



INTEROFFICE MEMO

Gary Grief, Executive Director Tom Hanson, Charitable Bingo Operations Director

To: Robert G. Rivera, Chairman
Cindy Fields, Commissioner
Mark A. Franz, Commissioner
Erik C. Saenz, Commissioner
Jamey Steen, Commissioner

From: Bob Biard, General Counsel *RJB*

Date: February 11, 2021

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

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

Commission Order No. 21-0012

Date: FEBRUARY 11, 2021

IN THE MATTER OF

**THE REVOCATION OF CERTAIN
LOTTERY RETAILER LICENSES**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

ORDER OF THE COMMISSION

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

I. Findings of Fact

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

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

3. The Commission, by and through its attorney of record, filed a motion to dismiss each of the referenced cases from the SOAH docket and to remand each case to the Commission for informal disposition, in accordance with Tex. Gov't Code §2001.058(d-1) and 1 Tex. Admin. Code §155.501(d).

Commission Order No. 21-0012

Date: FEBRUARY 11, 2021

4. The ALJ conditionally dismissed the referenced cases from the SOAH docket and remanded these cases to the Commission for informal disposition under Tex. Gov't Code §2001.056, provided the Respondent in each case did not file a motion to set aside the default within 15 days from the date of the ALJ's Order Remanding Case to Commission.

5. In each case, Respondent did not file a motion to set aside the default within 15 days from the date of the ALJ's Order.

II. Conclusions of Law

1. The Commission has jurisdiction over this matter pursuant to Tex. Gov't Code §466.155 and 16 Tex. Admin. Code Chapter 401.

2. The Respondent in each of the cases listed on Attachment A violated the State Lottery Act and the Commission's Rules as set forth in the Commission's notice of hearing applicable to such Respondent. Specifically, each Respondent failed to deposit money due to the State received from lottery ticket sales under the State Lottery Act, in violation of Tex. Gov't Code §466.351 and 16 Tex. Admin. Code §§ 401.351 and 401.352.

3. The relief sought by the Commission Staff is fair, reasonable, and adequately protects the public.

III. Order

NOW, THEREFORE, IT IS ORDERED that, after review and due consideration of the administrative record, each of the cases listed on Attachment A hereto, which is incorporated into this Order for all purposes, is hereby disposed by default, and:

1. All allegations set forth in each notice of hearing in the cases listed on Attachment A are deemed admitted; and

Commission Order No. 21-0012

Date: FEBRUARY 11, 2021

2. The Texas Lottery Ticket Sales Agent License for each Respondent in the cases listed on Attachment A is hereby revoked.

Passed and approved at the regular meeting of the Texas Lottery Commission in Austin, Texas, on the 11TH day of FEBRUARY, 2021.

Entered this 11TH day of FEBRUARY, 2021.

ROBERT G. RIVERA, CHAIRMAN

CINDY FIELDS, COMMISSIONER

MARK A. FRANZ, COMMISSIONER

ERIK C. SAENZ, COMMISSIONER

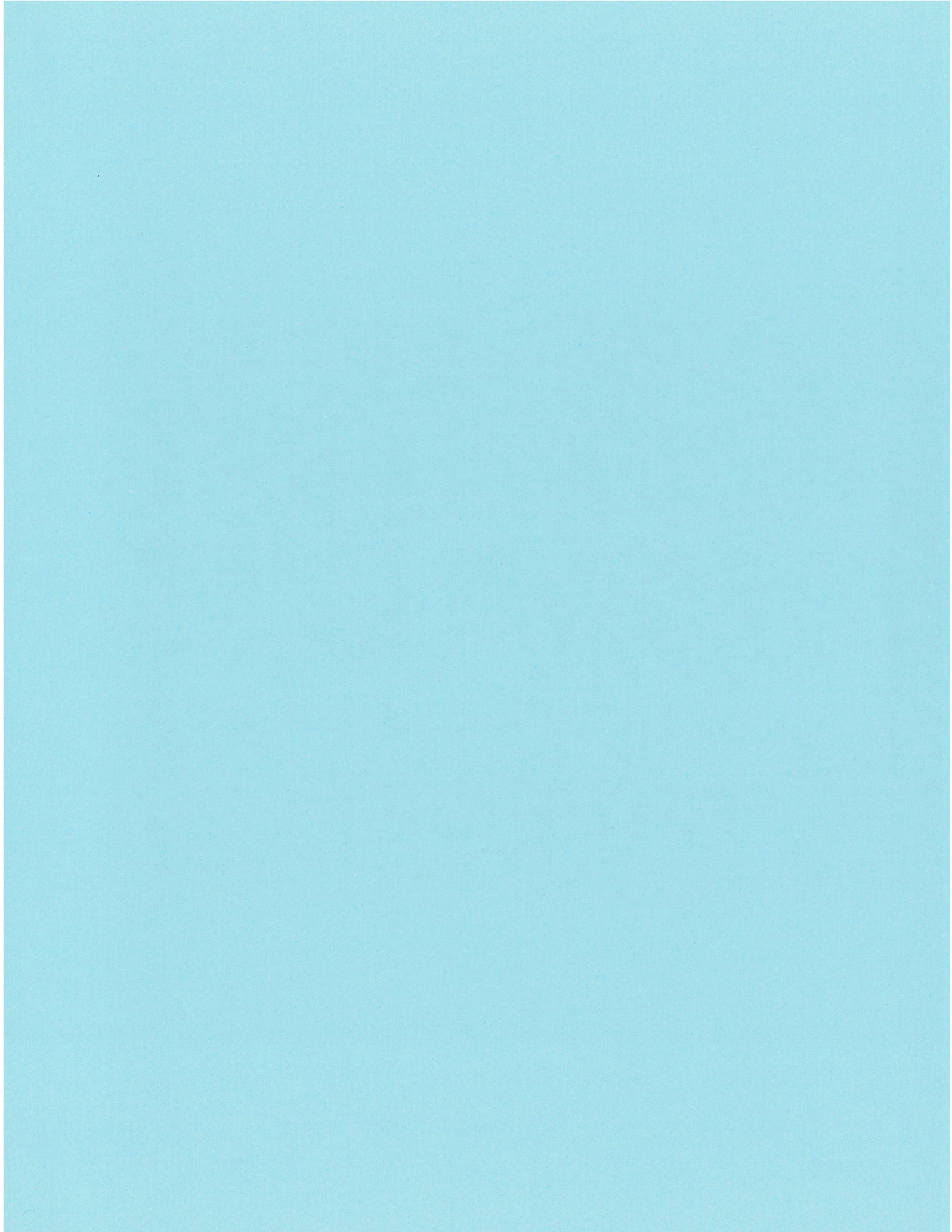
JAMES H. C. STEEN, COMMISSIONER

Commission Order No. 21-0012

Date: FEBRUARY 11, 2021

ATTACHMENT A

TAB NO.	SOAH DOCKET NO.	TICKET SALES AGENT NAME	TICKET SALES AGENT ADDRESS	LOTTERY LICENSE NO.
A.	362-21-0104	Quikin Business LLC d/b/a Quikin Food Mart	101 W. San Augustine St. Deer Park, TX 77536	185569



SOAH DOCKET NO. 362-21-0104

TEXAS LOTTERY COMMISSION, Petitioner	§	BEFORE THE STATE OFFICE
	§	
v.	§	
	§	OF
QUICKIN BUSINESS LLC DBA QUICKIN FOOD MART, Respondent	§	
	§	ADMINISTRATIVE HEARINGS

**ORDER NO. 2
CONDITIONAL ORDER OF DEFAULT DISMISSAL AND REMAND**

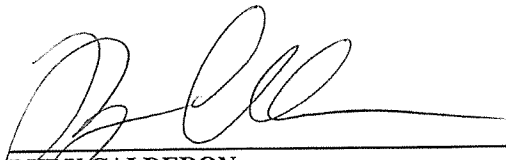
This matter was set for hearing on October 22, 2020, before the undersigned Administrative Law Judge (ALJ). Tyler Vance appeared on behalf of the staff (Staff) of the Texas Lottery Commission (Commission). Quickin Business LLC d/b/a Quickin Food Mart (Respondent) did not appear and was not represented at the hearing. At the hearing, Staff submitted a motion to remand to the Commission. Upon receiving Staff's Exhibits (Attachments 1-3 to Staff's motion), showing proof of adequate notice to Respondent, the ALJ granted Staff's motion to remand to the Commission for informal disposition.¹

Because Respondent failed to appear, this matter may be dismissed from the docket of the State Office of Administrative Hearings and returned to the Commission for informal disposition on a default basis in accordance with Texas Government Code § 2001.056, in which case the factual allegations listed in the notice of hearing could be deemed admitted and the relief sought in the notice of hearing might be granted. **IT IS, THEREFORE, ORDERED** that this case is **CONDITIONALLY DISMISSED AND REMANDED** pursuant to 1 Texas Administrative Code § 155.501(d)(1). **This order of dismissal will become final, without further action by the ALJ, unless Respondent files a motion to set aside the default not later than 15 days from the**

¹ 1 Tex. Admin. Code § 155.501(d)(1). The ALJ only reviewed the adequacy of the notice and not the sufficiency of Staff's factual allegations.

date of this order. Such a motion must show good cause for reopening the hearing, or show that the interests of justice require setting aside the default dismissal and remand.

SIGNED November 16, 2020.

A handwritten signature in black ink, appearing to read 'R. Calderon', written over a horizontal line.

**RUDY CALDERON
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

Commission Order No. 21-0013

Date: FEBRUARY 11, 2021

DOCKET NO. 362-21-0068

TEXAS LOTTERY COMMISSION
Petitioner

v.

CESAR B. FLORES
D/B/A 7-ABC BEER TO GO
TICKET SALES AGENT LICENSE
NO. 155335
Respondent

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BEFORE THE TEXAS

LOTTERY COMMISSION

ORDER OF THE COMMISSION

To: Cesar B. Flores
d/b/a 7-ABC Beer to Go
3310 Timberview Rd.
Dallas, TX 75229

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

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

NOW, THEREFORE, IT IS ORDERED that the Texas Lottery Ticket Sales Agent License of Cesar B. Flores d/b/a 7-ABC Beer to Go is hereby suspended for ninety (90) days.

Commission Order No. 21-0013

Date: FEBRUARY 11, 2021

Passed and approved at the regular meeting of the Texas Lottery Commission in Austin, Texas, on the 11TH day of FEBRUARY, 2021.

Entered this 11TH day of FEBRUARY, 2021.

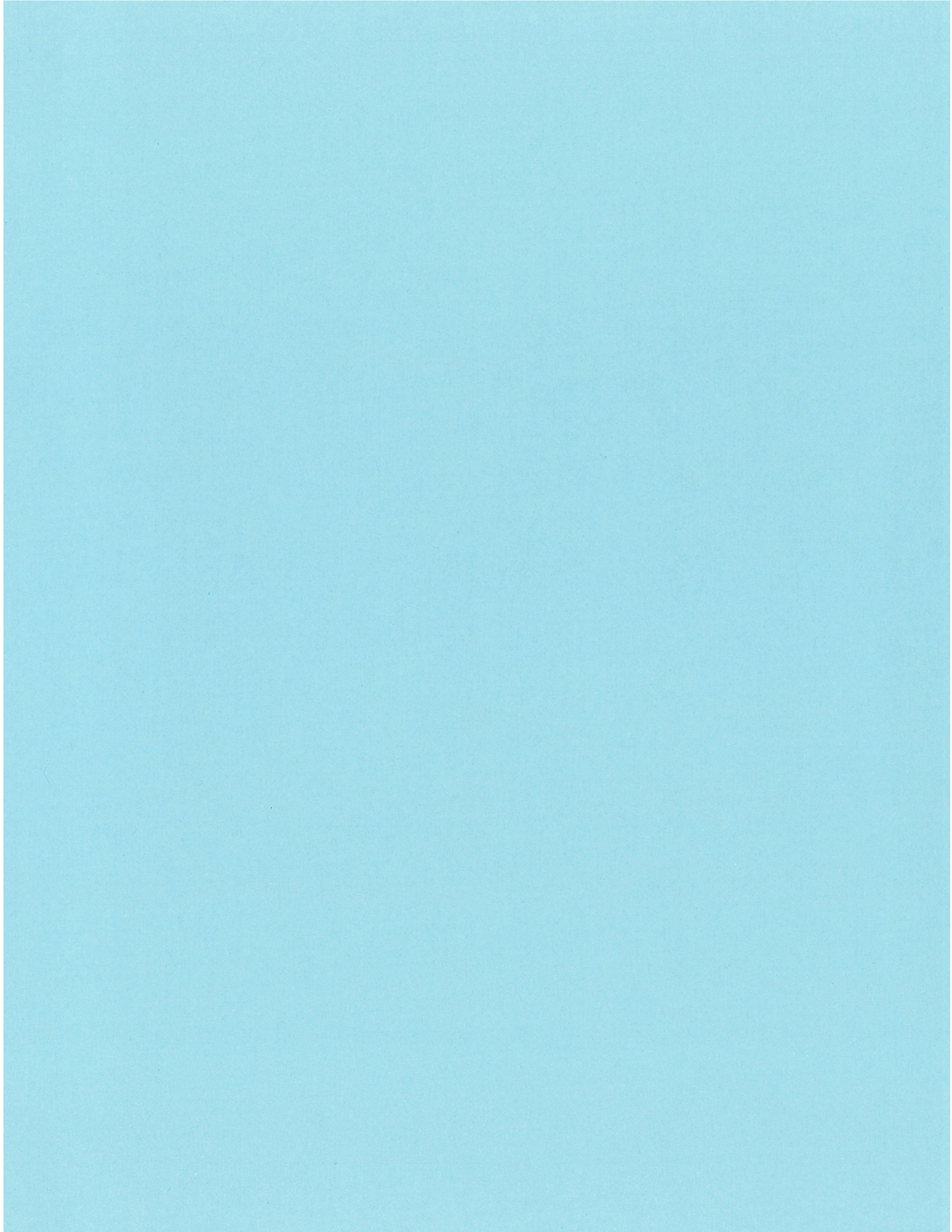
ROBERT G. RIVERA, CHAIRMAN

CINDY FIELDS, COMMISSIONER

MARK A. FRANZ, COMMISSIONER

ERIK C. SAENZ, COMMISSIONER

JAMES H. C. STEEN, COMMISSIONER





State Office of Administrative Hearings

Kristofer S. Monson
Chief Administrative Law Judge

November 20, 2020

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

VIA E-FILE TEXAS

**RE: Docket No. 362-21-0068; Texas Lottery Commission v.
Cesar B. Flores, d/b/a 7-ABC Beer to Go**

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, a SOAH rule found at www.soah.state.tx.us.

Sincerely,

Elizabeth Drews
Administrative Law Judge/Mediator

ED/nm

cc: Kristen Guthrie, Assistant General Counsel, Texas Lottery Commission, 611 E. 6th, Austin Texas 78701 - **VIA E-FILE TEXAS**
Cesar B. Flores, d/b/a 7-ABC Beer to Go, 3310 Timberview Road, Dallas, Texas 75229; 3165 Darvany Drive, Dallas, Texas 75220; 3116 Kinkaid Drive, Dallas, Texas 75220, and 3021 Lombardy Lane #104, Dallas, Texas 75220 - **VIA REGULAR MAIL**

SOAH DOCKET NO. 362-21-0068

TEXAS LOTTERY COMMISSION,
Petitioner

v.

CESAR B. FLORES
D/B/A 7-ABC BEER TO GO,
Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

Staff of the Texas Lottery Commission (Commission) requested a 90-day suspension of lottery sales agent's license No. 155335 held by Cesar B. Flores d/b/a 7-ABC Beer to Go (Licensee). Staff contends Mr. Flores attempted to purchase a lottery ticket from a person who is not a licensed lottery retailer, in violation of 16 Texas Administrative Code § 401.158(b)(33)(D),¹ and induced another person to assign or transfer a right to claim a prize, initiated or accepted an offer to sell the right to claim a prize, and offered, for compensation, to claim the prize of another person, in violation of Texas Government Code §§ 466.308(a) and 466.310(a) and 16 Texas Administrative Code § 401.158(b)(33)(A), (B), and (C). The Administrative Law Judge (ALJ) finds Staff proved that the violations occurred and that a 90-day license suspension should be imposed.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

On September 29, 2020, State Office of Administrative Hearings (SOAH) ALJ Elizabeth Drews convened a telephonic hearing on the merits. Assistant General Counsel Kristin Guthrie represented Staff. Cesar B. Flores appeared on behalf of Licensee. The hearing adjourned and the record closed that day.

¹ 16 Texas Administrative Code § 401.158 was revised effective August 30, 2020. This Proposal for Decision cites the version in effect on March 26, 2019, when the alleged violations occurred.

Neither party objected to notice or jurisdiction. Those matters therefore are set out in the findings of fact and conclusions of law without further discussion.

II. APPLICABLE LAW

The Commission's director may issue a license to a person only if the director finds that the person's experience, character, and general fitness are such that the person's participation as a sales agent will not detract from the integrity, security, honesty, and fairness of the operation of the lottery.² After a hearing, the Commission shall suspend or revoke a license if the Commission finds that the sales agent has violated the State Lottery Act, Texas Government Code chapter 466 (the Act), or a Commission rule adopted under the Act.³ At a hearing, the sales agent must show by a preponderance of the evidence why the license should not be suspended or revoked.⁴

Texas Government Code § 466.308(a) states:

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

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

Texas Government Code § 466.310(a) provides:

A person commits an offense if the person:

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

² Tex. Gov't Code § 466.151(e).

³ Tex. Gov't Code § 466.155(a)(5). Section 466.155 was revised effective June 7, 2019. This Proposal for Decision cites Texas Government Code provisions in effect on March 26, 2019, when the alleged violations occurred.

⁴ Tex. Gov't Code § 466.155(c).

A Commission rule, 16 Texas Administrative Code § 401.158(b), states in pertinent part:

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

- (31) licensee intentionally or knowingly claims a lottery prize or a share of a lottery prize by means of fraud, deceit, or misrepresentation; or aids or agrees to aid another person or persons to claim a lottery prize or a share of a lottery prize by means of fraud, deceit, or misrepresentation;
- (33) licensee:
 - (A) induces another person to assign or transfer a right to claim a prize;
 - (B) initiates or accepts an offer to sell the right to claim a prize;
 - (C) initiates or accepts an offer of compensation from another person to claim a lottery prize; or
 - (D) purchases a lottery ticket from a person who is not a licensed lottery retailer.

Texas Government Code § 466.402(b) requires that the payment of a prize in an amount of \$600 or more be made only by the director of the Commission's lottery division.⁵ 16 Texas Administrative Code § 401.360 states:

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

Each retailer agrees to operate in a manner consistent with the Act, federal and Texas laws, local ordinances, Commission rules, terms and conditions related to the retailer's license, the most recent Retailer Manual, and the retailer's license agreements with the Texas Lottery.⁶

⁵ See also Tex. Gov't Code § 466.002(2)-(3).

⁶ 16 Tex. Admin. Code § 401.366. This rule was revised effective August 30, 2020. This Proposal for Decision cites the version in effect on March 26, 2019, when the alleged conduct occurred.

The Commission imposes penalties, including suspensions and revocations, in accordance with 16 Texas Administrative Code § 401.160, which specifies factors to be considered and penalty ranges for various violations.

III. DISCUSSION

A. Staff's Evidence and Recommendation

Staff offered eight exhibits, which were admitted into evidence without objection.⁷ Staff also presented the testimony of Carlos Salinas, Commission investigator, and Nancy Guerra, retail services specialist.

Ms. Guerra testified that the Commission's records show Licensee has held the license since 2011, at which time Licensee's owner, Mr. Flores, was trained on the requirements to hold the license. In 2015, he received refresher training after a failure to activate lottery tickets.⁸ Ms. Guerra noted that a licensee may request training at any time with no limit on the number of trainings the licensee receives.

Ms. Guerra stated that on January 18, 2019, Mr. Flores presented to the Dallas claim center a Texas Lottery scratch ticket with a prize value of \$1,000. Based on internal review, Staff initiated an investigation into that claim. Ms. Guerra explained that licensed retailers are allowed to buy lottery tickets, and usually do so at their own store because the tickets are readily available and the retailer receives a 15 percent commission on all lottery sales. In this instance, Mr. Flores did not buy the lottery ticket at his store, 7-ABC Beer to Go. Inquiries on the ticket were submitted eleven

⁷ Staff Exs. 1-8. Staff Exhibits 1 and 2 were admitted for the limited purpose of showing proper notice and jurisdiction. Staff Exhibit 8 (copies of Commission Orders in previous cases relating to other licensees) was admitted for the limited purpose of showing sanctions the Commission had approved in cases Staff contends were factually similar to this one. Staff Exhibits 3 to 7 (evidence about the alleged conduct and Licensee's license history) were admitted for all purposes.

⁸ Staff Exs. 6 (Commission license records) and 7 (Commission training records) are consistent with Ms. Guerra's testimony about the license and license-related training received by Mr. Flores.

times at two other retailer locations before the last inquiry on it at Mr. Flores's store. Ms. Guerra testified that such a large number of inquiries is not typical.⁹

Mr. Salinas's testimony and Investigative Report¹⁰ indicate that as a result of the January 18, 2019 ticket claim, he was assigned to conduct an undercover investigation of Licensee. The violations at issue arose during his March 26, 2019 undercover visit to 7-ABC Beer to Go. At that time, Mr. Salinas presented a Texas Lottery scratch ticket with a prize value of \$1,000 for validation at the store. Mr. Salinas asked Mr. Flores, who was acting as a store clerk at the time, to check the ticket. When Mr. Flores scanned the compliance ticket in the lottery terminal, the winning musical tone for a high-tiered prize was heard. Mr. Flores reviewed the ticket and confirmed its prize value was \$1,000. Mr. Flores stated that the ticket was over the amount the store could pay but that if Mr. Salinas had identification and a social security number, the ticket could be claimed. Mr. Flores said he had claimed various tickets for other customers before. Mr. Flores told Mr. Salinas that Mr. Flores could pay the ticket prize to him but would have to charge for that service. Mr. Flores proposed paying \$600 to Mr. Salinas and keeping \$400 for himself. After Mr. Salinas agreed to this arrangement, Mr. Flores kept the ticket, placed it behind the counter area, retrieved \$600 from a cash box, and handed the \$600 to Mr. Salinas. After Mr. Salinas identified himself as a Commission investigator, Mr. Flores said he was sorry for what he had just done, expressed concern about his license, and asked if he was going to lose his license.

Ms. Guerra explained that if a ticket purchaser cannot travel to a claim center to claim a lottery prize, the purchaser may mail the ticket to the Commission for payment. According to Ms. Guerra, licensed retailers know that, because it is printed on the back of lottery tickets.

Testifying she found the violations egregious, Ms. Guerra recommended a 90-day suspension of the license. She explained that a licensed retailer is authorized to pay out only prizes less than \$600 in value. Violating that requirement circumvents the fraud review the Commission

⁹ Staff Exs. 3 (Investigative Report) at TLC000013-14 and 4 (Report Analysis) at TLC000019 are consistent with Ms. Guerra's testimony about the lottery ticket Mr. Flores presented to the Dallas claim center on January 18, 2019.

¹⁰ Staff Ex. 3 (Investigative Report).

conducts to ensure larger prizes are not paid to purchasers who are delinquent on child support or other government debt. Ms. Guerra stated that a 90-day suspension is necessary to deter violations and to ensure the integrity, security, and fairness of the process. She regarded her recommendation as consistent with 90-day suspensions imposed in Commission Orders in three cases with facts similar to this one. She explained that like this case, the first two cases¹¹ involved a violation by the licensee's owner. The third case¹² involved an employee who had sold scratched-off losing tickets to Texas Lottery players. In that case, the licensee's owner was considered to be uncooperative with the investigation because employee was not terminated.

B. Licensee's Recommendation

Mr. Flores did not testify or present witnesses or other evidence. In his closing statement, he did not dispute the violations alleged by Staff. He acknowledged he had made a mistake and said it would not be repeated. Stating there were no previous violations, Mr. Flores requested a 30-day suspension instead of the 90 days requested by Staff.

C. ALJ's Analysis

The ALJ finds that Mr. Flores committed the alleged violations and, for reasons discussed below, recommends that the Commission suspend Respondent's license for 90 days, as proposed by Staff.

The evidence shows that through its owner, Mr. Flores; Licensee induced another person to assign or transfer a right to claim a prize, initiated or accepted an offer to sell the right to claim a prize, and offered, for compensation, to claim the prize of another person in violation of Texas Government Code § 466.310(a)(1)-(3) and 16 Texas Administrative Code § 401.158(b)(33)(A)-(C). The evidence also shows that on March 26, 2019, through Mr. Flores, Licensee attempted to purchase a lottery ticket from a person who is not a licensed lottery retailer in violation of 16 Texas Administrative Code § 401.158(b)(33)(D).

¹¹ Staff Ex. 8 (Parts A and B).

¹² Staff Ex. 8 (Part C).

The Commission has adopted a standard penalty chart.¹³ The range of sanctions for the first occurrence of the violations listed above is a 10- to 90-day license suspension or license revocation. Based on the evidence and consideration of the penalty chart and factors listed in 16 Texas Administrative Code § 401.160, the ALJ recommends the 90-day license suspension proposed by Staff. These were serious violations by Mr. Flores, who had owned Licensee for years and twice been trained on requirements to hold the license. Mr. Flores's statements to Mr. Salinas after he identified himself as a Commission investigator indicate Mr. Flores knew his conduct violated the license requirements. A 90-day suspension is appropriate to deter future violations. Here, Mr. Flores proposed an arrangement that allowed him to keep \$400 of the \$1,000 ticket and that bypassed required claim procedures intended to ensure that persons paid such a large prize are not delinquent on child support or other government debt. Before Mr. Salinas identified himself as a Commission investigator, Mr. Flores told Mr. Salinas that Mr. Flores had claimed tickets for other customers before. Based on the ALJ's review of the three cases included in Staff Exhibit 8, the 90-day suspension proposed by Staff in this case is consistent with 90-day suspensions the Commission has imposed in cases involving other retailers whose owners committed similar violations.¹⁴

For the above-stated reasons, the ALJ finds that the violations occurred and recommends a 90-day suspension of the license. In support thereof, the ALJ makes the following Findings of Fact and Conclusions of Law.

¹³ 16 Tex. Admin. Code § 401.160(g) (Figure). 16 Tex. Admin. Code § 401.160 was amended effective August 30, 2020. For example, the rule in effect on March 26, 2019, included the penalty chart under Subsection (g); the current rule includes the penalty chart under Subsection (h). The rule amendments do not make substantive changes relevant to the penalty analysis in this case.

¹⁴ See, e.g., Staff Ex. 8 at TLC000035 (Commission order stating: "A 90-day suspension will send a message to the licensed retailer community that the Commission will not tolerate a retailer owner's unlawful purchase of a prize-winning ticket from a person who is not also a licensed retailer regardless of whether the retailer profits from the transaction") and TLC000036 (Commission order stating: "And, in similar contested cases, where a retailer owner has purchased a prize-winning ticket of another person, the Commission has suspended the retailer's license for 90 days.").

IV. FINDINGS OF FACT

1. Cesar B. Flores d/b/a 7-ABC Beer to Go (Licensee) holds license number 155335 to sell Texas Lottery tickets at its store, 7-ABC Beer to Go, which is located at 3021 Lombardy Lane #104, Dallas, Texas.
2. The Texas Lottery Commission (Commission) originally issued the license to Licensee in 2011.
3. Cesar B. Flores is the sole owner of Licensee and has received training on requirements applicable to the license.
4. On March 26, 2019, Commission investigator Carlos Salinas presented a Texas Lottery scratch ticket with a \$1,000 prize value for validation to Mr. Flores, who was acting as a store clerk at 7-ABC Beer to Go.
5. Mr. Flores reviewed the ticket and confirmed its prize value was \$1,000. Mr. Flores stated that the ticket was over the amount the store could pay but that if Mr. Salinas had identification and a social security number, the ticket could be claimed. Mr. Flores said he had claimed various tickets for other customers before.
6. Mr. Flores told Mr. Salinas that Mr. Flores could pay the ticket prize to him but would have to charge for that service. Mr. Flores proposed paying \$600 to Mr. Salinas and keeping \$400 for himself.
7. After Mr. Salinas agreed to this arrangement, Mr. Flores kept the ticket, placed it behind the counter area, retrieved \$600 from a cash box on the counter, and handed the \$600 to Mr. Salinas.
8. After Mr. Salinas identified himself as a Commission investigator, Mr. Flores said he was sorry for what he had done and expressed concern about whether he would lose his license.
9. On July 18, 2019, Staff notified Licensee of the alleged violations and provided an opportunity to respond to the allegations.
10. On September 9, 2020, Staff sent the notice of hearing informing Licensee of the final hearing date, hearing location, and allegations it intended to prove at the hearing. The notice was sent by email and regular and certified mail, return receipt requested, to Licensee's address on file with the Commission.
11. On September 15, 2020, Order No. 1 was sent to the parties informing them the hearing would be telephonic and providing them instructions for participating by telephone.
12. On September 29, 2020, State Office of Administrative Hearings Administrative Law Judge Elizabeth Drews convened the hearing on the merits. Assistant General Counsel Kristin Guthrie represented Commission Staff. Mr. Flores appeared on behalf of Licensee. The hearing adjourned and the record closed that day.

V. CONCLUSIONS OF LAW

1. The Texas Lottery Commission (Commission) has jurisdiction over this matter pursuant to the State Lottery Act, Tex. Gov't Code ch. 466 (the Act).
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. Tex. Gov't Code ch. 2003.
3. Licensee received proper and timely notice of the hearing pursuant to Texas Gov't Code §§ 2001.051-.052 and § 466.155(b) of the Act, and 16 Texas Admin. Code § 401.205(4).
4. After a hearing, the Commission shall suspend or revoke a license if the Commission finds that a sales agent has violated the Act or a Commission rule adopted under the Act. Tex. Gov't Code § 466.155(a)(5).
5. Licensee is subject to sanction because, through its owner Mr. Flores, it attempted to purchase a lottery ticket from a person who is not a licensed lottery retailer. 16 Tex. Admin. Code § 401.158(b)(33)(D).
6. Licensee is subject to sanction because, through its owner Mr. Flores, it induced another person to assign or transfer a right to claim a prize, initiated or accepted an offer to sell the right to claim a prize, and offered, for compensation, to claim the prize of another person. Texas Gov't Code § 466.310(a)(1)-(3); 16 Tex. Admin. Code § 401.158(b)(33)(A)-(C).
7. Based on the Findings of Fact, Licensee violated Texas Government Code § 466.310(a)(1)-(3) and 16 Tex. Admin. Code § 401.158(b)(33)(A)-(D).
8. The Commission's penalty policy allows a 10- to 90-day suspension or revocation for a first occurrence of the violations described in Conclusion of Law No. 7. 16 Tex. Admin. Code § 401.160(g).
9. Based on the Findings of Fact and Conclusions of Law, Licensee's license should be suspended for 90 days.

SIGNED November 20, 2020.



ELIZABETH DREWS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

Commission Order No. 20-0014

Date: FEBRUARY 11, 2021

Case Nos. 2020-250, 2020-253, and 2020-254

IN THE MATTER OF	§	BEFORE THE TEXAS
	§	
FRIENDS OF EVERMAN POLICE,	§	
POLYTECHNIC MAIN STREET	§	
PROJECT INC., AND VARIETY	§	
WHEELCHAIR ARTS AND SPORTS	§	
ASSOCIATION	§	LOTTERY COMMISSION

MEMORANDUM OF AGREEMENT AND CONSENT ORDER

The Charitable Bingo Operations Division (Division) of the Texas Lottery Commission (Commission) and Friends of Everman Police and Polytechnic Main Street Project Inc. (collectively, the Organizations) and Variety Wheelchair Arts and Sports Association (Lessor) make the following Agreed Findings of Fact, Agreed Conclusions of Law, and Memorandum of Agreement, and enter into the following Consent Order.

AGREED FINDINGS OF FACT

1. The Organizations are the sole members of Everman Bingo Unit Trust (Unit), a bingo accounting unit subject to Tex. Occ. Code §§ 2001.431–.439. Each Organization is licensed by the Division to conduct bingo under the following taxpayer numbers: Friends of Everman Police – 13002220799 and Polytechnic Main Street Project Inc. – 17522348931.

2. During the review period discussed below, the Lessor was licensed by the Division as a commercial lessor to lease bingo premises to the Unit under Taxpayer No. 17523763237. The Lessor leased bingo premises located at 1801 Everman Pkwy., Everman, TX 76140-5115.

EVERMAN BINGO UNIT TRUST

3. The Division conducted a compliance audit of the Unit and its members for the first quarter of 2018 (January 1 through March 31). Based on the information provided by the Organizations in response to the audit, the Division determined that the Organizations incurred or paid items of expense in connection with the conduct of a game of bingo that were not reasonable or necessary expenses within the meaning of Tex. Occ. Code §§ 2001.453(1) and .458(a)(6).

4. Specifically, on March 9, 2018, the Unit made an electronic funds transfer payment from their bingo bank account in the amount of \$1,032.68 to the Texas Workforce Commission. The Division determined that \$119.05 of this amount is not a permissible bingo expense because it consists of penalties and interest which are not authorized by law.

5. Additionally, because the Lessor disputed its 2014 and 2015 property taxes due to Tarrant County Tax Assessor Collector (Tarrant County), the portion of the property taxes due by the Unit to the Lessor under the lease agreement for these two years did not become due until December 2016. In October 2016, the Lessor took out a loan to pay their outstanding property taxes due to Tarrant County. Between December 2016 and November 2019, the Unit, on behalf of the Lessor, made thirty-six (36) monthly loan payments of \$1,320.90 on the Lessor's loan, totaling \$46,904.40 (the Unit's portion of the property taxes). The Division determined that \$21,822.53 of this amount is not a permissible bingo expense because it consists of late penalties, interest, and additional fees not authorized by law.

VARIETY WHEELCHAIR ARTS AND SPORTS ASSOCIATION

6. The Division alleged that the Lessor loaned money to the Unit by deferring the collection of overdue property tax payments until the Unit had sufficient proceeds to make the payments as noted in Findings of Fact No. 5 above. The Lessor disagrees that it loaned money to the Organizations.

AGREED CONCLUSIONS OF LAW

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

2. The Organizations and the Lessor are required to follow the Bingo Enabling Act and the Commission rules to maintain their respective licenses.

3. Tex. Occ. Code §2001.154(a) states, in pertinent part:

The commission may not issue a commercial lessor license to or renew a commercial license of:

-
- (3) a person who loans money to an authorized organization.

4. Tex. Occ. Code §2001.406(b) states, in pertinent parts:

Rent for premises used for the conduct of bingo must be paid in a lump sum. Except as otherwise provided by this section, the lump sum must include all expenses authorized by Section 2001.458 that are paid by the licensed authorized organization to the lessor in connection with the use of the premises. A licensed authorized organization or unit may pay as a separate expense, based on the percentage of the total area of the lessor's facility that the organization or unit uses as the bingo premises for the conduct of bingo, the organization's or unit's pro rata share of:

- (1) property taxes on the facility that are paid by the lessor, excluding any penalties and interest on the taxes;

5. Tex. Occ. Code §2001.453 states, in pertinent parts:

A licensed authorized organization may withdraw funds from its bingo account only for:

- (1) the payment of necessary or reasonable bona fide expenses . . . ; or
- (2) the disbursement of net proceeds derived from the conduct of bingo as provided by this subchapter.

6. Tex. Occ. Code §2001.458(a) states, in pertinent part:

An item of expense may not be incurred or paid in connection with the conduct of bingo except an expense that is reasonable or necessary to conduct bingo, including an expense for:

-
- (6) stated rental or mortgage and insurance expenses;

7. Tex. Occ. Code §2001.554(a) states, in pertinent part:

A person commits an offense and the person's license is subject to revocation under this chapter if the person:

...

(5) violates this chapter or a term of a license issued under this chapter.

8. Tex. Occ. Code §2001.601 states:

The commission may impose an administrative penalty against a person who violates this chapter or a rule or order adopted by the commission under this chapter.

9. Tex. Occ. Code §2001.602(a) states:

The amount of the administrative penalty may not exceed \$1,000 for each violation. Each day a violation continues or occurs may be considered a separate violation for purposes of imposing a penalty.

10. Tex. Gov't Code §2001.056 states, in pertinent part:

Unless precluded by law, an informal disposition may be made of a contested case by:

...

(2) agreed settlement.

11. 16 Tex. Admin. Code §402.505 states, in pertinent part:

(a) Definitions. The following terms, when used in this section shall have the following meanings:

(1) Reasonable expense--An amount of expense appropriate as it relates to the conduct of bingo; an expense that is moderate or fair in the amount, not extreme or excessive; an amount paid that does not substantially exceed the current rate or average retail cost of items or services purchased.

(b) The Commission will consider the following in determining the reasonableness of an expense:

...

(2) Whether the individuals authorizing the amount of the expense acted with prudence in the circumstances, considering their responsibilities to the organization;

...

(4) Whether the licensed authorized organization engaged in arms-length transactions generally accepted sound business practices.

...
(f) Expenses must conform to any limitations or exclusions set forth in the Bingo Enabling Act or Charitable Bingo Enabling Rules as to types or amount of expense items.

12. Each Organization's license to conduct bingo is subject to suspension or revocation pursuant to Tex. Occ. Code §2001.554(a), because of the Unit's violations of Tex. Occ. Code §§ 2001.406(b)(1), 2001.453 and 2001.458(a)(6).

13. The Lessor's license is subject to suspension or revocation pursuant to Tex. Occ. Code §2001.554(a), because of the Lessor's violation of Tex. Occ. Code §2001.154(a)(3).

MEMORANDUM OF AGREEMENT

1. By signing this Memorandum of Agreement, the Organizations and the Lessor agree to its terms, acknowledge understanding them, and waive their right to all procedural requirements for the entry of the Order consistent with the terms of this Memorandum of Agreement, including but not limited to the right to notice of hearing, a formal hearing, a proposal for decision, a rehearing and any right to seek judicial review of the Order.

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

3. The Organizations agree to collectively pay \$800 as an administrative penalty to the Commission within thirty (30) days from the effective date.

4. The Organizations agree to re-deposit \$21,941.58 into the Unit's bingo bank account within sixty (60) days from the effective date.

5. The Lessor agrees to pay \$100 as an administrative penalty to the Commission within thirty (30) days from the effective date.


6. The Organizations and the Lessor agree that this Memorandum of Agreement and Consent Order, and the Agreed Findings of Fact and Agreed Conclusions of Law contained herein, may be admitted in any future administrative action initiated against any of them by the

Commission. This Memorandum of Agreement and Consent Order, and the Agreed Findings of Fact and Agreed Conclusions of Law, shall not, however, form the basis for, nor be used as, evidence against the Organizations or the Lessor in a future license renewal application, absent other alleged violations.

7. The Organizations and the Lessor agree that if, after a formal hearing on the sole issue of compliance with this Memorandum of Agreement and Consent Order, it is found that the Organizations and the Lessor have failed to comply with the terms of this Memorandum of Agreement and Consent Order, the Commission may seek any and all authorized remedies, including revocation of their respective licenses.

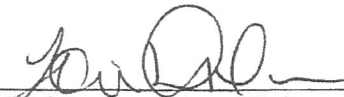
AGREED AS TO FORM AND SUBSTANCE:

Friends of Everman Police

By: 
Lori Durham, Bingo Chairperson

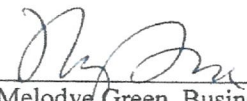
Date: 1-4-2021

Polytechnic Main Street Project, Inc.

By: 
Lori Durham, Bingo Chairperson

Date: 1-4-2021

Variety Wheelchair Arts and Sports Association

By: 
Melodye Green, Business Contact

Date: 1-4-21

**Texas Lottery Commission
Charitable Bingo Operations Division**

By: 
Thomas Hanson, Director

Date: 1/13/2021

Commission Order No. 20-0014

Date: FEBRUARY 11, 2021

Case Nos. 2020-253, 2020-254, and 2020-250

IN THE MATTER OF	§	BEFORE THE TEXAS
	§	
FRIENDS OF EVERMAN POLICE,	§	
POLYTECHNIC MAIN STREET	§	
PROJECT INC., AND VARIETY	§	
WHEELCHAIR ARTS AND SPORTS	§	
ASSOCIATION	§	LOTTERY COMMISSION

CONSENT ORDER

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

(1) IT IS ORDERED by the Commission that Friends of Everman Police and Polytechnic Main Street Project Inc. (collectively, the Organizations), the sole members of the Everman Bingo Unit Trust (Unit), collectively shall pay \$800 as an administrative penalty to the Commission within thirty (30) days following the date this Consent Order is signed by the Commission.

(2) IT IS FURTHER ORDERED by the Commission that the Organizations shall re-deposit \$21,941.58 into the Unit's bingo bank account within sixty (60) days following the date this Consent Order is signed by the Commission and the Organizations shall provide proof of the deposit to the Charitable Bingo Operations Division within ten (10) days of the deposit.

(3) IT IS FURTHER ORDERED by the Commission that Variety Wheelchair Arts and Sports Assoc. ("Lessor") shall pay \$100 as an administrative penalty to the Commission within thirty (30) days following the date this Consent Order is signed by the Commission.

Commission Order No. 20-0014

Date: FEBRUARY 11, 2021

(4) IT IS FURTHER ORDERED by the Commission that if, after a formal hearing on the sole issue of compliance with this Consent Order, it is found that the Organizations or the Lessor have failed to comply with the terms of this Consent Order, the Commission may seek any and all authorized remedies, including revocation of their respective licenses.

Passed and approved at the regular meeting of the Texas Lottery Commission in Austin, Texas, on the 11TH day of FEBRUARY, 2021.

Entered this 11TH day of FEBRUARY, 2021.

ROBERT G. RIVERA, CHAIRMAN

CINDY FIELDS, COMMISSIONER

MARK A. FRANZ, COMMISSIONER

ERIK C. SAENZ, COMMISSIONER

JAMES H. C. STEEN, COMMISSIONER

Commission Order No. 21-0015

Date: FEBRUARY 11, 2021

**Case Nos. 2020-285, 2020-286, 2020-287,
2020-288, 2020-289, and 2020-380**

IN THE MATTER OF	§	BEFORE THE TEXAS
	§	
AMERICAN LEGION AUDIE MURPHY	§	
POST #336, AMERICAN LEGION UNIT 2	§	
AUX., CATHOLIC WAR VETERANS	§	
POST 1907, KINGSBURY VOLUNTEER	§	
FIRE DEPARTMENT, LULAC COUNCIL	§	
4483, AND LANDLORD GREEN LLC	§	LOTTERY COMMISSION

MEMORANDUM OF AGREEMENT AND CONSENT ORDER

The Charitable Bingo Operations Division (Division) of the Texas Lottery Commission (Commission) and American Legion Audie Murphy Post #336, American Legion Unit 2 Aux., Catholic War Veterans Post 1907, Kingsbury Volunteer Fire Department, and LULAC Council 4483 (collectively, “Organizations”); and Landlord Green LLC (Lessor) make the following Agreed Findings of Fact, Agreed Conclusions of Law, and Memorandum of Agreement, and enter into the following Consent Order.

AGREED FINDINGS OF FACT

1. The Organizations are the sole members of Plaza Bingo Unit (Unit), a bingo accounting unit subject to Tex. Occ. Code §§ 2001.431–.439. Each Organization is licensed by the Commission to conduct bingo under the following taxpayer numbers: American Legion Audie Murphy Post #336 – 17461044236; American Legion Unit 2 Aux. – 17460629920; Catholic War Veterans Post 1907 – 12624472390; Kingsbury Volunteer Fire Department – 12373130256; and LULAC Council 4483 – 19119197440.

2. The Lessor is licensed by the Commission as a commercial lessor to lease bingo premises to Organizations to conduct bingo under Taxpayer No. 18237641347.

3. The Lessor leases bingo premises to Organizations at Plaza Del Rey Ballroom located at 2716 Fredericksburg Rd., San Antonio, TX 78201-4703 for the purpose of conducting charitable bingo.

PLAZA BINGO UNIT

4. The Division conducted a compliance audit of the Unit for the third quarter of 2018 (July 1 through September 30). Based on information provided by the Organizations in response to the audit, the Division extended the review period through February 2019, and determined that the Organizations incurred or paid items of expense in connection with the conduct of a game of bingo that were not reasonable or necessary, within the meaning of Tex. Occ. Code §2001.453(1).

5. Due to the Lessor's practice of collecting past due rent from subsequent proceeds earned by the Unit, between July 1, 2018 and February 6, 2019, the Organizations paid the Lessor for rental expenses in the amount of \$162,000 incurred before the review period in which the payments were made:

(a) On July 1, 2018, Lessor collected from the Unit past due rent for January 2018 in the amount of \$27,000, one hundred and fifty (150) days after the relevant bingo occasions.

(b) On August 1, 2018, Lessor collected from the Unit past due rent for February 2018 in the amount of \$27,000, one hundred and fifty three (153) days after the relevant occasions.

(c) On August 15, 2018, Lessor collected from the Unit past due rent for March 2018 in the amount of \$27,000, one hundred and thirty six (136) days after the relevant occasions.

(d) On September 1, 2018, Lessor collected from the Unit past due rent for April 2018 in the amount of \$27,000, one hundred and twenty three (123) days after the relevant occasions.

(e) On January 1, 2019, Lessor collected from the Unit past due rent for August 2018 in the amount of \$27,000, one hundred and twenty two (122) days after the relevant occasions.

(f) On February 6, 2019, Lessor collected from the Unit past due rent for September 2018 in the amount of \$27,000, one hundred and twenty eight (128) days after the relevant occasions.

6. Further, the Division's compliance audit of the Unit included a finding that, as of February 11, 2019, after having paid the Lessor past due rent in the amount of \$162,000, the Organizations still owed the Lessor rent in the amount of \$106,800 for the period from January 2018 to September 2018.

7. The Division also alleged that, had the Unit made the deferred rent payments noted in Findings of Fact No. 5 and No. 6 in the same quarter in which the corresponding bingo occasions had occurred, the Unit would have had negative net proceeds, thereby jeopardizing the Organizations' eligibility to remain licensed, pursuant to Tex. Occ. Code §2001.451(g) and 16 Tex. Admin. Code §402.452, which requires accounting units to have positive net proceeds at the end of each quarter for the prior four (4) quarter period.

LESSOR LANDLORD GREEN LLC

8. The Division alleged that the Lessor engaged in a practice of deferring the collection of rent from the Unit, as noted in Findings of Fact No. 5 and No. 6 above. The Lessor denies it engaged in such a practice but admits it received rent from the Unit more than four to five months after the date of the bingo occasions for which the rent was due.

9. The Division also alleged that the Lessor's practice of deferring collection of rent for bingo occasions that occurred more than four to five months earlier, and collecting past due rent only when the Unit had sufficient funds in its bingo account, violated Tex. Occ. Code §2001.159(a)(3), which requires rent charged by a commercial lessor to be fair and reasonable. The Lessor denies that it charged or collected rent that was not fair or reasonable.

10. Further, the Division alleged that the Lessor's practice of deferring the collection of rent for bingo occasions that occurred more than four to five months earlier, and collecting past due rent only when the Unit had sufficient funds in its bingo account, violated Tex. Occ. Code §2001.405, which prohibits leasing a premises to conduct bingo if the rent is to be paid, in whole or part, on the basis of a percentage of the receipts or net proceeds derived from the operation of bingo. The Lessor denies that rent under its lease with the Unit was to be paid on the basis or a percentage of the receipts or net proceeds derived from the operation of bingo.

11. The Division also alleged that the Lessor loaned money to the Unit by deferring the collection of overdue rent until the Unit had sufficient proceeds to pay the overdue rent. The Lessor only collected past due rent from the Unit in the calendar quarters when the Unit had sufficient proceeds to pay the past due rent. The Lessor denies it loaned money to the Unit.

12. In total, between July 1, 2018 and February 6, 2019, the Lessor collected from the Unit past due rent in the amount of \$162,000 more than four to five months after the corresponding bingo occasions.

AGREED CONCLUSIONS OF LAW

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

2. The Organizations and the Lessor are required to follow the Bingo Enabling Act and the Commission rules to maintain their respective licenses.

3. Tex. Occ. Code §2001.154(a) states, in pertinent part:

The commission may not issue a commercial lessor license to or renew a commercial license of:

(3) a person who loans money to an authorized organization.

4. Tex. Occ. Code §2001.159(a) states, in pertinent parts:

The commission shall issue or renew a commercial lessor license if the commission determines that:

...
(3) the rent to be charged is fair and reasonable;

...
(6) the applicant will lease the premises for the conduct of bingo in accordance with this chapter.

5. Tex. Occ. Code §2001.405 states:

Bingo may not be conducted at a leased premises if rental under the lease is to be paid, in whole or in part, on the basis of a percentage of the receipts or net proceeds derived from the operation of the game or by reference to the number of people attending a game.

6. Tex. Occ. Code §2001.451(g) states:

The bingo operations of a licensed authorized organization must:

(1) result in net proceeds over the organization's license period.

7. Tex. Occ. Code §2001.453 states, in pertinent parts:

A licensed authorized organization may withdraw funds from its bingo account only for:

(1) the payment of necessary or reasonable bona fide expenses . . .; or

(2) the disbursement of net proceeds derived from the conduct of bingo as provided by this subchapter.

8. Tex. Occ. Code §2001.458(a) states, in pertinent part:

An item of expense may not be incurred or paid in connection with the conduct of bingo except an expense that is reasonable or necessary to conduct bingo, including an expense for:

...
(6) stated rental or mortgage and insurance expenses;

9. Tex. Occ. Code §2001.554(a) states, in pertinent part:

A person commits an offense and the person's license is subject to revocation under this chapter if the person:

...
(5) violates this chapter or a term of a license issued under this chapter.

10. Tex. Occ. Code §2001.601 states:

The commission may impose an administrative penalty against a person who violates this chapter or a rule or order adopted by the commission under this chapter.

11. Tex. Occ. Code §2001.602(a) states:

The amount of the administrative penalty may not exceed \$1,000 for each violation. Each day a violation continues or occurs may be considered a separate violation for purposes of imposing a penalty.

12. Tex. Gov't Code §2001.056 states, in pertinent part:

Unless precluded by law, an informal disposition may be made of a contested case by:

...

(2) agreed settlement.

13. 16 Tex. Admin. Code §402.452 states, in pertinent part:

(a) Net proceeds from the conduct of bingo must result in a positive amount over the organization's license period.

...

(c) Calculation of Net Proceeds for Units.

(1) Net proceeds for units will be calculated at the end of each quarter for the prior four (4) quarter period.

14. 16 Tex. Admin. Code §402.505 states, in pertinent part:

(a) Definitions. The following terms, when used in this section shall have the following meanings:

(1) Reasonable expense--An amount of expense appropriate as it relates to the conduct of bingo; an expense that is moderate or fair in the amount, not extreme or excessive; an amount paid that does not substantially exceed the current rate or average retail cost of items or services purchased.

(b) The Commission will consider the following in determining the reasonableness of an expense:

...

(2) Whether the individuals authorizing the amount of the expense acted with prudence in the circumstances, considering their responsibilities to the organization;

...

(4) Whether the licensed authorized organization engaged in arms-length transactions generally accepted sound business practices.

...

(f) Expenses must conform to any limitations or exclusions set forth in the Bingo Enabling Act or Charitable Bingo Enabling Rules as to types or amount of expense items.

15. Each Organization's license to conduct bingo is subject to suspension or revocation pursuant to Tex. Occ. Code §2001.554(a), because of the Unit's violations of Tex. Occ. Code §§ 2001.453 and .458(a)(6).

16. The Lessor's license is subject to suspension or revocation pursuant to Tex. Occ. Code §2001.554(a), because of the Lessor's violations of Tex. Occ. Code §§ 2001.154(a)(3), .159(a)(3), and .405.

MEMORANDUM OF AGREEMENT

1. By signing this Memorandum of Agreement, the Organizations and the Lessor agree to its terms, acknowledge understanding them, and waive their right to all procedural requirements for the entry of the Order consistent with the terms of this Memorandum of Agreement, including but not limited to the right to notice of hearing, a formal hearing, a proposal for decision, a rehearing and any right to seek judicial review of the Order.

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

3. The Organizations agree to collectively pay an administrative penalty in the amount of \$1,000 within thirty (30) days following the effective date.

4. The Organizations agree that, beginning on the effective date, the Unit will not make rental payments that are more than one hundred and twenty (120) days past due to any commercial lessor, including the Lessor. The 120-day period will begin on the first day of the month following the month in which a bingo occasion is held.

5. The Lessor agrees to pay an administrative penalty in the amount of \$400 within thirty (30) days following the effective date.

6. The Lessor agrees that, beginning on the effective date, the Lessor will not collect or accept rental payments that are more than one hundred twenty (120) days past due from any accounting unit or any licensed authorized organization, including the Unit or any of the Organizations. Rent not paid within one hundred twenty (120) days will be deemed forgiven. The 120-day period will begin on the first day of the month following the month in which a bingo occasion is held.

7. The Lessor further agrees to forgive \$54,000 in rent that otherwise would be owed by the Organizations for bingo occasions conducted beginning on the effective date and continuing for each bingo occasion conducted until the full amount of \$54,000 has been forgiven. The Lessor agrees that if the entire \$54,000 in rent has not been forgiven on or before May 31, 2021, the Lessor will refund any remaining amount to the Organizations within thirty (30) days following May 31 and the Lessor will provide supporting documentation of such refund(s) to the Division within thirty (30) days of the refund(s).

8. The total rent forgiven by the Lessor hereunder shall be \$54,000. The Lessor agrees to not attempt to charge or to collect the forgiven rent of \$54,000 at any point in the future and to provide rent forgiveness letters to the Organizations, with copies provided to the Division, identifying each bingo occasion and the associated forgiven rent amount showing the full amount of \$54,000 has been forgiven.

9. The Organizations and the Lessor agree that this Memorandum of Agreement and Consent Order, and the Agreed Findings of Fact and Agreed Conclusions of Law contained herein, may be admitted in any future administrative action initiated against any of them by the Commission. This Memorandum of Agreement and Consent Order, and the Agreed Findings of

Fact and Agreed Conclusions of Law, shall not, however, form the basis for, nor be used as, evidence against the Organizations and/or the Lessor in a future license renewal application, absent other alleged violations.

10. The Organizations and the Lessor agree that if, after a formal hearing on the sole issue of compliance with this Memorandum of Agreement and Consent Order, it is found that the Organizations and/or the Lessor have failed to comply with the terms of this Memorandum of Agreement and Consent Order, the Commission may seek any and all authorized remedies, including license revocation.

AGREED AS TO FORM AND SUBSTANCE:

American Legion Audie Murphy Post #336

By: *irwin barath*
irwin barath (Nov 20, 2020 14:33 CST)
Irwin Barath, Bingo Chairperson

Date: Nov 20, 2020

American Legion Unit 2 Aux.

By: *Belinda E. Gonzalez*
Belinda E. Gonzalez (Nov 20, 2020 20:47 CST)
Belinda Gonzalez, Bingo Chairperson

Date: Nov 20, 2020

Catholic War Veterans Post 1907

By: *Gilberto Lozano*
Gilberto Lozano (Nov 20, 2020 22:00 CST)
Gilberto Lozano, Bingo Chairperson

Date: Nov 20, 2020

**Texas Lottery Commission
Charitable Bingo Operations Division**

By: *Thomas Hanson*
Thomas Hanson, Director

Date: 12/1/2020

Kingsbury Volunteer Fire Department

By: *william harborth*
william harborth (Nov 20, 2020 21:31 CST)
William Harborth, Bingo Chairperson

Date: Nov 20, 2020

LULAC Council 4483

By: *Rodolfo Rosales Jr.*
Rodolfo Rosales Jr. (Nov 21, 2020 13:39 CST)
Rodolfo Rosales, Jr., Bingo Chairperson

Date: Nov 21, 2020

Landlord Green LLC

By: *Valentin Martinez*
Valentin Martinez (Nov 20, 2020 21:56 CST)
Valentin Martinez, Business Contact

Date: Nov 20, 2020

Commission Order No. 21-0015

Date: FEBRUARY 11, 2021

**Case Nos. 2020-285, 2020-286, 2020-287,
2020-288, 2020-289, and 2020-380**

IN THE MATTER OF	§	BEFORE THE TEXAS
	§	
AMERICAN LEGION AUDIE MURPHY	§	
POST #336, AMERICAN LEGION UNIT 2	§	
AUX., CATHOLIC WAR VETERANS	§	
POST 1907, KINGSBURY VOLUNTEER	§	
FIRE DEPARTMENT, LULAC COUNCIL	§	
4483, AND LANDLORD GREEN LLC	§	LOTTERY COMMISSION

CONSENT ORDER

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

(1) IT IS ORDERED by the Commission that American Legion Audie Murphy Post #336, American Legion Unit 2 Aux., Catholic War Veterans Post 1907, Kingsbury Volunteer Fire Department, and LULAC Council 4483 (collectively, “Organizations”) collectively shall pay an administrative penalty in the amount of \$1,000 within thirty (30) days following the date this Consent Order is signed by the Commission.

(2) IT IS FURTHER ORDERED by the Commission that the Organizations shall not make rental payments that are more than one hundred twenty (120) days past due to any commercial lessor, including Landlord Green LLC (Lessor). The 120-day period shall begin on the first day of the month following the month in which a bingo occasion is held.

Commission Order No. 21-0015

Date: FEBRUARY 11, 2021

(3) IT IS FURTHER ORDERED by the Commission that the Lessor shall pay an administrative penalty in the amount of \$400 within thirty (30) days following the date this Consent Order is signed by the Commission.

(4) IT IS FURTHER ORDERED by the Commission that the Lessor shall not collect or accept rental payments that are more than one hundred twenty (120) days past due from any accounting unit or any licensed authorized organization, including the Unit or any of the Organizations. Rent not paid within one hundred twenty (120) days shall be deemed forgiven. The 120-day period shall begin on the first day of the month following the month in which a bingo occasion is held.

(5) IT IS FURTHER ORDERED by the Commission that the Lessor shall forgive \$54,000 in rent that otherwise would be owed by the Organizations for bingo occasions conducted beginning on the date this order is signed by the Commission and continuing for each bingo occasion conducted until the full amount of \$54,000 has been forgiven. If the entire \$54,000 in rent has not been forgiven on or before May 31, 2021, the Lessor shall refund any remaining amount to the Organizations within thirty (30) days following May 31 and the Lessor shall provide supporting documentation of such refund(s) to the Charitable Bingo Operations Division (Division) within thirty (30) days of the refund(s).

(6) IT IS FURTHER ORDERED by the Commission that the Lessor shall not attempt to charge or to collect the forgiven rent of \$54,000 at any point in the future and shall provide rent forgiveness letters to the Organizations, with copies provided to the Division, identifying each bingo occasion and the associated forgiven rent amounts showing the full amount of \$54,000 has

Commission Order No. 21-0015

Date: FEBRUARY 11, 2021

been forgiven.

(7) IT IS FURTHER ORDERED by the Commission that if, after a formal hearing on the sole issue of compliance with this Consent Order, it is found that the Organizations or the Lessor have failed to comply with the terms of this Consent Order, the Commission may seek any and all authorized remedies, including revocation of their respective licenses.

Passed and approved at the regular meeting of the Texas Lottery Commission in Austin, Texas, on the 11TH day of FEBRUARY, 2021.

Entered this 11TH day of FEBRUARY, 2021.

ROBERT G. RIVERA, CHAIRMAN

CINDY FIELDS, COMMISSIONER

MARK A. FRANZ, COMMISSIONER

ERIK C. SAENZ, COMMISSIONER

JAMES H. C. STEEN, COMMISSIONER

Commission Order No. 20-0016

Date: FEBRUARY 11, 2021

**Case Nos. 2020-341, 2020-342,
2020-343, 2020-344, and 2020-431**

IN THE MATTER OF	§	BEFORE THE TEXAS
	§	
AMERICAN GI FORUM OF TEXAS INC.,	§	
THE DEPARTMENT OF TX VETERANS	§	
OF FOREIGN WARS OF THE US AUX.,	§	
RED MEN TRIBE 19 APACHE,	§	
LEANDER FFA ALUMNI, AND	§	
NORTH AUSTIN BINGO ASSOCIATION	§	LOTTERY COMMISSION

MEMORANDUM OF AGREEMENT AND CONSENT ORDER

The Charitable Bingo Operations Division (“Division”) of the Texas Lottery Commission (“Commission”) and American GI Forum of Texas Inc., the Department of TX Veterans of Foreign Wars of the US Aux., Red Men Tribe 19 Apache, and Leander FFA Alumni (collectively, “Organizations”), and North Austin Bingo Association (“Lessor”) make the following Agreed Findings of Fact, Agreed Conclusions of Law, and Memorandum of Agreement, and enter into the following Consent Order.

AGREED FINDINGS OF FACT

1. The Division conducted a compliance audit for the first quarter of 2019 (January 1 to March 31) of the Organizations and Waterloo Counseling Center Inc. who, at the time of the audit, were the sole members of North Austin Bingo Unit-2 (“Unit”), a bingo accounting unit subject to Tex. Occ. Code §§ 2001.431–.439, and licensed by the Commission to conduct bingo under the following taxpayer numbers: American GI Forum of Texas Inc. – 17560056131, The Department of TX Veterans of Foreign Wars of the US Aux. – 17460745882, Red Men Tribe 19 Apache – 17520140140, Leander FFA Alumni – 17429460052, and Waterloo Counseling Center Inc. – 17422917926.

2. As of June 6, 2019, the Department of TX Veterans of Foreign Wars of the US Aux. is no longer a member of the Unit.

3. As of May 1, 2020, Red Men Tribe 19 Apache is no longer a member of the Unit.

4. On January 12, 2020, Waterloo Counseling Center Inc. surrendered its license to conduct charitable bingo.

5. The Lessor is licensed by the Commission as a commercial lessor to lease bingo premises to the Unit under Taxpayer No. 18240510869.

6. The Lessor leases bingo premises to the Unit at North Austin Bingo located at 13376 N. Research Blvd., Ste. 112, Austin, TX 78750-3235 for the purpose of conducting charitable bingo.

NORTH AUSTIN BINGO UNIT-2

7. The Division conducted a compliance audit of the Unit for the first quarter of 2019 (January 1 to March 31). Based on information gathered during the audit, the Division determined that the Unit incurred or paid items of expense in connection with the conduct of a game of bingo that were not reasonable or necessary, within the meaning of Tex. Occ. Code §§2001.453(1) and .458(a)(6). Specifically, in February 2019, eight (8) months after the corresponding bingo occasions, the Unit paid the Lessor \$4,800 for rental expenses the Unit incurred in May 2018.

NORTH AUSTIN BINGO ASSOCIATION

8. The Division alleged that the Lessor engaged in a practice of deferring the collection of rent from the Unit, as noted in Findings of Fact No. 7 above. The Lessor denies it engaged in such a practice but admits it received rent from the Unit eight (8) months after the date of the bingo occasions for which the rent was due.

9. The Division also alleged that the Lessor's practice of deferring collection of rent for bingo occasions that occurred eight (8) months earlier and collecting past due rent only when

the Unit had sufficient funds in its bingo account, violated Tex. Occ. Code §2001.159(a)(3), which requires rent charged by a commercial lessor to be fair and reasonable. The lessor denies that it charged or collected rent that was not fair or reasonable.

10. Further, the Division alleged that the Lessor's practice of deferring the collection of rent for bingo occasions that occurred eight (8) months earlier, and collecting past due rent only when the Unit had sufficient funds in its bingo account, violated Tex. Occ. Code §2001.405, which prohibits leasing a premises to conduct bingo if the rent is to be paid, in whole or part, on the basis of a percentage of the receipts or net proceeds derived from the operation of bingo. The Lessor denies that rent under its lease with the Unit was to be paid on the basis or a percentage of the receipts or net proceeds derived from the operation of bingo.

11. The Division also alleged that the Lessor loaned money to the Unit by deferring the collection of overdue rent until the Unit had sufficient proceeds to pay the overdue rent, in violation of Tex. Occ. Code §2001.154(a)(3). The lessor denies it loaned money to the Unit.

12. In February 2019, eight (8) months after the corresponding bingo occasions, the Lessor collected from the Unit \$4,800 in rental expenses incurred by the Unit in May 2018.

AGREED CONCLUSIONS OF LAW

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

2. The Organizations and the Lessor are required to follow the Bingo Enabling Act and the Commission rules to maintain their respective licenses.

3. Tex. Occ. Code §2001.154(a) states, in pertinent part:

The commission may not issue a commercial lessor license to or renew a commercial license of:

...
(3) a person who loans money to an authorized organization.

4. Tex. Occ. Code §2001.159(a) states, in pertinent parts:

The commission shall issue or renew a commercial lessor license if the commission determines that:

...

(3) the rent to be charged is fair and reasonable;

...

(6) the applicant will lease the premises for the conduct of bingo in accordance with this chapter.

5. Tex. Occ. Code §2001.405 states:

Bingo may not be conducted at a leased premises if rental under the lease is to be paid, in whole or in part, on the basis of a percentage of the receipts or net proceeds derived from the operation of the game or by reference to the number of people attending a game.

6. Tex. Occ. Code §2001.453 states:

A licensed authorized organization may withdraw funds from its bingo account only for:

(1) the payment of necessary or reasonable bona fide expenses . . . ; or

(2) the disbursement of net proceeds derived from the conduct of bingo as provided by this subchapter.

7. Tex. Occ. Code §2001.458(a) states:

An item of expense may not be incurred or paid in connection with the conduct of bingo except an expense that is reasonable or necessary to conduct bingo, including an expense for:

...

(6) stated rental or mortgage and insurance expenses;

8. Tex. Occ. Code §2001.554(a) states, in pertinent part:

A person commits an offense and the person's license is subject to revocation under this chapter if the person:

...

(5) violates this chapter or a term of a license issued under this chapter.

9. Tex. Occ. Code §2001.601 states:

The commission may impose an administrative penalty against a person who violates this chapter or a rule or order adopted by the commission under this chapter.

10. Tex. Occ. Code §2001.602(a) states:

The amount of the administrative penalty may not exceed \$1,000 for each violation. Each day a violation continues or occurs may be considered a separate violation for purposes of imposing a penalty.

11. Tex. Gov't Code §2001.056 states, in pertinent part:

Unless precluded by law, an informal disposition may be made of a contested case by:

...
(2) agreed settlement.

12. 16 Tex. Admin. Code §402.505 states, in pertinent part:

(a) Definitions. The following terms, when used in this section shall have the following meanings:

(1) Reasonable expense--An amount of expense appropriate as it relates to the conduct of bingo; an expense that is moderate or fair in the amount, not extreme or excessive; an amount paid that does not substantially exceed the current rate or average retail cost of items or services purchased.

(b) The Commission will consider the following in determining the reasonableness of an expense:

...
(2) Whether the individuals authorizing the amount of the expense acted with prudence in the circumstances, considering their responsibilities to the organization;

...
(4) Whether the licensed authorized organization engaged in arms-length transactions generally accepted sound business practices.

...
(f) Expenses must conform to any limitations or exclusions set forth in the Bingo Enabling Act or Charitable Bingo Enabling Rules as to types or amount of expense items.

13. Each Organization's license to conduct bingo is subject to suspension or revocation pursuant to Tex. Occ. Code §2001.554(a), because of the Unit's violations of Tex. Occ. Code §§ 2001.453 and .458(a)(6).

14. The Lessor's license is subject to suspension or revocation pursuant to Tex. Occ. Code §2001.554(a), because of the Lessor's violations of Tex. Occ. Code §§ 2001.154(a)(3), .159(a)(3), and .405.

MEMORANDUM OF AGREEMENT

1. By signing this Memorandum of Agreement, the Organizations and the Lessor agree to its terms, acknowledge understanding them, and waive their right to all procedural requirements for the entry of the Order consistent with the terms of this Memorandum of Agreement, including but not limited to the right to notice of hearing, a formal hearing, a proposal for decision, a rehearing and any right to seek judicial review of the Order.

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

3. The Organizations agree to collectively pay an administrative penalty in the amount of \$1,000 within thirty (30) days following the effective date.

4. The Organizations agree that, beginning on the effective date, they will not make rental payments that are more than one hundred and twenty (120) days past due to any commercial lessor, including the Lessor. The 120-day period will begin on the first day of the month following the month in which a bingo occasion is held.

5. The Lessor agrees to pay an administrative penalty in the amount of \$400 within thirty (30) days following the effective date.

6. The Lessor agrees that, beginning on the effective date, the Lessor will not collect or accept rental payments that are more than one hundred twenty (120) days past due from any accounting unit or any licensed authorized organization, including the Unit or any of the Organizations. Rent not paid within one hundred twenty (120) days will be deemed forgiven. The 120-day period will begin on the first day of the month following the month in which a bingo occasion is held.

7. The Lessor further agrees to forgive \$4,800 in rent that otherwise would be owed by the Unit for bingo occasions conducted beginning on the effective date and continuing for each

bingo occasion conducted until the full amount of \$4,800 has been forgiven. The Lessor agrees that if the entire \$4,800 in rent has not been forgiven on or before May 31, 2021, the Lessor will refund any remaining amount to the Organizations within thirty (30) days following May 31 and the Lessor will provide supporting documentation of such refund(s) to the Division within thirty (30) days of the refund(s).

8. The total rent forgiven by the Lessor hereunder shall be \$4,800. The Lessor agrees to not attempt to charge or to collect the forgiven rent of \$4,800 at any point in the future and to provide rent forgiveness letters to the Organizations, with copies provided to the Division, identifying each bingo occasion and the associated forgiven rent amount showing the full amount of \$4,800 has been forgiven.

9. The Organizations and the Lessor agree that this Memorandum of Agreement and Consent Order, and the Agreed Findings of Fact and Agreed Conclusions of Law contained herein, may be admitted in any future administrative action initiated against any of them by the Commission. This Memorandum of Agreement and Consent Order, and the Agreed Findings of Fact and Agreed Conclusions of Law, shall not, however, form the basis for, nor be used as, evidence against the Organizations and/or the Lessor in a future license renewal application, absent other alleged violations.

10. The Organizations and the Lessor agree that if, after a formal hearing on the sole issue of compliance with this Memorandum of Agreement and Consent Order, it is found that the Organizations and/or Lessor have failed to comply with the terms of this Memorandum of Agreement and Consent Order, the Commission may seek any and all authorized remedies, including license revocation.

AGREED AS TO FORM AND SUBSTANCE:

American GI Forum of Texas Inc.

By: *Gilbert Rodriguez*
Gilbert Rodriguez (Dec 16, 2020 18:58 CST)
Gilbert Rodriguez, Bingo Chairperson

Date: Dec 10, 2020

Leander FFA Alumni

By: *Jason Sanders*
Jason Sanders (Dec 10, 2020 19:00 CST)
Jason Sanders, Bingo Chairperson

Date: Dec 10, 2020

Red Men Tribe 19 Apache

By: *Dale Golden*
Dale Golden (Dec 10, 2020 18:29 CST)
Dale Golden, Bingo Chairperson

Date: Dec 10, 2020

The Department of TX Veterans of Foreign Wars of the US Aux.

By: *Beth Creasey*
Beth Creasey (Dec 10, 2020 13:17 CST)
Beth Creasey, Bingo Chairperson

Date: Dec 10, 2020

**Texas Lottery Commission
Charitable Bingo Operations Division**

By: *Thomas Hanson*
Thomas Hanson, Director

Date: Dec 18, 2021

North Austin Bingo Association

By: *Margaret A Baldwin*
Margaret A Baldwin (Dec 10, 2020 19:05 CST)
Margaret Baldwin, Business Contact

Date: Dec 10, 2020

Commission Order No. 20-0016

Date: FEBRUARY 11, 2021

**Case Nos. 2020-341, 2020-342,
2020-343, 2020-344, and 2020-431**

IN THE MATTER OF	§	BEFORE THE TEXAS
	§	
AMERICAN GI FORUM OF TEXAS INC.,	§	
THE DEPARTMENT OF TX VETERANS	§	
OF FOREIGN WARS OF THE US AUX.,	§	
RED MEN TRIBE 19 APACHE,	§	
LEANDER FFA ALUMNI, AND	§	
NORTH AUSTIN BINGO ASSOCIATION	§	LOTTERY COMMISSION

CONSENT ORDER

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

(1) IT IS ORDERED by the Commission that American GI Forum of Texas Inc., The Department of TX Veterans of Foreign Wars of the US Aux., Red Men Tribe 19 Apache, and Leander FFA Alumni (collectively, "Organizations") collectively shall pay an administrative penalty in the amount of \$1,000 within thirty (30) days following the date this Consent Order is signed by the Commission.

(2) IT IS FURTHER ORDERED by the Commission that Organizations shall not make rental payments that are more than one hundred twenty (120) days past due to any commercial lessor, including North Austin Bingo Association (Lessor). The 120-day period shall begin on the first day of the month following the month in which a bingo occasion is held.

Commission Order No. 20-0016

Date: FEBRUARY 11, 2021

(3) IT IS FURTHER ORDERED by the Commission that the Lessor shall pay an administrative penalty in the amount of \$400 within thirty (30) days following the date this Consent Order is signed by the Commission.

(4) IT IS FURTHER ORDERED by the Commission that the Lessor shall not collect or accept rental payments that are more than one hundred twenty (120) days past due from any accounting unit or any licensed authorized organization, including the Unit or any of the Organizations. Rent not paid within one hundred twenty (120) days shall be deemed forgiven. The 120-day period shall begin on the first day of the month following the month in which a bingo occasion is held.

(5) IT IS FURTHER ORDERED by the Commission that the Lessor shall forgive \$4,800 in rent that otherwise would be owed by the Unit for bingo occasions conducted beginning on the date this Consent Order is signed by the Commission and continuing for each bingo occasion conducted until the full \$4,800 has been forgiven. If the entire \$4,800 in rent has not been forgiven on or before May 31, 2021, the Lessor shall refund any remaining amount to the Organizations within thirty (30) days following May 31 and the Lessor shall provide supporting documentation of such refund(s) to the Charitable Bingo Operations Division (Division) within thirty (30) days of the refund(s).

(6) IT IS FURTHER ORDERED by the Commission that the Lessor shall not attempt to charge or to collect the forgiven rent of \$4,800 at any point in the future and shall provide permanent rent forgiveness letters to the Organizations, with copies provided to the Division, identifying each bingo occasion and the associated forgiven rent amounts showing the full amount of \$4,800 has been forgiven.

Commission Order No. 21-0016

Date: FEBRUARY 11, 2021

(7) IT IS FURTHER ORDERED by the Commission that if, after a formal hearing on the sole issue of compliance with this Consent Order, it is found that Organizations and/or Lessor have failed to comply with the terms of this Consent Order, the Commission may seek any and all authorized remedies, including revocation of their respective licenses.

Passed and approved at the regular meeting of the Texas Lottery Commission in Austin, Texas, on the 11TH day of FEBRUARY, 2021.

Entered this 11TH day of FEBRUARY, 2021.

ROBERT G. RIVERA, CHAIRMAN

CINDY FIELDS, COMMISSIONER

MARK A. FRANZ, COMMISSIONER

ERIK C. SAENZ, COMMISSIONER

JAMES H. C. STEEN, COMMISSIONER