

TEXAS ALCOHOLIC BEVERAGE  
COMMISSION

VS.

MAESTRO'S NEW YORK STYLE PIZZERIA  
INC.  
D/B/A MAESTRO'S NEW YORK STYLE  
PIZZERIA  
PERMIT/LICENSE NO(s). BG713544, FB &  
BL  
DALLAS COUNTY, TEXAS  
(SOAH DOCKET NO. 458-10-2836)

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BEFORE THE TEXAS

ALCOHOLIC

BEVERAGE COMMISSION

**ORDER**

The above-styled and numbered cause is before the Assistant Administrator, Texas Alcoholic Beverage Commission for consideration and entry of the agency order.

After proper notice was given, this case was heard by Administrative Law Judge Brenda Coleman. The hearing convened on the 19<sup>th</sup> day of March, 2010 and adjourned the same day. The Administrative Law Judge made and filed a Proposal For Decision containing Findings of Fact and Conclusions of Law on the 17<sup>th</sup> day of May, 2010. The Proposal For Decision was properly served on all parties who were given an opportunity to file Exceptions and Replies. No exceptions were filed.

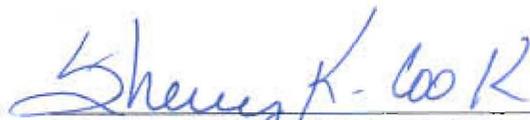
The Assistant Administrator of the Texas Alcoholic Beverage Commission, after review and due consideration of the Proposal for Decision and Exhibits, adopts the Findings of Fact and Conclusions of Law of the Administrative Law Judge.

**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 your permit(s) and/or license(s) is hereby CANCELLED.

This Order will become **final and enforceable** on the 20<sup>th</sup> day of July, 2010, unless a Motion for Rehearing is filed **before** that date.

By copy of this Order, service shall be made upon all parties by in the manner indicated below.

**SIGNED** this the 2<sup>nd</sup> day of July, 2010, at Austin, Texas.

  
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Sherry K-Cook, Assistant Administrator  
Texas Alcoholic Beverage Commission

Honorable Judge Brenda Coleman  
**ADMINISTRATIVE LAW JUDGE**  
State Office of Administrative Hearings  
Dallas, Texas  
*VIA FACSIMILE: (214) 956-8611*

Maestro's New York Style Pizzeria, Inc.  
d/b/a Maestro's New York Style Pizzeria  
**RESPONDENT**  
6850 N Shiloh Rd., Ste. K141  
Garland, TX 75044-2917  
*VIA REGULAR MAIL*

Judith L. Kennison  
**ATTORNEY FOR PETITIONER**  
TABC Legal Section

Licensing Division

Dallas District Office

# State Office of Administrative Hearings



Cathleen Parsley  
Chief Administrative Law Judge

May 17, 2010

Alan Steen  
Administrator  
Texas Alcoholic Beverage Commission  
5806 Mesa Drive  
Austin, Texas 78731

VIA FACSIMILE 512/206-3203

**RE: TEXAS ALCOHOLIC BEVERAGE COMMISSION VS. MAESTRO'S NEW  
YORK STYLE PIZZERIA INC. D/B/A MAESTRO'S NEW YORK STYLE  
PIZZERIA  
SOAH DOCKET NUMBER 458-10-2836**

Dear Mr. Steen:

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 1 TEX. ADMIN. CODE § 155.507(c), a SOAH rule which may be found at [www.soah.state.tx.us](http://www.soah.state.tx.us).

Sincerely,

A handwritten signature in cursive script that reads "Brenda Coleman".

Brenda Coleman  
Administrative Law Judge

BC/lan  
Enclosure

Xc: Judith Kennison, Staff Attorney, Texas Alcoholic Beverage Commission, VIA FACSIMILE 512-206-3498  
Don Lee, D/B/A Maestro's New York Style Pizzeria, Respondent, VIA REGULAR MAIL, 6850 N. Shiloh Road Suite  
K-141 Garland, Texas 75044  
Emily Helm, General Counsel, Texas Alcoholic Beverage Commission, VIA FACSIMILE 512/206-3498

SOAH DOCKET NO. 458-10-2836

<b>TEXAS ALCOHOLIC BEVERAGE</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>COMMISSION,</b>	§	
<b>Petitioner</b>	§	
	§	
<b>v.</b>	§	
	§	<b>OF</b>
<b>MAESTRO'S NEW YORK</b>	§	
<b>STYLE PIZZERIA INC. D/B/A</b>	§	
<b>MAESTRO'S NEW YORK</b>	§	
<b>STYLE PIZZERIA,</b>	§	
<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**PROPOSAL FOR DECISION**

The Staff of the Texas Alcoholic Beverage Commission (Commission or Petitioner) brought this disciplinary action against Maestro's New York Style Pizzeria d/b/a Maestro's New York Style Pizzeria (Respondent), alleging that Respondent, its agent, servant, or employee, failed to pay taxes, fees, or penalties due to the State of Texas on or about October 8, 2009. Respondent failed to appear at the hearing and the hearing proceeded on a default basis. The Administrative Law Judge (ALJ) recommends cancellation of Respondent's permit.

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

The Commission has jurisdiction over this matter under TEX. ALCO. BEV. CODE ANN. (Code) ch. 5 and § 11.61. 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 proposed findings of fact and conclusions of law, pursuant to TEX. GOV'T CODE ANN. ch. 2003.

On March 1, 2010, the Commission issued its notice of hearing setting the matter for hearing on March 19, 2010. The notice of hearing was sent by regular mail and certified mail, return receipt requested, to Respondent at Respondent's last known address. 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, as required by TEX. GOV'T CODE ANN. § 2001.052. The notice of hearing also contained the following language in 12-point or larger boldface type: "If a party fails to appear at the hearing, the factual allegations in the notice of hearing will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default." The certified mail was delivered to Respondent, as evidenced by the green card signed by Respondent's agent, Joan Karo.

On March 19, 2010, a hearing convened before SOAH ALJ Brenda Coleman. The Commission was represented at the hearing by Judith Kennison, Staff Attorney. Respondent did not appear and was not represented at the hearing. Petitioner presented evidence that proved proper notice and jurisdiction. The record closed on that same date.

## II. DISCUSSION

Based on the failure of Respondent to appear at the hearing, Petitioner requested that the default provisions of 1 TEX. ADMIN. CODE (TAC) § 155.501 be invoked. The ALJ finds that Petitioner issued notice in compliance with 1 TAC §§ 155.401 and 155.501 and TEX. ALCO. BEV. CODE ANN. § 11.63. Pursuant to 1 TAC § 155.501, the allegations presented in the notice of hearing are deemed admitted as true. Accordingly, the ALJ has incorporated these allegations into the Proposed Findings of Fact below. Based on the deemed factual findings in this case, Respondent's permit should be canceled.

## III. FINDINGS OF FACT

1. Maestro's New York Style Pizzeria d/b/a Maestro's New York Style Pizzeria (Respondent) holds Wine and Beer Retailer's Permit BG 713544, which includes the Food and Beverage Certificate and Retailers On Premise Late Hours License issued by the Commission, for the premises located at 4980 Belt Line Road, Suite 180, Addison, Dallas County, Texas.

2. Respondent is delinquent in paying its sales taxes.
3. On March 1, 2010, the Commission issued its notice of hearing by regular mail and certified mail, return receipt requested, to Respondent at Respondent's last known address, setting the hearing on the merits for March 19, 2010.
4. The certified mail was delivered to Respondent, as evidenced by the green card signed by Respondent's agent, Joan Karo.
5. 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. The notice of hearing also contained the following language in 12-point or larger boldface type: "If a party fails to appear at the hearing, the factual allegations in the notice of hearing will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default."
7. A hearing convened before SOAH ALJ Brenda Coleman on March 19, 2010. The Commission appeared through its Staff Attorney, Judith Kennison. Respondent did not appear and was not represented at the hearing. The record closed on that same date.

#### IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to ch. 5 and § 11.11 of the Code.
2. SOAH has jurisdiction to conduct the hearing in this matter and to issue a proposal for decision containing findings of fact and conclusions of law pursuant to TEX. GOV'T CODE ANN. ch. 2003.
3. Proper and timely notice of the hearing was effected on Respondent pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001, 1 TAC § 155.501 and Code § 11.63.
4. A default judgment should be entered against Respondent pursuant to 1 TAC § 155.501.
5. Based on the foregoing findings and conclusions, Respondent is indebted to the state for taxes, fees, or payment of penalties. Code § 11.61(b)(5).

6. Respondent's permit should be canceled. Code § 11.61(b)(5).

**SIGNED May 17, 2010.**

  
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**BRENDA COLEMAN**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**