

Rehearing and to Set Aside Default Judgment. In the Administrative Law Judge's August 29, 2014 letter, he indicated that a separate Order would be issued denying the May 27, 2014 Motion for Rehearing. On September 9, 2014 an Order was issued denying Respondent's Motion for Rehearing.

After review and due consideration of the Proposal for Decision, Respondent's Exceptions, and the Administrative Law Judge's August 29, 2014 letter, **and with a clarification to Finding of Fact No. 11 noted below**, I adopt the Findings of Fact and Conclusions of Law of the Administrative Law Judge that are contained in the Proposal for Decision, as modified by the Administrative Law Judge's August 29, 2014 letter, and incorporate those Findings of Fact and Conclusions of Law into this Order, as if such were fully set out and separately stated herein.

Finding of Fact No. 11 is clarified to read:

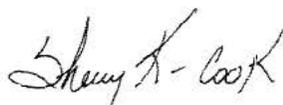
On or about October 30, 2012, Respondent, 3911 International, LLC d/b/a 3911 Lounge, or Respondent's agent, servant or employee, knowingly possessed or permitted the possession on a mixed beverage licensed premises of alcoholic beverages not covered by invoice.

All motions, requests for entry of Proposed Findings of Fact and Conclusions of Law, and any other requests for general or specific relief submitted by any party are denied, unless specifically adopted herein.

THEREFORE, IT IS ORDERED that Respondent's Mixed Beverage Permit No. MB722725, and the associated Mixed Beverage Late Hours Permit, are hereby **CANCELLED**.

This Order will become **final and enforceable** on the 31st day of October, 2014, **unless a Motion for Rehearing is filed by the 30th day of October, 2014**.

SIGNED this the 7th day of October, 2014, at Austin, Texas.



Sherry K-Cook, Executive Director
Texas Alcoholic Beverage Commission

CERTIFICATE OF SERVICE

I certify that the persons listed below were served with a copy of this Order in the manner indicated below on this the 7th day of October, 2014.



Martin Wilson, Assistant General Counsel
Texas Alcoholic Beverage Commission

Steven M. Rivas
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SOAH DOCKET NO. 362-11-2561

TEXAS LOTTERY COMMISSION, Petitioner	§	BEFORE THE STATE OFFICE
	§	
v.	§	
	§	
BABA C-STORES INC. D/B/A ONE STAR FOOD MART, Respondent	§	OF
	§	
AGENT LICENSE NO. 148478	§	ADMINISTRATIVE HEARINGS

PROPOSAL FOR DECISION

The Texas Lottery Commission (Commission) brought an action to revoke the lottery sales agent's license of Baba C-Stores d/b/a One Star Food Mart (Respondent) based on allegations that Respondent was convicted of gambling.¹ The Administrative Law Judge recommends that Respondent's license be revoked.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

A hearing was convened on February 22, 2011, by ALJ Steven M. Rivas at the State Office of Administrative Hearings, 300 West 15th Street, Austin, Texas. The Commission staff (Staff) was represented by Stephen White, Enforcement Attorney. Despite being provided proper notice, Respondent did not appear at the hearing. Although Respondent did not appear, Staff did not proceed on a default basis and instead presented evidence. The record closed at the conclusion of hearing on that day. Because there were no notice or jurisdictional issues, those matters are addressed in the findings of fact and conclusion of law without further discussion here.

¹ According to Court documents, Respondent was in possession of gambling devices.

II. APPLICABLE LAW

TEX. GOV'T CODE ANN. § 466.155(a)(1)(A) states:

After a hearing, the director shall deny any application for a license or the commission shall suspend or revoke a license if the director or commission, as applicable, finds that the applicant or sales agent is an individual who has been convicted of a felony, criminal fraud, gambling or a gambling-related offense, or a misdemeanor involving moral turpitude, if less than 10 years has elapsed since the termination of the sentence, parole, mandatory supervision, or probation served for the offense.

TEX. GOV'T CODE ANN. § 466.312(a) states:

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

16 TEX. ADMIN. CODE § 401.153(b)(1) states:

The director may grant or deny an application for a license under this subchapter based on any one or more factors listed in subsection (a) of this section. In addition, the director shall deny an application for a license under this subchapter upon a finding that the applicant has been convicted of a felony, criminal fraud, gambling or a gambling-related offense, or a misdemeanor involving moral turpitude, if less than 10 years has elapsed since the termination of the sentence, parole, mandatory supervision, or probation served for the offense.

TEX. GOV'T CODE ANN. § 466.155(c) states in pertinent part:

At a hearing, a sales agent must show by a preponderance of the evidence why the license should not be suspended or revoked.

III. DISCUSSION

Staff offered the testimony of Michelle Young, Collection Specialist for the Lottery Operations Division of the Texas Lottery Commission. Ms. Young testified as to the accuracy of Exhibits 1-9, all of which were admitted into evidence.

On September 29, 2009, Respondent was convicted of Gambling, a Class C misdemeanor, in the County Criminal Court at Law No. 13, Harris County, Texas. Respondent was fined \$200 and ordered to pay \$190 in court costs.² Ten years have not elapsed since the termination of Respondent's sentence. On October 16, 2009, Respondent submitted a Texas Lottery Ticket Sales and License Renewal Application Eligibility Statement, but failed to notify the Commission that he had been recently convicted of a gambling-related offense.

Less than two years has elapsed since Respondent's gambling conviction. The statute provides that the Commission director shall suspend or revoke a sales agent's license if the director or Commission finds that the sales agent is an individual who has been convicted of a gambling-related offense, if less than 10 years has elapsed since the termination of the sentence, parole, mandatory supervision, or probation.

Staff proved that Respondent's license should be revoked because Respondent was found guilty of a gambling-related offense and failed to notify the Commission of his conviction. Accordingly, the ALJ agrees with Staff's recommendation that Respondent's license be revoked based on Respondent's conviction.

IV. FINDINGS OF FACT

1. Baba C-Stores Inc. d/b/a One Star Food Mart (Respondent) holds Texas Lottery Commission (Commission) sales agent's license number 148478.
2. Shokat Sabza Ali is Respondent's sole owner.

² Ex. 6, Judgment of Conviction. The offense was reduced from a Class A Misdemeanor.

3. On September 29, 2009, a Judgment was entered in the County Criminal Court at Law No. 13 in Harris County, Texas, in which Respondent was convicted of Gambling, a Class C misdemeanor that is considered a gambling-related offense.
4. A hearing was held on February 22, 2011, to consider disciplinary action against Respondent.
5. All parties received not less than 20 days' notice of the hearing. The notice of hearing 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.
6. All parties had an opportunity to respond and present evidence and argument on each issue involved in the case.
7. Respondent failed to attend the hearing or present any evidence.

V. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter, pursuant to 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, as provided by TEX. GOV'T CODE ANN. ch. 2003.
3. All parties received proper notice of the hearing, as required by TEX. GOV'T CODE ANN. §§ 466.155(b), 2001.051, and 2001.052.
4. The Commission director shall suspend or revoke Respondent's sales agent's license because Respondent was convicted of a gambling-related offense in 2009. TEX. GOV'T CODE ANN. § 466.155(a)(1).
5. Respondent's sales agent's license, number 148478, should be revoked.

SIGNED April 19, 2011.



**STEVEN M. RIVAS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**