

**BEFORE THE LOCAL LIQUOR AND BEER
LICENSING AUTHORITY, CITY OF COLORADO
SPRINGS, STATE OF COLORADO**

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CITY CLERK'S OFFICE

2018 APR -6 A 10: 52

IN THE MATTER OF:

JJ & MJ, LLC d/b/a
THE BUZZ
734 N. 19th Street
Colorado Springs, CO 80904
LICENSEE

▲ AUTHORITY USE ONLY ▲

License No: 724125

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Pursuant to an Order to Show Cause and Notice of Hearing dated March 9, 2018, a hearing was held in this matter on April 6, 2019, at the Colorado Springs Municipal Court Building, Division 2, 224 East Kiowa Street, Colorado Springs, Colorado 80901. Hearing Officer Kristen L. Hoffecker ("Hearing Officer") presided over the hearing.

APPEARANCES:

For the City of Colorado Springs ("City"):

Michael Curran, Colo. Reg. No. 28590
Office of the City Attorney-Prosecuting Division
224 East Kiowa Street, Suite 410
Colorado Springs, CO 80901

For JJ & MJ, LLC d/b/a The Buzz ("Licensee")

NONE

WITNESSES FOR THE CITY

Russ Elliott, Criminal Investigator – State of Colorado Liquor Enforcement Division

Lee McRae, License Enforcement Officer – City of Colorado Springs

Officer C. Piazza, Police Officer – Colorado Springs Police Department

WITNESSES FOR LICENSEE:

NONE

EVIDENCE:

CITY presented the sworn testimony of the three witnesses identified above. The following Exhibits were identified, offered, and admitted into evidence at the hearing:

On behalf of the City:

Exhibit 1	Bill of Sale dated November 03, 2017
Exhibit 2	Business Purchase Agreement dated November 03, 2017
Exhibit 3	Lease Agreement
Exhibit 4	Articles of Organization – The Buzz Bar LLC dated November 06, 2017
Exhibit 5	Transfer of Trademark dated November 14, 2017
Exhibit 6	Dissolution of JJ and MJ LLC dated January 14, 2018
Exhibit 7	Business Card
Exhibit 8	Check number 020955 dated November 3, 2017
Exhibit 9	Bank Records Jamison 10/09/17 to 11/08/17
Exhibits 10-16	Photographs interior
Exhibits 17-19	Photographs exterior
Exhibit 20	Occu Tax Receipt dated March 16, 2018
Exhibit 21	Installment Promissory Note dated November 03, 2017

Hearing Officer Administratively Noticed Documents

N/A	Local Licensing Authority Administrative File for license number 724125
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FINDINGS OF FACT

Evidence was presented at the hearing by City. The Hearing Officer has examined the evidence properly admitted – testimonial and otherwise – and has weighed the credibility, sufficiency and probative effect thereof. The Hearing Officer has observed the demeanor of the witnesses while testifying.

With respect to the evidence of the witnesses, the Hearing Officer has assessed:
Any untoward bias, motive or prejudice which may be actuating a witness' testimony in such a fashion and to such an extent as to render that testimony or parts thereof less worthy of belief.

The Hearing Officer is mindful of the burden and standard of proof that is applicable in liquor license suspension / revocation proceeding.

Therefore, the Hearing Officer finds by a preponderance of the evidence:

1. JJ & MJ, LLC d/b/a The Buzz ("Licensee") is the holder of Tavern Liquor License #724125 at all times relevant to this proceeding.
2. Licensee JJ & MJ LLC is a single member LLC, whose sole member is James Jamison.
3. Licensee's licensed premises are located at 734 N. 19th Street, Colorado Springs, CO 80904 ("Licensed Premises").
4. Licensee was provided timely and accurate notice of this proceeding by providing a copy of the Order to Show Cause and Notice of Hearing personally to the Licensee's Licensed Premises and by first class postage paid mail to JJ & MJ, LLC d/b/a The Buzz 734 N. 19th Street, Colorado Springs, CO 80904 and to James R. Jamison 9615 Desert Lily Circle, Colorado Springs, CO 80925.
5. Lee McRae is employed as a License Enforcement Officer for the City of Colorado Springs. Mr. McRae has been a License Enforcement Officer for the City for 7 years.
6. Russ Elliott is employed as a Criminal Investigator for the Colorado Department of Revenue Liquor Enforcement Division ("Department"). Investigator Elliot has been an investigator with Department for 16 years and has an additional 6 years of law enforcement experience as a police officer for the City of Manitou. Investigator Elliott has a total of 22 years of law enforcement experience.
7. Department investigates complaints concerning violations of the Colorado Liquor Code throughout the State of Colorado.
8. On January 22, 2018 Investigator Elliott received information that Licensee had sold its business and that the business was being operated by Jason Frye. Investigator Elliott traveled to Licensed Premises and contacted an individual identified as Jason Frye. Frye admitted to having purchased the business from Licensee on November 3, 2017 and that he had been operating the establishment since that date.
9. On November 6, 2017 Jason Frye formed The Buzz Bar LLC listing Licensed Premises as the address. *Exhibit 4.*
10. On November 14, 2017 Licensee filed a Statement of Transfer of Trademark Registration from JJ & MJ LLC to The Buzz Bar LLC. *Exhibit 5.*
11. On January 14, 2018 Licensee was dissolved. *Exhibit 6.*
12. As of January 22, 2018 no transfer application had been filed with the local or state licensing authorities and Investigator Elliott informed Frye that the establishment was operating

unlawfully.

13. On January 24, 2018 Investigator Elliott met with Frye and Jamison at Licensed Premises. Frye and Jamison admitted that Frye had purchased the establishment from Jamison on November 3, 2017 as evidenced by the Bill of Sale dated November 3, 2017 *Exhibit 1*, the Business Purchase Agreement dated November 3, 2017 *Exhibit 2*. Jamison admitted that as of November 3, 2017 he did not have possession or ownership of the business.
14. Frye provided Jamison with \$21,000 as a down payment for the purchase of the business. *Exhibits 8, 9*. Frye was to make payments to Jamison in the amount of \$800 per month beginning February 15, 2018 for 30 months for a total purchase price of \$45,000. *Exhibit 1, 2, 21*. Frye admitted to Investigator Elliott that he was in the process of obtaining a lease for Licensed Premises.
15. As of January 24, 2018 no transfer application had been filed with the local or state licensing authorities and Investigator Elliott informed Frye and Jamison that the establishment was operating unlawfully.
16. On February 6, 2018 Investigator Elliott met with Frye at Licensed Premises. Frye indicated that he had obtained a lease for Licensed Premises. No transfer application had been filed with the local or state licensing authorities and Investigator Elliott informed Frye that the establishment was operating unlawfully.
17. On February 8, 2018 Investigator Elliott obtained a copy of the lease agreement (*Exhibit 3*) for Licensed Premises. Jason Frye is listed as the tenant. Licensee does not have possession of Licensed Premises.
18. Officer Piazza is a police officer employed by the Colorado Springs Police Department. On February 24, 2018 Officer Piazza conducted a bar check of Licensed Premises. The business was open and actively selling alcohol beverages and had their alcohol displayed on the shelves. *Exhibits 10-16*.
19. As of February 24, 2018 no transfer application had been filed with the local or state licensing authorities.
20. On March 9, 2018 Mr. McRae went to Licensed Premises to personally serve a copy of the Order to Show Cause and Notice of Hearing in the matter. Mr. McRae contacted Frye on Licensed Premises. Frye was engaged in changing the signage at Licensed Premises to include that language "Jason's Westside". *Exhibits 17-19*.
21. As of March 9, 2018 no transfer application had been filed with the local or state licensing authorities.
22. On March 16, 2018 Frye paid Licensee's occupation liquor tax and late fees. *Exhibit 20*.
23. As of March 16, 2018 no transfer application had been filed with the local or state licensing authorities.

24. As of April 6, 2018 no transfer application had been filed with the local or state licensing authorities.

ANALYSIS AND CONCLUSIONS OF LAW:

25. The Hearing Officer's factual findings concern only evidence that is dispositive of the issues involved: the Hearing Officer has not addressed every piece of evidence that might lead to a conflicting conclusion and has rejected evidence contrary to the above findings as unpersuasive. *Magnetic Engineering, Inc. v. ICAO*, 5 P.3d 385 (Colo.App. 2000).
26. Hearing in this matter is commenced pursuant to the Order to Show Cause and Notice of Hearing dated March 9, 2018, C.R.S. §12-47-101 *et. seq.* ("Colorado Liquor Code") and pertinent Rules and Regulations.
27. The Local Liquor and Beer Licensing Authority for the City of Colorado Springs has the authority to suspend or revoke a City liquor licenses for violations of the Colorado Liquor Code. C.R.S. §12-47-601
28. City bears the burden of proof by a preponderance of the evidence. The preponderance standard requires the finder of fact to determine whether the existence of a contested fact is more probable than its non-existence. *Swain v. Colorado Dept. of Revenue*, 717 P.2d 507 (Colo. App. 1985). While the quantum of evidence that constitutes a preponderance cannot be reduced to a simple formula, a party has met this burden of proof when the evidence, on a whole and however slightly, tips in favor of that party.
29. Licensee is the holder of Tavern Liquor License #724125 and subject to the Colorado Liquor Code and regulations promulgated thereto.
30. The Hearing Officer finds that Licensee has waived its right to participate in this proceeding by failing to appear after timely and accurate notice.
31. Count III in the Order to Show Cause and Notice of Hearing is withdrawn at City's request.
32. C.R.S. §12-47-301(3)(a) provides in pertinent part:

"Each license issued under this article and article 46 of this title is separate and distinct. It is unlawful for any person to exercise any of the privileges granted under any license other than that which the person holds or for any licensee to allow any other person to exercise such privileges granted under the licensee's license..."

The evidence establishes that on November 3, 2017 Licensee sold its business to Jason Frye. The evidence establishes that since November 3, 2017 Frye has unlawfully been exercising the privileges granted under Licensee's Tavern Liquor License in contravention of C.R.S. §12-47-301(3)(a). Count I of the Order to Show Cause is sustained.

33. C.R.S. §12-47-301(7) provides in pertinent part:

"A licensee shall report each transfer or change of financial interest in the license to the state

licensing authority and, for retail licenses, to the local licensing authority within thirty days after the transfer or change...It is unlawful for the licensee to fail to report a transfer required by this subsection (7). Such failure to report shall be grounds for suspension or revocation of the license”

The evidence establishes that on November 3, 2017 Licensee sold its business to Jason Frye and that the change of financial interest has not been reported to the local or state licensing authorities in contravention of C.R.S. §12-47-301(7). Count II of the Order to Show Cause is sustained.

34. C.R.S. §12-47-301(3)(b) provides:

“ At all times a licensee shall possess and maintain possession of the premises or optional premises for which the license is issued by ownership, lease, rental, or other arrangement for possession of such premises”.

The evidence establishes that Licensee does not have possession of Licensed Premises in contravention of C.R.S. §12-47-301(3)(b). Count IV of the Order to Show Cause is sustained.

35. The Hearing Officer considers Licensee’s violations of the Colorado Liquor Code as set forth in ¶¶32-34 demonstrate a willful disregard for the law. Licensee and Frye were notified and warned that their conduct was in violation of the law. Licensee and Frye did not discontinue their unlawful behavior, but continued to operate unlawfully.

ORDER

NOW THEREFORE, based on Licensee’s violations of the Colorado Liquor Code as set forth above it is hereby ORDERED that Licensee’s Tavern Liquor License #724125 is REVOKED effective immediately.

DONE this 6th day of April, 2018



Kristen L. Hoffecker
Hearing Officer

CERTIFICATE OF SERVICE

I hereby certify that I have delivered a true copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** on this 6th day of APRIL, 2018 at 5:15 am/pm by personally delivering to:

NAME: JASON FRYE

ADDRESS: 734 N. 19th Street, Colorado Springs, CO 80904

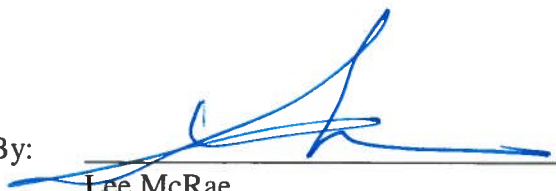
AND

I hereby certify that I have mailed a true copy of the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** by United States mail, first class postage paid, this day 6th of APRIL, 2018 to the following addresses of record:

JJ & MJ, LLC
d/b/a The Buzz
734 N. 19th Street
Colorado Springs, CO 80904

James R. Jamison
9615 Desert Lily Circle
Colorado Springs, CO 80925

By: _____


Lee McRae
License Enforcement Officer
City Clerk's Office
30 S. Nevada Avenue
Colorado Springs, CO 80903