status for three years prior to application. According to Mr. Royal, the Act requires that the fraternal organization be a nonprofit organization. The nonprofit organization must have

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<sup>16</sup> Staff Ex. 10.

<sup>17</sup> Staff Ex. 9 at 10-12.



a 501(c) tax exempt status. Under the Act, the fraternal organization must be in existence for three years prior to application. Hence, Mr. Royal contended that Habitable Spaces was required to have its tax-exempt status for three years prior to application.

Ms. Heinemeier testified that she and Mr. Heinemeier started Habitable Spaces. She stated that Habitable Spaces does not put on performing arts, but promotes and educates the public about the arts by giving lectures and workshops. She noted that the Fall Harvest Festival is of great benefit to the City of Kingsbury and the surrounding community. They formed Habitable Spaces to bring the arts back to the agricultural area.

Ms. Heinemeier contended that the IRS classification for art education is specifically for arts schools, not for an entity such as Habitable Spaces. She asserted that Habitable Spaces does educate the public about the arts by putting on workshops and lectures. Ms. Heinemeier has a Master of Fine Arts degree and Mr. Heinemeier has a Bachelor of Fine Arts degree. She stated that many of the artists holding the lectures or workshops are similarly qualified. She believed this supported Habitable Spaces's ability to educate about the arts.

#### IV. ANALYSIS

Habitable Spaces is a nonprofit organization and seeks a license to conduct bingo as a fraternal organization. There is no dispute that Habitable Spaces received its tax-exempt status from the IRS in March 2014, less than three years before it submitted its license application to the Commission. The question is whether the Act and Commission rule require Habitable Spaces to have held that tax-exempt status for three years prior to filing the application, as urged by Staff.

Pursuant to Texas Occupations Code § 2001.002(19) and 16 Texas Administrative Code § 402.420, Habitable Spaces is required, as a nonprofit organization, to have acquired tax-exempt status under § 501(c) of the Internal Revenue Code. Until it acquires that tax-exempt status, it is not a nonprofit organization as defined by the Act or Commission rule. A fraternal organization is defined under the Act as a nonprofit organization. Under Texas Occupation Code

§ 2001.101(b), a fraternal organization seeking a license to conduct bingo must show that it has been organized as a fraternal organization in the State of Texas for at least three years prior to submitting its application for a license to conduct bingo. It follows, then, that the fraternal organization must meet the requirements of a nonprofit organization for three years prior to submitting its application to conduct bingo. One of these requirements is obtaining 501(c) tax-exempt status. Because Habitable Spaces has not had 501(c) tax-exempt status for the required period of time, its application must be denied.

Staff also argues that the application should be denied because Habitable Spaces failed to show that it has been in existence in Texas as a fraternal organization for three years prior to submitting its application. Habitable Spaces filed its license application in February 2015, which means that it had to show it had been in existence as a fraternal organization in Texas, and as defined in the Act, prior to February 2012. The evidence showed that Habitable Spaces did not file its Certificate of Formation with the Secretary of State's Office until March 2014. And while there were minutes of meetings of the organization that were dated as early as January 2012, there is no evidence the group was a Texas fraternal organization meeting the requirements of the Act for three years prior to February 2015.

Staff next argues that Habitable Spaces failed to show that during the three-year period prior to submitting its application it had a bona fide membership actively and continuously engaged as an organization in furthering its authorized purpose. The evidence showed that Habitable Spaces did not have voting members until March 2015. As a result, it could not have a bona fide membership actively and continuously engaged as an organization in furthering its authorized purpose under the requirements of the Act.

Finally, Staff contends that the stated purpose of Habitable Spaces, as found in its bylaws, does not comport with the definition of a fraternal organization in the Act, based on an Attorney General Letter Opinion, which addressed questions related to the eligibility of a fraternal organization for a license to conduct bingo. The question addressed in the Letter Opinion was:

Assuming all other requirements are met, does a nonprofit organization organized to promote performing arts, whose primary activities are the preparation and performance of performing art productions, open to the general public who purchase tickets, qualify as a fraternal organization for a license to conduct bingo?<sup>18</sup>

The answer given in the opinion was:

Again, we find the description “to promote the performing arts” insufficient to apprise us of an organization’s eligibility for licensure as a “fraternal organization,” which must be one that “is organized to perform, and engages primarily in performing charitable, benevolent, patriotic, employment-related, or educational functions.” ... A determination could only be made upon consideration of a particular organization’s actual activities and organization.<sup>19</sup>

Staff interprets this opinion to disallow any activity related to the performing arts as a purpose for which a fraternal organization may qualify under the Act to conduct bingo. Notwithstanding the fact that Habitable Spaces denied it was involved in the performing arts, the ALJ does not read the opinion to go that far; rather, it appears to conclude that, without further evaluation of the specifics of an organization’s actual activities and organization, the mere description of “promoting the public arts” is insufficient to reach any conclusion at all. Because Habitable Spaces’s application must be denied because it did not have tax-exempt status for three years, did not show that it had been organized as a fraternal organization in the State of Texas for at least three years, and did not show it had a bona fide membership for three years, the ALJ does not reach a conclusion with regard to whether Habitable Spaces’s stated purpose in its bylaws would automatically make it ineligible to hold a license to conduct bingo.

For these reasons, the ALJ concludes Habitable Spaces failed to prove it is eligible to be licensed to conduct bingo, and its application should be denied.

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<sup>18</sup> Staff Ex. 4 at 4-5.

<sup>19</sup> Staff Ex. 4 at 5.

## V. FINDINGS OF FACT

1. On February 9, 2015, Habitable Spaces filed an application to conduct bingo as a fraternal organization with the Texas Lottery Commission (Commission).
2. On August 7, 2015, the staff (Staff) of the Commission notified Habitable Spaces that it was proposing to deny its license application.
3. On August 25, 2015, Habitable Spaces appealed the proposed denial and requested a hearing.
4. A second Amended Notice of Hearing was sent to Habitable Spaces on October 27, 2015. 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 a short, plain statement of the matters asserted.
5. In March 2014, Habitable Spaces filed its Certificate of Formation with the Texas Secretary of State's Office.
6. In March 2014, Habitable Spaces received its tax-exempt status under § 501(c)(3) of the Internal Revenue Code.
7. When it filed its Certificate of Formation in March 2014, Habitable Spaces had no voting members.
8. In March 2015, Habitable Spaces filed a Certificate of Amendment with the Texas Secretary of State's Office, to indicate that Habitable Spaces would have voting members.
9. Habitable Spaces did not have tax-exempt status for three years prior to its application.
10. Habitable Spaces did not show it had a bona fide membership for three years prior to its application.
11. The hearing was held on February 16, 2016, before Administrative Law Judge Beth Bierman. Kristen Guthrie represented Staff; Eddie Heinemeier represented Habitable Spaces. The record closed that day.

## VI. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter. Tex Occ. Code ch. 2001.

2. The State Office of Administrative Hearings (SOAH) has jurisdiction over all matters relating to the conduct of a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law. Tex. Gov't Code ch. 2003.
3. Habitable Spaces has the burden of proof in this proceeding. Tex. Occ. Code § 2001.352(b).
4. A fraternal organization is a nonprofit organization organized to perform and engaged primarily in performing charitable, benevolent, patriotic, employment-related, or educational functions that meet the other requirements of the Bingo Enabling Act. Tex. Occ. Code 2001.002(11).
5. A nonprofit organization is an unincorporated association or a corporation that is incorporated or holds a certificate of authority under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes). Tex. Occ. Code § 2001.002(19).
6. A nonprofit organization must obtain a tax-exempt status under Section 501(c), Internal Revenue Code of 1986. Tex. Occ. Code § 2001.002(19)(B).
7. A fraternal organization seeking a license to conduct bingo must show that it has been organized as a fraternal organization in the State of Texas for at least three years and must show that it has a bona fide membership that is actively and continuously engaged in furthering its charitable purpose. Tex. Occ. Code § 2001.101(b)(1), (2).
8. A fraternal organization seeking a license to conduct bingo must have obtained tax-exempt status under Section 501(c) for three years prior to submitting its application for a license to conduct bingo. Tex. Occ. Code §§ 2001.002(19)(B), 2001.101(b)(1), (2); 16 Tex. Admin. Code § 402.420.
9. Adequate and timely notice of the hearing was provided. Tex. Gov't Code §§ 2001.051-.052.
10. Habitable Spaces's application should be denied.

**SIGNED April 18, 2016.**



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**BETH BIERMAN**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**



## Guthrie, Kristen

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**From:** Eddie Heinemeier <eddieh@staffprotexas.com>  
**Sent:** Thursday, May 05, 2016 4:58 PM  
**To:** Beth Bierman; Guthrie, Kristen; shane heinemeier  
**Subject:** Habitable Spaces PFD and Exceptions  
**Attachments:** LMS License - Amendment.html; LMS Athletic Booster Club Original Bingo License application package.pdf; LMS Bingo License.pdf

Dear Administrative Law Judge Bierman:

I received the Proposal for Decision in this matter. As we said at the hearing, previously the Division issued licenses to organizations that did not have tax exempt status for at least 3 consecutive years before the issuance of the license. Also, our position is that Habitable Spaces has been organized as a fraternal organization in Texas for at least 3 years, had a voting membership, and had a bona fide membership that is actively and continuously engage in furthering its charitable purpose for the requisite period of time.

After the hearing, I did get an example of the Division's past practice. Enclosed is an Application for LMS Athletic Booster Club. The organization submitted its license application on January 10, 2014 and then withdrew the application because it apparently didn't have proper verification from the IRS. Once it obtained the verification, it resubmitted its application on March 21, 2014. You can see that the effective date of exemption is September 3, 2013. Also, please note that LMS Athletic Booster Club was formed as a nonprofit corporation in September 2013. The Division issued the license. If you don't believe you can rely on the information I've submitted without it being formally part of the record, then we request you re-open the record in order for this information to be part of the record. For your information, I submitted a Public Information Act request to the Texas Lottery Commission to obtain copies of applications similar to this one. The response I received was that, after conducting a reasonable search, the Commission did not locate any documents responsive to my request. The attached was obtained through a Public Information Act request to the Commission, after the one I submitted.

We take exception with Conclusion of Law No. 8 which concludes that a fraternal organization seeking a license to conduct bingo must have obtained tax-exempt status under Section 501(c) for three years prior to submitting its application for a license to conduct bingo. We take exception to Conclusion of Law No. 7 and Finding of Fact No. 10 because they conclude an organization can't amend documents to correct incorrect information, such as the fact that Habitable Spaces did have voting members and did have a bona fide membership for 3 years prior to its application. We also take exception to Conclusion of Law No. 10 which concludes the application should be denied. If the Division wants to change its interpretation of the applicable statutes and the rules from its previous interpretation that organizations have relied on when submitting their applications and license application fees, it should only do so after notifying interested persons of a change in its interpretation. Habitable Spaces submitted a \$3300 license application fee that it can't get back from the Division. Had the Division notified interested persons it was changing its interpretation, Habitable Spaces wouldn't have submitted the application and paid \$3300. That may not seem like a lot of money but it is to a non-profit organization.

We respectfully request that you amend the Proposal for Decision and conclusions of law to indicate that the Division's previous interpretation was that an organization only had to have obtained tax exempt status before the issuance of the license and that the Habitable Spaces did have voting members and a bona fide membership for the requisite period of time. If the Division wants to change its previous interpretation that interested persons have relied on, it should only be able to do so after formal notification of a change in its interpretation. We believe the Commission should have amended its rules to put interested persons on notice of the change in interpretation.

Dear Judge Bierman, I hope you will reconsider your Proposal for Decision. It is not fair to non-profit organizations that apply for licenses and pay costly application fees to have applications denied just because there has been a change in the Division's interpretation of the statutes and rules, with no formal notice to interested persons. Thank you.

## **Eddie A. Heinemeier**

Designated Agent & Director

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San Antonio, TX 78261

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(830) 980-2694 fax

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Charitable Bingo Operations Division  
**Texas Application for an Original License to  
 Conduct Charitable Bingo**

B-AP-117 (Rev. 9/13)

CONDUCTOR

FOR T.L.C. USE ONLY  
 Amount Paid \$ 100.00  
 Postmark Date 1-10-14

**TAXPAYER INFORMATION** PLEASE PRINT LEGIBLY OR TYPE IN BLACK INK

RECEIVED  
 JAN 13 2014

1. Name of Organization LMS Athletic Booster Club

2. Mailing Address (Street address, PO Box or Rural Route. Do not give apartment no., S.W. or R.F.D. No.)  
410 S West Dr.

Leander TX 78641 Williamson  
 City State ZIP Code County

n/a Shannon Montez  
 Organization Website Address Individual's Name to Contact

512-799-4852  
 Organization Phone Number (Area Code & Number) Individual's Contact Number (Area Code and Number)

Organization Fax Number (Area Code & Number) Individual's Email Address (optional)

3. Type of non-profit organization (check one):  
 1-Religious  2-Medical  3-Fraternal  4-Volunteer Fire Department  5-Veteran\*  
 6-National Historical District Association  7-Volunteer Emergency Medical Services Provider  
 \*Is this veteran's organization chartered by the US Congress?  Yes  No

4. Is this organization affiliated with a state or a national organization?  Yes  No

5. Does this organization now have a 501(c) exemption from the Internal Revenue Service (IRS)?  Yes  No

6. Enter your nine (9) digit Federal Employer Identification Number (EIN) if any. 1742970218

7. Enter your organization's eleven (11) digit Texas Vendor Identification Number. 17429702180

8. If this organization is a corporation, enter the following:  
 State Texas Charter or CNA Number MM DD YYYY

9. If the organization is NOT a corporation, describe the method of organization such as bylaws, constitution, charter, etc.  
Bylaws - articles of incorp MM DD YYYY 09 03 2013  
 Method of Organization (Bylaws, constitution, charter, articles)

10. Has your organization filed Form 990 with the IRS in the past?  Yes  No

11. Does your organization distribute any of your income to members, officers, or governing body except as reasonable compensation for services?  
 Yes (describe below)  No

**BINGO INFORMATION**

12. Date you wish to start conducting charitable bingo games:  
 Effective the earliest possible date OR  Effective MM DD YYYY

13. Day of the week and time(s) games will be played.

Day	Time	AM	PM	Day	Time	AM	PM	Day	Time	AM	PM
First Occasion		PM	to	PM		PM	to	PM		PM	to
				Second Occasion				Third Occasion			

ORGANIZATION LOCATION

14. IWFL

Name of organization's primary business office if no business office, otherwise the private residence of your CEO

1703 Lions Den

Address (Use street address, NOT PO Box or Rural Route. Do not give directions, i.e., 5 miles north of 1-20)

Leander

City

TX

State

78641

ZIP Code

Williamson

County

This location is:  business office  principal residence of the CEO

PLAYING LOCATION

15. 690 N Bagdad

Name of location where bingo games will be played

512 576 4874

Enter the phone number of the bingo hall (include area code)

690 N Bagdad

Physical address of your organization's playing location (Use street address, NOT PO Box or Rural Route. Do not give directions, i.e., 5 miles north of 1-20)

Leander

City

TX

State

78641

ZIP Code

Williamson

County

16. Is this location inside the city limits named in Item 15?  YES  NO

17. How is this location controlled by your organization?  Own (list date acquired) and skip to Item 19

Lease, including use of facilities free of charge (if enclosed a copy of the meeting minutes where your organization voted to conduct bingo. Go to Item 18)

18. Is your organization joining a unit?  YES  NO

LESSOR INFORMATION

19. IWFL

Name of the entity from whom you are leasing premises

743006307

Lessor's taxkey number

PO Box 1844

Address

Round Rock

City

TX

State

78680

ZIP Code

BINGO CHAIRPERSON

20. Enter the name and all requested information for the officer or member of your board of directors that will serve as the Bingo Chairperson for your organization. This individual is responsible for overseeing the organization's bingo activities and reporting back to the membership about those activities.

Frederick, Laurie

Name (LAST, FIRST MIDDLE INITIAL)

Social Security Number

Driver's License / Identification Number

State

1703 Lions Den

Home Address (Street Address, PO Box, or Rural Route. Do not give directions, i.e., 5 miles north of 1-20)

Leander

City

TX

State

78641

ZIP Code

512 576-4874

Phone Number (Area Code & Number)

White

Race

WM WF

Gender

Date of Birth

11

MM

22

DD

1973

YYYY

Home Address (optional)

Position (Check all that apply)  Director  Officer  Operator (must be a member of the organization)  Submitted w/app

Chairperson

Worker Property Number

**CERTIFICATE FOR LICENSES TO CONDUCT CHARITABLE BINGO**

22. Has a license been held, or is a license currently held, at the playing location named in Item 15?

YES (proceed to Item 24)  NO (proceed to Item 23)

23. The following section must be completed by either the County Clerk or City Secretary for the county or city in which you are proposing to conduct charitable bingo. In the case where the proposed playing location is within the boundaries of an incorporated city or town, the City Secretary's Certificate should be completed. If the proposed playing location is not inside the boundaries of an incorporated city or town, the County Clerk's Certificate should be completed.

**COUNTY CLERK'S CERTIFICATE**

I hereby certify that the conduct of bingo is lawful in the county named below. I further certify that the location of the premises listed in Item 17 and sought to be licensed herein is not inside the boundaries of an incorporated city or town.

Witness my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_ A.D. (Year) \_\_\_\_\_

X \_\_\_\_\_  
County Clerk

SEAL \_\_\_\_\_ County Clerk of \_\_\_\_\_ Name of County

**CITY SECRETARY'S CERTIFICATE (if not an incorporated city, so state)**

I hereby certify that the conduct of bingo is lawful at the location of the premises listed in Item 17 and sought to be licensed herein, and that such location is inside the boundaries of the city or town and is not prohibited by local option election.

Witness my hand and seal of office this 8<sup>th</sup> day of January A.D. (Year) 2014



X Rebecca Hale  
City Secretary / Clerk

City Secretary of City of Leander  
Name of City

**CERTIFICATION OF RESPONSIBILITY**

You are certifying on a State of Texas License Application that the information provided is true and correct. There is a substantial penalty for a fraudulent application.

This is the certification of responsibility to be signed by the Bingo Chairperson and an operator of the organization. The signing operator must also be listed on the Registry of Approved Bingo Workers and as an operator on Schedule B.

24. We, the undersigned, declare that the organization identified in this application is a bona fide non-profit organization, that we are active members of the organization, that we will be responsible for conducting charitable bingo games and filing all required returns in accordance with the provisions of the Texas Bingo Enabling Act (BEA) and Charitable Bingo Administrative Rules (CBAR), and that all net proceeds derived from charitable bingo games will be used for charitable purposes as defined in the BEA. We further declare that if granted a license to conduct charitable bingo, a member of the organization identified in this application designated as an operator will be present at and in charge of each and every charitable bingo game played under the license. We further declare that this license will not be sold, rented, transferred, or otherwise assigned to any group or individual. We further declare that we will keep accurate records of all charitable bingo proceeds and expenses subject to audit by the Texas Lottery Commission. We understand that the failure to abide by the provisions of the BEA and CBAR could subject the signers of this application to possible criminal prosecution and the revocation of this license.

We further certify that all statements in this application and any attachments are true and correct to the best of our knowledge and belief and that we, the undersigned, declare that as the Bingo Chairperson of the organization and operator, we have read and will abide by the above statement.

sign here ▶ Heather Beach 11 Heather Beach (President) 1-9-14  
Operator Print Name & Title Date

I certify that I will be responsible for the conduct of bingo under the terms of the License and Section 2001, Texas Occupations Code, Bingo Enabling Act.

sign here ▶ Shannon Montez Shannon Montez (Treasurer) 1-8-14  
Bingo Chairperson (cannot sign as operator) Print Name & Title Date

JAN-10-2014 08:25

received:

SSADMIN GEORGETOWN

Jan 10 2014 08:23am

00000000

P.008



Department of the Treasury  
Internal Revenue Service

P.O. BOX 2508  
CINCINNATI OH 45201

In reply refer to: 9999999999  
Oct. 01, 2013 LTR 3367C S0  
74-2970218 000000 00

00025121

BODC: TE

LMS ATHLETIC BOOSTER CLUB  
410 SOUTH WEST DR  
LEANDER TX 78641



015433

Employer Identification Number: 74-2970218  
Tax Form: 1023  
Document Locator Number: 17053-263-31600-3  
For assistance, call: 1-877-829-5500

Dear Applicant,

We received your application for exemption from Federal income tax and your user fee payment.

During the initial review process, applications for exemption are separated into three groups:

1. Those that can be processed immediately based on information submitted,
2. Those that need minor additional information to be resolved, and
3. Those that require additional development.

If your application falls in the first group or second group, you will receive your determination letter stating that you are exempt from Federal income tax or a request for information via phone, fax, or letter. If your application falls within the third group, you will be contacted when your application has been assigned to an Exempt Organizations specialist for technical review. You can expect to be contacted within approximately 90 days from the date of this notice.

IRS does not issue "tax exempt numbers" or "tax exempt certificates" for state or local sales or income taxes. If you need exemption from these taxes, contact your state or local tax offices.

General information about the application process and tax-exemption can be found by visiting our website, [www.irs.gov/eo](http://www.irs.gov/eo). If you are unable to locate the information needed, you may call our toll free number shown above Monday through Friday. When communicating with us, please refer to the employer identification number and document locator number shown above.

Sign up for Exempt Organizations' EO Update, a regular e-mail newsletter that highlights new information posted on the Charities pages of [irs.gov](http://irs.gov). To subscribe, go to [www.irs.gov/eo](http://www.irs.gov/eo) and click on "EO Newsletter."

January 10, 2014

To Whom it May Concern,

Attached is an application package for LMS Athletic Booster Club to request a License to Conduct Bingo.

The package includes:

- Schedule W1- Signed by the Bingo Chairperson & Operator
- Schedule B-
- Texas Application for an Original License to Conduct Charitable Bingo
- Minutes from 2011 & 2013. We are also submitting "Texas Franchise Tax Ownership Information Report" for years 2008, 2009, 2010, 2011 to indicate that our organization has been in existence.
- Letter from the IRS indicating that they have received form 1023 requesting reinstatement of our 501c.3 status. As of today, the application has yet to be assigned to a caseworker.
- \$100 application fee

Should you have any questions, please do not hesitate to contact me at 512-799-6852 or at [shannon.montez@yahoo.com](mailto:shannon.montez@yahoo.com).

Sincerely,



Shannon M. Montez

Treasurer- LMS Athletic Booster Club

4/15

**DORN, DONNA**

014106004911

LMS Athletic Booster Club  
174 297 02180

**From:**  
**Sent:**  
**To:**  
**Cc:**  
**Subject:**  
**Attachments:**

Shannon Montez  
Tuesday, April 15, 2014 2:51 PM  
Dorn, Donna  
Montez Shannon;  
Supplemental forms for LMS Athletic Booster club  
lms articles of incorporation.pdf; LMS Athletic Booster Club By-Laws dated 8 24 1998.docx; 08 2011 bank statement.pdf; Aug 2012 BKST.pdf; August 2013 bank statement.pdf; Feb 2014 bank statement.pdf; LMS Athletic Booster Club minutz 5.10.11.docx; Minutes for General Meeting - 12-10-13 LMS Athletic Booster Club.pdf; Minutes for General Meeting - 12-10-13 LMS Athletic Booster Club.pdf; LMS Athletic Booster club membership list.doc

4-15-14

Donna,

Thanks for your patience. I am attaching the following:

- 1. Bank Account information for 3 separate years
- 2. Minutes from 3 separate years. I could not locate minutes from 2012 but am providing minutes from 2014, 2013 & 2011 to show existence for at least 3 years.
- 3. Copy of Bi-Laws
- 4. Articles of Incorporation
- 5. List of membership

Please let me know if you need any other documents or if you have issues opening these.

Shannon Montez  
512-799-6852

RECEIVED  
APR 16 2014  
BINGO DIVISION

Corporations Section  
P.O. Box 13697  
Austin, Texas 78711-3697



John Steen  
Secretary of State

Office of the Secretary of State  
Packing Slip

September 6, 2013  
Page 1 of 1

S Montez  
3506 Bachelor Gulch  
Leander, TX 78641

Batch Number: 49991820  
Client ID: 446369426

Batch Date: 09-03-2013  
Return Method: Mail

Document Number	Document Detail	Number / Name	Page Count	Fee
499918200001	Certificate of Formation	Leander Middle School Athletic Booster Club	0	\$25.00
			Total Fees:	\$25.00

Payment Type	Payment Status	Payment Reference	Amount	
Check	Received	2219	\$25.00	
			Total:	\$25.00

Total Amount Charged to Client Account: \$0.00  
(Applies to documents or orders where Client Account is the payment method)

*Note to Customers Paying by Client Account:* This is not a bill. Payments to your client account should be based on the monthly statement and not this packing slip. Amounts credited to your client account may be refunded upon request. Refunds (if applicable) will be processed within 10 business days.

User ID: AHURTADO

Corporations Section  
P.O.Box 13697  
Austin, Texas 78711-3697



John Steen  
Secretary of State

## Office of the Secretary of State

September 06, 2013

S Montez  
3506 Bachelor Gulch  
Leander, TX 78641 USA

RE: Leander Middle School Athletic Booster Club  
File Number: 801845324

It has been our pleasure to file the certificate of formation and issue the enclosed certificate of filing evidencing the existence of the newly created nonprofit corporation.

Nonprofit corporations do not automatically qualify for an exemption from federal and state taxes. Shortly, the Comptroller of Public Accounts will be contacting the corporation at its registered office for information that will assist the Comptroller in setting up the franchise tax account for the corporation. Information about franchise tax, and contact information for the Comptroller's office, is available on their web site at <http://window.state.tx.us/taxinfo/franchise/index.html>. For information on state tax exemption, including applications and publications, visit the Comptroller's Exempt Organizations web site at <http://window.state.tx.us/taxinfo/exempt/index.html>. Information on exemption from federal taxes is available from the Internal Revenue Service web site at [www.irs.gov](http://www.irs.gov).

Nonprofit corporations do not file annual reports with the Secretary of State, but do file a report not more often than once every four years as requested by the Secretary. It is important for the corporation to continuously maintain a registered agent and office in Texas as this is the address to which the Secretary of State will send a request to file a periodic report. Failure to maintain a registered agent or office in Texas, failure to file a change to the agent or office information, or failure to file a report when requested may result in the involuntary termination of the corporation. Additionally, a nonprofit corporation will file documents with the Secretary of State if the corporation needs to amend one of the provisions in its certificate of formation. If we can be of further service at any time, please let us know.

Sincerely,

Corporations Section  
Business & Public Filings Division  
(512) 463-5555  
Enclosure

Phone: (512) 463-5555  
Prepared by: Angie Hurtado

*Come visit us on the Internet at <http://www.sos.state.tx.us/>*

Fax: (512) 463-5709  
TID: 10286

Dist: 7-1-1 for Relay Services  
Document: 49991820002



Corporations Section  
P.O. Box 13697  
Austin, Texas 78711-3697



John Steen  
Secretary of State

## Office of the Secretary of State

### CERTIFICATE OF FILING OF

Leander Middle School Athletic Booster Club  
File Number: 801845324

The undersigned, as Secretary of State of Texas, hereby certifies that a Certificate of Formation for the above named Domestic Nonprofit Corporation has been received in this office and has been found to conform to the applicable provisions of law.

ACCORDINGLY, the undersigned, as Secretary of State, and by virtue of the authority vested in the secretary by law, hereby issues this certificate evidencing filing effective on the date shown below.

The issuance of this certificate does not authorize the use of a name in this state in violation of the rights of another under the federal Trademark Act of 1946, the Texas trademark law, the Assumed Business or Professional Name Act, or the common law.

Dated: 09/03/2013

Effective: 09/03/2013



A handwritten signature in black ink, appearing to read "John Steen".

John Steen  
Secretary of State

Form 202  
(Revised 05/11)

Submit in duplicate to:  
Secretary of State  
P.O. Box 13697  
Austin, TX 78711-3697  
512 463-5555  
FAX: 512/463-5709  
Filing Fee: \$25



This space reserved for office use.

FILED  
In the Office of the  
Secretary of State of Texas

SEP 03 2013

Corporations Section

**Certificate of Formation  
Nonprofit Corporation**

**Article 1 – Entity Name and Type**

The filing entity being formed is a nonprofit corporation. The name of the entity is:

Leander Middle School Athletic Booster Club

**Article 2 – Registered Agent and Registered Office**

(See instructions. Select and complete either A or B and complete C.)

A. The initial registered agent is an organization (cannot be entity named above) by the name of:

OR

B. The initial registered agent is an individual resident of the state whose name is set forth below:

Shannon Monte

First Name M.I. Last Name Suffix

C. The business address of the registered agent and the registered office address is:

410 S West St Leander TX 78641  
Street Address City State Zip Code

**Article 3 – Management**

The management of the affairs of the corporation is vested in the board of directors. The number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as directors until the first annual meeting of members or until their successors are elected and qualified are as follows:

*A minimum of three directors is required.*

Director 1			
<u>Heather</u>		<u>Beach</u>	
First Name	M.I.	Last Name	Suffix
<u>410 S West St</u>	<u>Leander</u>	<u>TX</u>	<u>78641</u>
Street or Mailing Address	City	State	Zip Code Country

Director 2				
Shelly		Ford		
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>		<i>Suffix</i>
410 S West St	Leander	TX	78641	
<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Zip Code</i>	<i>Country</i>

Director 3				
Shannon		Montez		
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>		<i>Suffix</i>
410 S West St	Leander	TX	78641	
<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Zip Code</i>	<i>Country</i>

OR

The management of the affairs of the corporation is to be vested in the nonprofit corporation's members.

#### Article 4 – Membership

(See instructions. Do not select statement B if the corporation is to be managed by its members.)

- A. The nonprofit corporation shall have members.
- B. The nonprofit corporation will have no members.

#### Article 5 – Purpose

(See instructions. This form does not contain language needed to obtain a tax-exempt status on the state or federal level.)

The nonprofit corporation is organized for the following purpose or purposes:  
 Maintain an organization which helps to promote activities and further the goals of the Leander Middle Schools athletic program.

The following text area may be used to include any additional language or provisions that may be needed to obtain tax-exempt status.

**Supplemental Provisions/Information**  
(See instructions.)

Text Area: [The attached addendum, if any, is incorporated herein by reference.]

**Organizer**

The name and address of the organizer:

Shannon Montez

*Name*

410

S West St

*Street or Mailing Address*

Leander

*City*

TX

*State*

78641

*Zip Code*

**Effectiveness of Filing** (Select either A, B, or C.)

- A.  This document becomes effective when the document is filed by the secretary of state.
- B.  This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: \_\_\_\_\_
- C.  This document takes effect upon the occurrence of a future event or fact, other than the passage of time. The 90<sup>th</sup> day after the date of signing is: \_\_\_\_\_

The following event or fact will cause the document to take effect in the manner described below:

**Execution**

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized to execute the filing instrument.

Date: 08/16/2013



*Signature of organizer*

Shannon M Montez

*Printed or typed name of organizer*

014084003930

**BINGO LICENSING, ADMINISTRATIVE PENALTY AND  
CONSENT ORDER  
DISTRIBUTION FORM**

POSTMARK DATE:	3-24-14
TAXPAYER NUMBER:	17429702180
TAXPAYER NAME:	LMS Athletic Booster Club
CHECK AMOUNT:	\$ 257.00

**LICENSE**

ORIGINAL:	\$ 132.00
RENEWAL:	\$
AMENDMENT:	\$
TEMPORARY:	\$

**BOND**

AMOUNT	\$ 125.00
--------	-----------

**ADMINISTRATIVE PENALTY**

AMOUNT	\$
--------	----

**CONSENT ORDER (Agreed Order) - # \_\_\_\_\_**

AMOUNT	\$
--------	----

RECEIVED  
MAR 25 2014  
BINGO DIVISION

Conductor Original

FORMID 1

3-24-14

\$ 257.00

LMS Athletic Booster Club  
410 S West Dr  
Leander TX 78641  
TIN: 74-2970218  
March 21, 2014

To Whom it May Concern,

LMS Athletic Booster Club is resubmitting the Texas Application for Original License to Conduct Charitable. We had previously submitted the application but had to withdraw our application, as we did not have proper verification from the IRS. We have recently obtained documentation from the IRS indicating that we are a non-profit organization (501c3).

We are resubmitting the application along with the Calculation of Annual License Fee and Security.

Both myself and Heather Beach have viewed both the Bingo Training Program and the Pre-License Interview Training.

Should you have any questions, please contact Shannon Montez at or 512-799-6852.



Shannon Montez  
Treasurer LMS Athletic Booster Club

RECEIVED  
MAR 25 2014  
BINGO DIVISION

MAR-17-2014 15:21

IRS

513 263 3695 P.03

INTERNAL REVENUE SERVICE  
P. O. BOX 2508  
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

Date: **MAR 17 2014**

LMS ATHLETIC BOOSTER CLUB  
419 SOUTH WEST DR  
DEANDER, TX 78641

Employer Identification Number:  
74-2970218  
DLN:  
17053269316003  
Contact Person:  
HAROLD J FODOR ID# 31675  
Contact Telephone Number:  
(877) 829-5500  
Accounting Period Ending:  
June 30  
Public Charity Status:  
509(a)(2)  
Form 990 Required:  
Yes  
Effective Date of Exemption:  
September 3, 2013  
Contribution Deductibility:  
Yes  
Addendum Applies:  
No

Dear Applicant:

We are pleased to inform you that upon review of your application for tax exempt status we have determined that you are exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code. Contributions to you are deductible under section 170 of the Code. You are also qualified to receive tax deductible bequests, devises, transfers or gifts under section 2055, 2106 or 2522 of the Code. Because this letter could help resolve any questions regarding your exempt status, you should keep it in your permanent records.

Organizations exempt under section 501(c)(3) of the Code are further classified as either public charities or private foundations. We determined that you are a public charity under the Code section(s) listed in the heading of this letter.

Please see enclosed Publication 4221-FC, Compliance Guide for 501(c)(3) Public Charities, for some helpful information about your responsibilities as an exempt organization.

Sincerely,



Director, Exempt Organizations

Enclosure: Publication 4221-FC

Letter 847

03/17/2014 3:14PM (GMT-05:00)

## CHECKLIST

### REQUIRED FORMS AND PAPERWORK TO INCLUDE AS PART OF YOUR APPLICATION:

Please ensure that all of the following forms, fees and documents are submitted when applying for an original license to conduct bingo:

1. **Texas Application for Original License to Conduct Bingo form**
2. **License Fee** - Submit a check made payable to the State Comptroller in the Amount made calculated in Item 21.
3. **Bond** - Submit a check made payable to the State Comptroller or Schedule C - Assignment of for Bingo Prize Fees or Schedule D - Continuous Bond of Bingo License in the amount calculated in Item 20.
4. **Schedule A - Evidence of Eligibility** - Submit all documents requested based on the type of organization you are applying as.
5. **Schedule B - Individuals for License to Conduct Bingo**
6. **Texas Application for Registry of Approved Bingo Workers**
7. **Bingo Training Program** - The Bingo Chairperson must attend this training course before the license may be issued. Class information is available at [www.txbingo.org](http://www.txbingo.org).
8. **Pre License Interview Training** - The Bingo Chairperson and one operator must attend this training course before the license may be issued. This web based training is available at [www.txbingo.org](http://www.txbingo.org).

## APPLICATION SUBMISSION

PLEASE SUBMIT YOUR COMPLETED APPLICATION, ALL SUPPLEMENTAL INFORMATION AND THE APPROPRIATE LICENSE FEE TO:

by mail:

CHARITABLE BINGO OPERATIONS DIVISION  
TEXAS LOTTERY COMMISSION  
P.O. BOX 16630  
AUSTIN, TEXAS 78761-6630  
1-800-BINGO-77 (1-800-246-4677)

for delivery:

CHARITABLE BINGO OPERATIONS DIVISION  
TEXAS LOTTERY COMMISSION  
611 E. 6TH STREET  
AUSTIN, TEXAS 78701-3715  
1-800-BINGO-77 (1-800-246-4677)

Please retain these instructions and a copy of your completed application for your files.





# Texas Lottery Commission



Commissioners:

J. Winston Krause, Chairman • Jake G. Baggett

Katie Dickie Stavinola • John W. Townes, III • Mary Ann W. Blanton

Sandra K. Joseph  
Director

June 23, 2014

Via Email: [shannon.montez@yahoo.com](mailto:shannon.montez@yahoo.com)

LMS Athletic Booster Club  
410 S West Dr  
Leander, Texas 78641-1850

Taxpayer # 17429702180

Dear Ms. Montez,

This will acknowledge receipt of the application to conduct bingo for the above referenced organization. The license is granted as set out below:

**Day(s) & Time(s):** Tuesday 07:00 PM to 10:00 PM

**Location:** Booster Bingo Leander  
11880 Old 2243 W Ste 301  
Leander, Texas 78641-8594

**Bingo Chairperson:** Heather Beach  
1810 Laurel Ln  
Leander, Texas 78641-8627

This letter is effective June 24, 2014 and will continue to be in effective until the receipt of your original annual license.

If you have any questions, please contact this office at 1-800-BINGO-77 (246-4677).

Sincerely,

Terry Shankle, Manager  
Education, Licensing and Accounting Department

**A COPY OF THIS LETTER MUST BE DISPLAYED ON PREMISES**



# Texas Lottery Commission



Commissioners:

J. Winston Krause, Chairman • Jodie G. Buzzell  
Kate Dickie Stavinoha • John W. Townes, III • Mary Ann Williamson

Sandra K. Joseph  
Director

PERSONAL IDENTIFICATION NUMBER : 17465

June 23, 2014

Taxpayer Number:17429702180

HEATHER BEACH  
LMS ATHLETIC BOOSTER CLUB  
410 S WEST DR  
LEANDER, TX 78641-1850

Dear Licensee,

Please note that in the upper right hand corner of this letter is a Personal Identification Number ( P.I.N.) unique to your organization. Please refer to this P.I.N. when telephoning day or time change amendments to the Commission. We will be unable to process any changes without this number. We suggest that you safeguard this P.I.N. and supply it only to the individuals authorized to make these changes. Amendment applications may be telephoned to the Commission at 1-800-246-4677.

Day and time change amendments will be accepted via facsimile machine on the attached Amendment Application only. This form MUST be completed in its entirety and include the signature of the bingo chairperson and an officer of your organization. Once completed, the form should be faxed to 1-512-344-5142.

Both day and time change amendments may be received by the Commission via telephone and facsimile machine between the hours of 8:00 A.M. through 5:00 P.M. C.S.T. Monday through Friday with the exception of State Holidays. These applications MUST be received a minimum of four (4) hours in advance of the proposed change.

The license fee for an amendment application is \$10.00. Prepayment of this fee must be received at the Texas Lottery Commission Headquarters prior to the receipt of any amendment application. Your organization may submit excess license fees to create a credit balance to be used for this purpose. To do so, please submit a bingo bank account check indicating in writing that the funds are to be used for future amendments.

Amendment applications that would include a change in organization name, bingo chairperson, playing location or primary business location must be mailed to the Commission.

Should you have any questions please contact our office at 1-800-BINGO-77(246-4677).

Sincerely,

Debbie Parpounas, Acting Director  
Charitable Bingo Operations Division



SOAH DOCKET NO. 362-15-5571.B

TEXAS LOTTERY COMMISSION,  
Petitioner

v.

HABITABLE SPACES,  
Applicant

§  
§  
§  
§  
§  
§  
§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

**THE COMMISSION’S REPLY TO APPLICANT’S EXCEPTIONS TO THE  
ADMINISTRATIVE LAW JUDGE’S PROPOSAL FOR DECISION**

TO THE HONORABLE ADMINISTRATIVE LAW JUDGE BETH BIERMAN:

Texas Lottery Commission, Charitable Bingo Operations Division (the Commission), files its *Reply to Applicant’s Exceptions to the Administrative Law Judge’s (ALJ) Proposal for Decision (PFD)*.

**I.  
Introduction**

Applicant Habitable Spaces (Applicant) emailed its Exceptions in this proceeding to the Commission on May 5, 2016. The Commission first objects to Applicant’s service via email, given that the Commission and Applicant have not agreed that service via email is acceptable. The Commission also objects to Applicant’s attempt to submit evidence after the record has been closed. The Commission has had no opportunity to present testimony and other evidence to dispute or explain the new evidence Applicant attempts to seek admitted after the record has closed. Without waiving the objections stated above, and as discussed below, Applicant’s Exceptions to Conclusions of Law No. 7 and 8 are contrary to the evidence presented at the hearing in the matter. The ALJ correctly found that Applicant’s application failed for at least two reasons.

## II.

### **The ALJ Correctly Found That the Application Should Be Denied Because Applicant Did Not Have 501(c) Tax-Exempt Status For Three Years Prior To Its Application Date.**

Applicant takes exception to Conclusion of Law No. 8 regarding the requirement that a fraternal organization seeking a conductor bingo license have obtained exempt Section 501(c) status from the Internal Revenue Service (IRS) for three years prior to submitting its application. As noted in the PFD, the three-year period for 501(c) tax-exempt status is a statutory requirement of the Bingo Enabling Act (Act), (Chapter 2001, TEX. OCC. CODE ANN.). The following Act provisions, read together, require the 501(c) status to be held for three years prior to the time of application in order to meet the eligibility requirement for a “fraternal organization”, because: (1) A fraternal organization is defined as a “nonprofit organization”; (2) To qualify as a non-profit organization, the organization must have 501(c) tax-exempt status; and (3) The fraternal organization (defined as a nonprofit organization having 501(c) tax-exempt status) must have been organized in this state for at least three years:

TEX. OCC. CODE ANN. § 2001.002(11) defines “fraternal organization” as: “A nonprofit organization organized to perform and engaged primarily in performing charitable, benevolent, patriotic, employment-related, or educational functions that meet the other requirements of this chapter.” (emphasis added)

TEX. OCC. CODE ANN. § 2001.002(19) defines “nonprofit organization” as: “An unincorporated association or a corporation that is incorporated or holds a certificate of authority under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes). The organization:

(A) may not distribute any of its income to its members, officers, or governing body, other than as reasonable compensation for services; and

(B) must have obtained tax exempt status under Section 501(c), Internal Revenue Code of 1986.” (emphasis added)

TEX. OCC. CODE ANN. § 2001.101(b)(1) and (2) state, in part: “(b) A fraternal organization:

(1) must have been organized in this state for at least three years;

(2) must have had during the three year period a bona fide membership actively and continuously engaged as an organization in furthering its charitable purposes.” (emphasis added)

Accordingly, an organization can only meet the three-year eligibility requirement as a fraternal organization if it has been a nonprofit organization having 501(c) tax-exempt status for at least three years. A conductor applicant is required as a nonprofit organization to have acquired tax exempt status from the IRS. Until the 501(c) status is acquired, an organization does not meet the definition in the Act as a nonprofit organization. It is undisputed that Applicant did not have tax-exempt status from the IRS until March of 2014.

Applicant in its Exceptions inappropriately seeks to admit new evidence to show that on one past occasion the Commission issued a license to a conductor organization that did not have Section 501(c) status for three years prior to its application. Desira Glenn, Licensing and Accounting Services Manager, testified for the Commission at the hearing that, in the past, it was possible that such licenses inadvertently were issued due to lack of proper checks in place.<sup>1</sup> However, since Ms. Glenn’s hiring in October of 2015, and as she testified at the hearing, procedures now are in place to ensure the Act and Commission rules are consistently and properly enforced in screening applications for conductor licenses, specifically, with regard to the required three-year period of Section 501(c) status prior to approval of an application.<sup>2</sup> The law is clear, regardless of any past instance where it inadvertently may not have been enforced by Commission staff. In any event, any such action by Commission staff does not constitute Commission policy; and certainly does not provide a basis to bind the Commission to violate the Act, as Applicant suggests, until “interested persons” are notified of the Commission’s change in policy.

---

<sup>1</sup> Transcript (Tr.) at 36.

<sup>2</sup> *Id.*

### III.

#### **The Application Should Be Denied Because, as the ALJ Correctly Found, Applicant Failed To Show It Has Been Organized as a Fraternal Organization in Texas For at Least Three Years With a Bona Fide Membership That Was Actively and Continuously Engaged in Furthering Its Charitable Purpose.**

The basis for Applicant's exception to Conclusion of Law No. 7 is that Applicant merely asserts that it did have voting members and a bona fide membership for three years prior to its application. However, this assertion is contrary to the documentary evidence presented at hearing. Applicant did not file its Certificate of Formation with the Secretary of State's Office until March 2014, and did not have voting members until March 2015.<sup>3</sup> The PFD states, "And while there were minutes of meetings of the organization that were dated as early as January 2012, there is no evidence the group was a Texas fraternal organization meeting the requirements of the Act for three years prior to February 2015."

Again, Applicant in its Exceptions improperly seeks to admit new evidence in stating that one previously-licensed entity, LMS Athletic Booster Club, was only incorporated in September 2013, and issued a license when it applied in March of 2014. As stated previously, the Commission had no opportunity to counter the new evidence Applicant seeks to admit. TEX. OCC. CODE ANN. § 2001.101(b)(1) and (2) require a fraternal organization seeking a license to conduct bingo to show that it has been organized as a fraternal organization in the State of Texas for at least three years and must show it has a bona fide membership that was actively and continuously engaged in furthering its charitable purpose. As correctly noted in the PFD, Applicant failed to show that during the three-year period prior to submitting its application it had a bona fide membership actively and continuously engaged as an organization in furthering its authorized purpose.

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<sup>3</sup> Commission Ex.7.

**IV.  
Conclusion**

The ALJ properly found that Applicant's application should have been denied for at least two independent reasons. Either reason, in and of itself, would warrant a denial of the application. Therefore, Applicant failed to meet its burden of proof that its application should have been approved. For the reasons stated above, the Commission respectfully requests the ALJ to reject the Applicant's Exceptions.

Respectfully submitted,



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**KRISTEN GUTHRIE**  
Assistant General Counsel  
Texas Lottery Commission  
P.O. Box 16630  
Austin TX 78761  
Tel. 512-344-5475  
Fax 512-344-5189



**CERTIFICATE OF SERVICE**

I hereby certify that on May 20, 2016, a true and correct copy of *The Commission's Reply to Applicant's Exceptions to the Administrative Law Judge's Proposal for Decision* was served on the following individuals at the locations and in manners listed below, pursuant to 1 TEX. ADMIN. CODE § 155.103 and TEX. R. CIV. P. 21.

91 7199 9991 7030 8541 8677

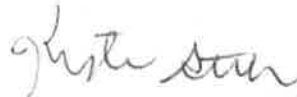
**Via CMRRR 91 7199 9991 7030 8541 8677 and First Class Mail**

Mr. Christopher Heinemeier  
Habitable Spaces  
3050 FM 1104  
Kingsbury, TX 78638-2533

91 7199 9991 7030 8541 8684

**Via CMRRR 91 7199 9991 7030 8541 8684 and First Class Mail**

Mr. Eddie Heinemeier  
3239-1 Rustic Oak  
San Antonio, TX 78261



Kristen Guthrie  
Assistant General Counsel



# State Office of Administrative Hearings



Lesli G. Ginn  
Chief Administrative Law Judge

June 2, 2016

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

VIA FACSIMILE NO. 512/478/3682

**RE: Docket No. 362-15-5571.B; *Texas Lottery Commission v. Habitable Spaces, Conductor Taxpayer No. 14655567643***

Dear Mr. Grief:

I have reviewed the exceptions to the Proposal for Decision (PFD) filed by Habitable Spaces and the reply filed by the Commission Staff. The evidence and the law presented in the case were considered and weighed carefully before the PFD was issued. The exceptions do not raise any issues not previously considered by the Administrative Law Judge. Therefore, it is my recommendation that the PFD be adopted without change.

Sincerely,

A handwritten signature in cursive script that reads "Beth Bierman".

Beth Bierman  
Administrative Law Judge

BB/eh

cc: Kristen Guthrie, Assistant General Counsel, Texas Lottery Commission, 611 E. 6<sup>th</sup>, Austin Texas 78701 - VIA FACSIMILE NO. 512/344-5189  
Christopher Heinemeir, Habitable Spaces, 3050 FM 1104, Kingsbury, Texas 78638-2533 - VIA FACSIMILE NO. 830-980-2694

SOAH DOCKET NO. 362-15-5571.B

TEXAS LOTTERY COMMISSION,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
v.	§	
	§	OF
HABITABLE SPACES,	§	
CONDUCTOR TAXPAYER NO.	§	
14655567643,	§	
Applicant	§	ADMINISTRATIVE HEARINGS

ORDER NO. 3  
ORDER REGARDING PROPER FILING PROCEDURES

On May 6, 2016, Mr. Heinemeier, the representative for Habitable Spaces (Applicant), emailed the Applicant’s exceptions to the Proposal for Decision directly to the undersigned Administrative Law Judge (ALJ) and to the staff attorney for the Charitable Bingo Operations Division of the Texas Lottery Commission (Commission). **It is improper to directly email pleadings to the ALJ.**

The Rules of Practice and Procedure of the State Office of Administrative Hearings, 1 Texas Administrative Code ch. 155, control this case. Copies of the rules may be found at [www.soah.state.tx.us](http://www.soah.state.tx.us), or a copy may be obtained by contacting SOAH’s Docketing Division. The parties are expected to familiarize themselves with these rules, and to abide by them. Under those rules, any requests for relief, including exceptions to the PFD and replies to those exceptions, must be communicated to the ALJ by written motion and served on the other party to the case. Although the parties may agree to accept service by email from each other, the parties may not file their documents with SOAH by emailing them directly to the ALJ.

There are four methods for filing a document with SOAH. Non-confidential pleadings and other documents shall be filed with SOAH by one of these following methods:

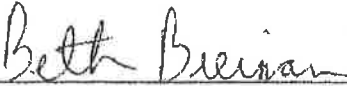
1. by mail addressed to P.O. Box 13025, Austin, Texas 78711-3025;
2. by hand delivery to 300 West 15th Street, Room 504;

3. by fax to (512) 322-2061; or
4. by electronic upload via SOAH's Electronic Case Information System found on SOAH's public website, as explained below.

SOAH's Electronic Case Information System may be accessed from SOAH's website at [www.soah.state.tx.us](http://www.soah.state.tx.us). Click the "Electronic Case Files" link at the upper right-hand corner of SOAH's home page to enter the system. To upload documents, click on "Upload a document" in the upper left hand corner. The system will prompt you to either log in to your account or create a new user account. **Emailing a document directly to the ALJ or to the ALJ's Administrative Assistant is not considered to be filing that document with SOAH.**

The deadline for filing exceptions to the PFD is today, May 6, 2016. The ALJ will print the email received from Mr. Heinemeier, including the two printable attachments,<sup>1</sup> and have it filed with SOAH. Future pleadings from the Applicant should be filed with SOAH using one of the four methods described above.

**SIGNED May 6, 2016.**

  
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BETH BIERMAN  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

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<sup>1</sup> The attachment "LMS Application Amendment" was an html document and therefore not printable or viewable.