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DOCKET NO. 511054

IN RE PALAZZO PUB INC.  
D/B/A PALAZZO PIZZA & PAS TA  
PERMIT NO(S). N489733

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BEFORE THE TEXAS  
  
ALCOHOLIC  
  
BEVERAGE COMMISSION

TARRANT COUNTY, TEXAS  
(SOAH DOCKET NO. 458-06-1444)

ORDER

**CAME ON FOR CONSIDERATION** this 28 day of April, 2006, the above-styled and numbered cause.

After proper notice was given, this case was heard by Administrative Law Judge Tanya Cooper. The hearing convened on March 29, 2006, and adjourned on the same date. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on April 4, 2006. This Proposal For Decision (**attached hereto as Exhibit "A"**), was properly served on all parties who were given an opportunity to file Exceptions and Replies as part of the record herein.

**As of this date no exceptions have been filed.**

The Assistant Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision, Transcripts, and Exhibits, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge, which are contained in the Proposal For Decision and incorporates those Findings of Fact and Conclusions of Law into this Order, as if such were fully set out and separately stated herein. All Proposed Findings of Fact and Conclusions of Law, submitted by any party, which are not specifically adopted herein are denied.

**IT IS THEREFORE ORDERED**, by the Assistant Administrator of the Texas Alcoholic Beverage Commission, pursuant to Subchapter B of Chapter 5 of the Texas Alcoholic Beverage Code and 16 TAC §31.1, of the Commission Rules, that **Respondent's permit(s) be cancelled for cause, pursuant to Section 11.46 © of the Code.**

**This Order will become final and enforceable on May 19, 2006**, unless a Motion for Rehearing is filed **before** that date.

By copy of this Order, service shall be made upon all parties by facsimile and by mail as indicated below.

SIGNED on this 28 day of April, 2006, at Austin, Texas.

On Behalf of the Administrator,



Jeannene Fox, Assistant Administrator  
Texas Alcoholic Beverage Commission

JF/dn

The Honorable Tanya Cooper  
Administrative Law Judge  
State Office of Administrative Hearings  
**VIA FACSIMILE 817-377-3706**  
Ph. No. 817-731-1733

Palazzo Pub Inc.  
d/b/a Palazzo Pizza and Pasta  
**RESPONDENT**  
7451 N. Beach St., Ste. 100  
Ft. Worth, TX 76137-1504  
**CERTIFIED MAIL NO. \_\_\_\_\_**  
**RETURN RECEIPT REQUESTED**

Tim Griffith  
**ATTORNEY FOR PETITIONER**  
**VIA FACSIMILE 214-819-9676**  
Ph.: 214-678-4043  
TABC Legal Section

Licensing Division  
Ft. Worth District Office

*T6 + default*

**DOCKET NO. 458-06-1444**

**TEXAS ALCOHOLIC BEVERAGE  
COMMISSION, Petitioner**

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**BEFORE THE STATE OFFICE**

**V.**

**OF**

**PALAZZO PUB INC. D/B/A  
PALAZZO PIZZA & PASTA,  
Respondent**

**ADMINISTRATIVE HEARINGS**

**PROPOSAL FOR DECISION**

The Texas Alcoholic Beverage Commission (TABC) Staff brought this disciplinary action against Palazzo Pub Inc., d/b/a Palazzo Pizza and Pasta (Respondent), alleging that Respondent committed numerous violations<sup>1</sup> associated with recordkeeping, alcoholic beverage replacement, and the proper operation of a private club. As Respondent did not appear and was not represented at the hearing, the hearing proceeded on a default basis. The Administrative Law Judge (ALJ) deems TABC Staff's allegation to be true and recommends cancellation of Respondent's permits.

**I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY**

The Texas Alcoholic Beverage Commission (TABC) has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. chs. 5, 6, 11, 32 and 44. The State Office of Administrative Hearings (SOAH) has jurisdiction over all matters relating to conducting a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, under TEX. GOV'T CODE ANN. ch. 2001.

On February 22, 2006, TABC Staff issued an amended Notice of Hearing to Respondent at

<sup>1</sup> The Commission or administrator may suspend for not more than 60 days or cancel an original or renewal permit if it is found after notice and hearing, that any permittee violated a provision of the Code or a rule of the Commission. TEX. ALCO. BEV. CODE ANN. § 11.61(b)(2).

**DOCKET NO. 458-06-1444**

**TEXAS ALCOHOLIC BEVERAGE  
COMMISSION, Petitioner**

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**BEFORE THE STATE OFFICE**

**v.**

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PROPOSAL FOR DECISION

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its mailing address of record reflected on Respondent's pennits. The amended Notice of Hearing was sent<sup>2</sup> by U.S. Post Office certified mail, return receipt requested. TABC Staff presented a return receipt "green card," which was received<sup>3</sup> at Respondent's address on February 21, 2006, by Michael Martin. However, the "green card's" number presented at the hearing (7001 2510 000 7274 2895) did not match with the "green card" number listed in the amended Notice of Hearing's Certificate of Service (7001 2510 0007274 2741). Nevertheless, the amended Notice of Hearing is presumed to have been received at its address of record pursuant to 1TEX. ADMIN. CODE § 155.25(d),<sup>4</sup> based upon the Certificate of Service included in TABC Staff's amended Notice of Hearing.

A hearing was convened as scheduled before ALJ Tanya Cooper at the SOAH office located at 6777 Camp Bowie Boulevard, Suite 400, Fort Worth, Texas, on March 29, 2006. TABC Staff was represented at the hearing by Timothy Griffith, TABC Staff Attorney. Respondent did not appear and was not represented at the hearing. During the hearing, TABC Staff offered evidence to support a default decision against Respondent. The hearing concluded and the record closed on

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<sup>2</sup> 1 TEX. ADMIN. CODE § 155.25 provides that any person filing a document with SOAH in a case shall, on the same date as the document is filed, provide a copy to each party . . . by regular, certified, or registered mail

TABC's Rule 37.3 provides that service of notices of hearing, . . . related to contested cases shall be by certified mail addressed to the licensee/permittee/certificate holder's last known address as reflected in the commission's records. A certificate of service to such address shall be prima facie evidence of adequate service on the licensee/permittee/certificate holder. This rule further requires that licensee/permittee/certificate holders and applicants for licenses, permits, or certificates, and their representatives, shall notify the commission in writing of any change of address within seven days of such change. Licensee/permittees shall file their change of address with the Licensing Division of the Texas Alcoholic Beverage Commission. 16 TEX. ADMIN. CODE § 37.3.

<sup>4</sup> 1 TEX. ADMIN. CODE § 155.25 provides as follows:

(d) Presumed time of receipt of served documents. The following rebuttable presumptions shall apply regarding the party's receipt of documents served by another party:

(3) If a document was sent by regular mail, certified mail, or registered mail, the judge shall presume that it was received no later than three days after mailing.

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PROPOSAL FOR DECISION

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that same day.

## II. ANALYSIS

Based on Respondent's failure to appear at the hearing, TABC Staff requested that the default provisions of 1 TEX. ADMIN. CODE § 155.55 be invoked. TABC Staff's amended Notice of Hearing complies with 1 TEX. ADMIN. CODE §§ 155.27 and 155.55, and TEX. ALCO. BEV. CODE ANN. § 11.63.<sup>5</sup> Pursuant to 1 TEX. ADMIN. CODE § 155.55, the allegations presented in the amended Notice of Hearing are deemed admitted as true. Accordingly, the ALJ incorporates these allegations into the Findings of Fact below.

At the conclusion of the hearing, TABC Staff requested that Respondent's permits be cancelled for cause. The ALJ agrees that TABC Staff's penalty recommendation is appropriate. Based upon Respondent's failure to appear at the hearing as scheduled and the number Code violations deemed to have been committed by Respondent, cancellation of Respondent's permits is recommended.

## III. FINDINGS OF FACT

1. Palazzo Pub, Inc. d/b/a Palazzo Pizza and Pasta (Respondent) holds a Private Club Registration Permit, N-489733, and a Beverage Cartage Permit, PE-489734, issued by the Texas Alcoholic Beverage Commission (TABC), for the premises located at 7451 N. Beach, Suite 100, Fort Worth, Tarrant County, Texas.
2. On February 22, 2006, the TABC Staff issued an amended Notice of Hearing to Respondent at its mailing address of record reflected on Respondent's permits: 7451 N. Beach, Suite 100, Fort Worth, Texas, 76137-1504. This amended Notice was sent by U.S. Post Office certified mail, return receipt requested, and is presumed to have been received at that address by

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<sup>5</sup> At least 10 days' notice shall be given when a hearing is provided by this code. A notice of hearing for refusal, cancellation, or suspension of a license or permit may be served personally by a representative of the commission or sent by registered or certified mail addressed to the licensee or permittee. TEX. ALCO. BEV. CODE ANN. § 11.63.

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PROPOSAL FOR DECISION

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February 27, 2006

3. The amended 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 statement of the matters asserted.
4. The amended Notice of Hearing properly disclosed in at least twelve-point, bold-face type that upon Respondent's failure to appear at the hearing, the factual allegations in the notice will be deemed to be admitted as true, and the relief sought may be granted by default.
5. On March 29, 2006, a hearing was convened at the State Office of Administrative Hearings, 6777 Camp Bowie Boulevard, Suite 400, Fort Worth, Tarrant County, Texas. TABC Staff was represented at the hearing by Timothy Griffith, TABC Staff Attorney. Respondent did not appear and was not represented at the hearing.
6. On or about October 28, 2005, and/or before that date, Respondent failed to maintain a membership committee composed of three or more (non-employed) members of the club.
7. On or around October 28, 2005, and/or before that date, Respondent failed to maintain membership committee minutes.
8. On or about October 28, 2005, and/or before that date, Respondent had members which were not approved in compliance with the Texas Alcoholic Beverage Code (the Code) or TABC Rules.
9. On or around October 28, 2005, and/or before that date, Respondent failed to properly maintain club records on the licensed premises.
10. On or around October 28, 2005, and/or before that date, Respondent did not purchase temporary membership cards.
11. On or around October 28, 2005, and/or before that date, Respondent failed to approve a preliminary membership within three days of the request of an applicant for membership.
12. On or around October 28, 2005, and/or before that date, Respondent failed to operate under the "Pool System" or "Alcoholic Beverage Replacement System."
13. On or around October 28, 2005, and/or before that date, Respondent's source records failed to indicate the percentage of beverage replacement.
14. On or around October 28, 2005, and/or before that date, Respondent replaced alcoholic beverages from money other than replacement money.

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PROPOSAL FOR DECISION

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15. On or around October 28, 2005, and/or before that date, Respondent's deposits in the replacement account were not recorded on a daily summary.
16. On or about October 28, 2005, and/or before that date, Respondent did not conduct its operations as a private club, and in accordance with its By-Laws, Management Agreement and/or Sub-Lease Agreement as set forth in Findings of Fact Nos. 6 -15 and 17.
17. On or about October 28, 2005, and/or before that date, Respondent entered into a device, scheme or plan which surrendered control of the premises or Respondent's business to a person or persons other than the Respondent when Respondent commingled its funds with a restaurant and reported its income and expenses on a partnership income tax return with said restaurant.

#### IV. CONCLUSIONS OF LAW

1. The Texas Alcoholic Beverage Commission has jurisdiction over this proceeding pursuant to TEX. ALCO. BEV. CODE ANN. chs. 5, 6, 11, 32 and 44.
2. The State Office of Administrative Hearings has jurisdiction over all matters relating to conducting a hearing in this proceeding, including the preparation of a proposal for decision with findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2001.
3. Based upon Findings of Fact Nos. 2 - 4, TABC Staff issued its amended Notice of Hearing in compliance with 1 TEX. ADMIN. CODE §§ 155.27 and 155.55 and TEX. ALCO. BEV. CODE ANN § 11.63.
4. Based upon Findings of Fact Nos. 2 - 5, the hearing proceeded on a default basis as authorized by 1 TEX. ADMIN. CODE § 155.55.
5. Based upon Finding of Fact No. 6, Respondent violated TEX. ALCO. BEV. CODE ANN § 11.61(b)(2) and 16 TEX. ADMIN. CODE § 41.52( C)(1)(B).
6. Based upon Finding of Fact No. 7, Respondent violated TEX. ALCO. BEV. CODE ANN. § 11.61(b)(2) and 16 TEX. ADMIN. CODE § 41.52( c)(1)(B).
7. Based upon Finding of Fact No. 8, Respondent violated TEX. ALCO. BEV. CODE ANN. § 11.61(b)(2) and 16 TEX. ADMIN. CODE § 41.52( c)(1)( C).
8. Based upon Finding of Fact No. 9, Respondent violated TEX. ALCO. BEV. CODE ANN § 11.61(b)(2) and 16 TEX. ADMIN. CODE § 41.52( c)(1)(D).
9. Based upon Finding of Fact No. 10, Respondent violated TEX. ALCO. BEV. CODE ANN. §§

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PROPOSAL FOR DECISION

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11.61(b)(2) and 32.03(d).

10. Based upon Finding of Fact No. 11, Respondent violated TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2) and 32.03(d)
11. Based upon Finding of Fact No. 12, Respondent violated TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2) and 32.06
12. Based upon Finding of Fact No. 13, Respondent violated TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2) and 32.06(b)(1).
13. Based upon Finding of Fact No. 14, Respondent violated TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2) and 32.06(b)(3)
14. Based upon Finding of Fact No. 15, Respondent violated TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2) and 32.06(b)(2)
15. Based upon Findings of Fact Nos. 6 - 17, Respondent violated TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2), 32.03, 32.06, and 16 TEX. ADMIN. CODE § 41.52.
16. Based upon Findings of Fact Nos. 6 - 17, Respondent violated TEX. ALCO. BEV. CODE ANN. §§ 11.61(b)(2) and 109.53.
17. Based upon Findings of Fact Nos. 1 - 17, and Conclusions of Law Nos. 1 - 16, Respondent's permits should be cancelled.

DATE SIGNED: APRIL 4, 2006



TANYA COOPER,  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS

## STATE OFFICE OF ADMINISTRATIVE HEARINGS

6777 Camp Bowie Blvd.  
Ft. Worth, Texas 76116  
Phone (817) 731-1733  
Fax (817) 377-3706

## SERVICE LIST

AGENCY TEXAS ALCOHOLIC BEVERAGE COMMISSION

CASE Palazzo Pub Inc. d/b/a Palazzo Pizza & Pasta

DOCKET NUMBER: 458-06-1444

AGENCY CASE NO. 511054

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Timothy Griffith  
Staff Attorney  
Texas Alcoholic Beverage Commission  
Ph: 214/678-4000  
Fax: 214/678-4001

AGENCY COUNSEL  
BY FAX

Palazzo Pub Inc.  
d/b/a Palazzo Pizza & Pasta  
7451 North Beach Street, Suite 100  
Fort worth, Texas 76137-1504

RESPONDENT  
BY MAIL

as of February 21, 2006