

## **RU 13.2 ADMINISTRATIVE HEARINGS**

### **GLC RULES – COIN OPERATED AMUSEMENT MACHINES RU 13.2 COIN OPERATED AMUSEMENT MACHINE ADMINISTRATION**

#### **RU 13.2.1 APPLICABILITY**

(1) The rules in this Chapter shall apply to and govern administrative hearings held by the Georgia Lottery Corporation (“GLC”) regarding Coin Operated Amusement Machines (“COAM”).

(2) Administrative hearings will be held by a Hearing Officer appointed by the President/CEO to hear such cases.

(3) Following receipt of a request for an administrative hearing, the Hearing Officer shall commence the administrative hearing within a reasonable period of time.

(4) When any person other than the President/CEO acts as Hearing Officer in such matters, the Hearing Officer's actions, decisions, and orders shall be deemed to be on behalf of the President/CEO and effective as though taken by the President/CEO, and are:

(a) Subject to the appeals procedures as provided in this section;

(b) Empowered to exercise the same degree of authority and perform the same actions as hearing officers under O.C.G.A. § 50-13-13.

#### **RU 13.2.2 ADMINISTRATIVE PROCEEDINGS**

The hearings held under these rules shall be only as formal as is necessary to preserve order and be compatible with the principles of justice.

(1) Parties shall have the right to be represented by legal counsel and to obtain the appearance of witnesses and documentary evidence.

(2) Parties shall have the right to respond and present evidence on all issues involved and to cross-examine all witnesses.

(3) The standard of proof on all issues in the hearing shall be a preponderance of the evidence.

(4) In cases commenced by the issuance of citations by the GLC, the GLC shall have the burden of proof and shall present its case first.

(5) In cases involving the preliminary denial of license applications, the GLC shall specifically set forth the reason(s) for denial, and the applicant or licensee shall then have the burden of proof and shall present its case first.

(6) In all other cases, the commencing party shall have the burden of proof and shall present its case first.

### **RU 13.2.3 EVIDENCE; OFFICIAL NOTICE**

(1) The rules of evidence in hearings covered by this Chapter shall be substantially as follows:

- (a) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded;
- (b) The rules of evidence as applied in the trial of civil non-jury cases in superior courts shall be followed as far as is practicable;
- (c) When necessary to ascertain facts not reasonably susceptible of proof under such rules, evidence not admissible under superior court rules may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent persons;
- (d) Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original or have it established as documentary evidence according to the rules of evidence applicable to the superior courts of Georgia;
- (e) A party may conduct such cross-examination as required for a full and true disclosure of the facts;
- (f) Official notice may be taken of judicially recognizable facts and generally recognized technical facts or records within the agency's specialized knowledge. The parties shall be notified of any material so noticed and shall be afforded the opportunity to contest such material.

(2) Any statement or confession made in judico and under oath regardless of the proceeding in which such statement or confession was made may be considered by the GLC in the course of any investigation or determination of a license application.

### **RU 13.2.4 EXECUTIVE ORDERS**

(1) As soon as possible after the close of a hearing, the Hearing Officer shall issue an Executive Order (the "Order") in the case and forward that Order to the GLC for service and execution.

(2) The Order shall contain the determination of the Hearing Officer and any penalties to be imposed as a result of the proceeding.

(3) Unless the execution of the Order is stayed by the President/CEO or Hearing Officer, the execution of the Order is to be effective on the date specified in the Order or upon service of the Order if no other effective date is so specified.

### **RU 13.2.5 APPEAL PROCEDURE; POST-HEARING MOTIONS**

(1) The following two-step appeal procedure shall be the exclusive administrative remedy for appealing decisions entered pursuant to these rules.

- (a) Step One - **Request for Reconsideration:**

1. A licensee or applicant who is aggrieved by the Order entered by the Hearing Officer, other than an Order entered by a Hearing Officer appointed under O.C.G.A. §50-27-102 (d), may appeal by filing a Request for Reconsideration with the Hearing Officer no later than ten (10) days after receipt of the Order .

2. The Hearing Officer shall review the request and either deny the request or modify the initial Order by an Order on Reconsideration.

3. A licensee or former licensee who is aggrieved by the Order entered by a Hearing Officer appointed under O.C.G.A. §50-27-102 (d), may appeal by filing a Request for Reconsideration with the Chief Executive Officer or his or her designee no later than ten (10) days after receipt of the Order.

**(b) Step Two - Motion for Review:**

1. (A) Provided a timely Request for Reconsideration was filed with the initial Hearing Officer, other than for an Order entered by a Hearing Officer appointed under O.C.G.A. §50-27-102 (d), a licensee or applicant shall have ten (10) days from the date of receipt of the Hearing Officer's Order on Reconsideration (or denial of request), to file with the President/CEO a written Motion for Review by electronic mail to [appeals@galottery.org](mailto:appeals@galottery.org). Motions for Review or appeals (by whatever name or however designated) submitted by any other means or to any other email shall not be accepted. Any responsive pleading to a Motion for Review or appeal must also be filed by electronic mail to [appeals@galottery.org](mailto:appeals@galottery.org).

(B) For an Order entered by a Hearing Officer appointed under O.C.G.A. §50-27-102 (d), a licensee or applicant shall have ten (10) days from the date of receipt of the Hearing Officer's Order, to file with the President/CEO a written Motion for Review by electronic mail to [appeals@galottery.org](mailto:appeals@galottery.org). Motions for Review or appeals (by whatever name or however designated) submitted by any other means or to any other email shall not be accepted. Any responsive pleading to a Motion for Review or appeal must also be filed by electronic mail to [appeals@galottery.org](mailto:appeals@galottery.org).

2. The motion shall set forth a concise statement of the basis upon which the appeal is made together with supporting arguments setting forth an enumeration of erroneous conclusions of law or determinations.

3. No evidence outside the record shall be considered.

4. After due consideration and as soon as practicable, the President/CEO or his/her designee shall either grant or deny the Motion for Review. For purposes of this Section, a Motion for Review shall be deemed denied if the President/CEO or his/her designee fails to provide a decision to either grant or deny the Motion of Review within 30 days from receipt of the Motion for Review.

5. If the Motion is granted, the President/CEO will either remand the case to the Hearing Officer for additional proceedings or issue a Final Order either modifying or upholding the Order.

6. Except in the case of a Final Order remanding the case, either the President/CEO's Final Order or the President/CEO's denial of a Motion for Review entered pursuant to this procedure shall constitute final GLC action and shall not be subject to further appeal within the GLC.

(2) **Application to Stay Execution of Order:** The filing of a Request for Reconsideration or Motion for Review does not, in and of itself, stay the execution and enforcement of any Order of the Hearing Officer or President/CEO.

(a) A request to stay the execution and enforcement of any Order may be made with the Request for Reconsideration or Motion for Review and the Hearing Officer or President/CEO may grant such request to stay upon appropriate terms for good cause shown.

(3) **Waiver of Administrative Appeal:** A party must follow the intra-agency appeal procedure as outlined in this Rule. The failure of a party to follow such appeal procedure shall constitute a waiver of its appeal rights.

#### **RU 13.2.6 CONTINUANCES AND POSTPONEMENTS**

(1) Matters set for hearing may be continued or postponed within the sound discretion of the Hearing Officer upon timely motion by either party.

(2) The Hearing Officer may on his own motion continue or postpone the hearing.

#### **RU 13.2.7 SUBPOENA FORMS; SERVICE**

(1) Either party may obtain subpoena forms from the Hearing Officer by making a timely request.

(2) Service, proof of service, and enforcement of subpoenas shall be as provided by Georgia law and shall be the responsibility of the party requesting the subpoena.

#### **RU 13.2.8 TRANSCRIPTS OF HEARING**

(1) Any party may request that the hearing be conducted before a court reporter.

(2) The request shall be in writing and include an agreement by the requesting party that he or she shall pay the costs incurred by the request or that he or she shall procure, at his or her own cost and on his or her own initiative, the court reporting services for the hearing.

(3) Regardless of who makes the arrangements or requests for a transcript to be made, the original transcript of the proceedings shall be submitted to the Hearing Officer prior to the close of the hearing record if the transcript is to be made part of the record.

### **RU 13.2.9 HEARINGS FOR ACTIONS ON EXISTING LICENSES**

(1) In the case where a licensee has received notice of suspension or revocation of an existing license pursuant to either O.C.G.A. § 50-27-71(a.2) or O.C.G.A § 50-27-73(c) and the licensee has requested a hearing pursuant to O.C.G.A. § 50-27-74 prior to the effective date of such action of suspension and revocation, the effective date of such action shall be stayed until the issuance of the Order of the Hearing Officer.

### **RU 13.2.10 DISPUTES SUBJECT TO ARBITRATION**

(1) Pursuant to O.C.G.A. §50-27-102 (d), as a condition of a COAM license, no Master licensee or Location licensee shall replace or remove a COAM from a licensed COAM location until the Master licensee and Location licensee certify to GLC that there are no disputes regarding any agreement, distribution of funds, or other claim between the Master licensee and Location licensee. If either party is unable to certify to GLC that there is no dispute, GLC shall refer the dispute to a hearing officer approved and appointed by GLC to hear such disputes.

(2) GLC may designate a qualified organization or firm to assign one or more hearing officers to hear the disputes and perform administrative tasks associated with hearing the disputes.

(3) Costs of the hearing officer's review, including any hearing set pursuant to this rule, shall be shared equally between the parties in the dispute; provided, however, that GLC shall not be responsible for any of the costs associated with the dispute resolution mechanism set forth in this rule. If one of the parties to the dispute refuses to cover any of the administrative costs of the arbitration, the other party may cover such costs and seek to recover such costs and the covering of such costs shall not be deemed an unlawful financial inducement.

(4) The conduct of the dispute resolution process pursuant to this rule including procedure, evidentiary matters, and any prehearing discovery shall be consistent with the Georgia Arbitration Act, O.C.G.A. §9-9-1, et al and any rules, policies or procedures as additionally set forth by the organizations or firms designated by the GLC as set forth in subsection (2) above.

(5) After a licensee receives a notification from GLC that a dispute exists, the licensee certifying that there is a dispute must complete and submit a demand for arbitration and pay the required fees, including the filing or retainer fee that is required, to commence arbitration with the organization(s) or firm(s) designated by GLC as set forth in subsection (2) above within 14 calendar days.

(a) After a licensee is served with a demand for arbitration by the licensee certifying that there is dispute, the non-moving or non-disputing licensee must pay the required fees to commence arbitration with the organization or firm designated by GLC as set forth in subsection (2) above within 14 calendar days.

(b) If the licensee certifying that there is a dispute fails to pay its required fees within 14 calendar days of GLC's notification, such failure to proceed shall be considered a confirmation that a dispute no longer exists between the licensees. Accordingly, GLC may proceed with its

consideration of any request to replace COAMs at the subject location based on such failure to proceed or to pursue the dispute.

(c) If the non-moving or non-disputing licensee fails to pay the required fees to participate in the arbitration proceeding within 14 calendar days of being served with a Notice of Intent to Initiate an Arbitration, the licensee certifying that there is a dispute may cover such costs as provided in subsection (3) above within 5 calendar days to proceed with the arbitration.

(d) After the appointment of a hearing officer, if any party fails to timely pay the costs of the hearing officer's review within 10 days of service of notice of costs by the hearing officer, the hearing officer shall grant a default judgment on liability against the nonpaying party. The hearing officer shall then consider evidence related to damages or any relief and shall render judgment based upon a preponderance of the evidence.

Version	Date	Modified By	Comments
2	07/16/15	J. Barker	Add RU 13.2.10 - Arbitration
3	10/15/15	J. Barker	Add RU 13.2.10 (5) – Arbitration time periods
4	07/21/16	J. Barker	Add RU 13.2.10 (5)(d) – 10 day notice of costs
			Add RU 13.2.3 relating to statement or confession made in <u>judicio</u> and under oath
		J. Barker	Amend RU 13.2.5 to provide a party must follow the intra-agency appeal procedure or waive its appeal rights
5	1/26/17	J. Barker	Amend RU 13.2.5 to provide for an appeal from an arbitration order
6	1/25/18	J. Barker	Amend RU 13.2.5 to provide for submission of Motions for Review or appeals to GLC's CEO by electronic mail
7	4/25/19	J. Barker	Amend RU 13.2.10 to remove reference to instructions of arbitration firms relating to the time frame to commence arbitration proceedings