

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

Address: 30 South Nevada Avenue, Suite 101
Colorado Springs, CO 80903
Telephone: (719) 385-5901
Fax Number: (719) 385-5114
Email: cityclerk@springsgov.com

CITY CLERK'S OFFICE

2018 AUG 17 A 11:30

IN THE MATTER OF:

**DAT'S ITALIAN, LLC d/b/a
DAT'S ITALIAN**
2514 W. Colorado Ave #102
Colorado Springs, CO 80904
LICENSEE

▲ **AUTHORITY USE ONLY** ▲

License No: 717104

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Pursuant to an Order to Show Cause and Notice of Hearing dated July 16, 2018, a hearing was held in this matter on August 17, 2018, 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 DAT'S ITALIAN, LLC d/b/a DAT'S ITALIAN ("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

Det. L. Juhl – 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	Photo
Exhibit 2	Photo
Exhibit 3	Photo
Exhibit 6	Stipulation, Agreement, and Order
Exhibit 7	Order to Show Cause and Notice of Hearing

Hearing Officer Administratively Noticed Documents

N/A	Local Licensing Authority Administrative File for license number 717104
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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. Dat's Italian, LLC d/b/a Dat's Italian ("Licensee") is the holder of Hotel & Restaurant Liquor License #717104 at all times relevant to this proceeding.
2. Dennis Trujillo is a 50% owner of Licensee Dat's Italian, LLC d/b/a Dat's Italian.

3. Licensee's licensed premises are located at 2514 W. Colorado Avenue, #102, 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 Dat's Italian, LLC d/b/a Dat's Italian, 2514 W. Colorado Ave. #102, Colorado Springs, CO 80904.
5. Licensee has waived its right to participate in this proceeding by failing to appear after timely and accurate notice.
6. 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.
7. 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 Elliot has a total of 22 years of law enforcement experience.
8. Detective Juhl is employed by the Colorado Springs Police Department ("CSPD") and is currently assigned to the Metro Vice Narcotics and Intelligence unit. Det. Juhl has 7 years of law enforcement experience.
9. Department investigates complaints concerning violations of the Colorado Liquor Code throughout the State of Colorado and conducts liquor compliance audits throughout the State of Colorado.
10. CSPD investigates complaints concerning violations of the Colorado Liquor Code throughout the State of Colorado and conducts liquor compliance audits throughout the State of Colorado.
11. Department and CSPD have developed a methodology for conducting compliance audits utilizing underage purchasers. Prior to beginning a compliance audit detail, all forms of identification and money are collected from the underage purchaser and the age of the purchaser is verified. The underage purchaser is instructed that if asked for identification during the detail that the purchaser should respond that he/she does not have any identification.
12. On June 26, 2018 Department and CSPD conducted compliance audits in the City of Colorado Springs utilizing a 19 year old underage purchaser in compliance with the developed methodology.
13. On June 26, 2018 at approximately 14:10 hours a compliance audit was conducted at Licensee's Licensed Premises. The underage purchaser was contacted by Dennis Trujillo and the underage purchaser ordered a bottle of Colorado Native Amber Lager beer. Mr. Trujillo retrieved a bottle of Colorado native Amber Lager (5.5% alcohol by volume), opened the

bottle and served the open bottle of beer to the underage purchaser. *See Exhibits 1-3*

14. At no time did Mr. Trujillo ask the underage purchaser for proof of age identification, nor did he ask the underage purchaser his date of birth. Mr. Trujillo admitted to Investigator Elliott and Detective Juhl that he did not ask the underage purchaser for id or his date of birth.

ANALYSIS AND CONCLUSIONS OF LAW:

15. 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).
16. Hearing in this matter is commenced pursuant to the Order to Show Cause and Notice of Hearing dated July 16, 2018, C.R.S. §12-47-101 *et. seq.* ("Colorado Liquor Code") and pertinent Rules and Regulations.
17. 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*
18. 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.
19. Licensee is the holder of Hotel & Restaurant Liquor License #717104 and subject to the Colorado Liquor Code and regulations promulgated thereto.
20. The Hearing Officer finds that Licensee has waived its right to participate in this proceeding by failing to appear after timely and accurate notice.
21. The evidence establishes that on June 26, 2018 the Licensee, did sell, serve, give away, dispose of, exchange, or deliver or permit the sale, serving, giving, or procuring of an alcohol beverage to or for a person under the age of twenty-one (21) years, an underage purchaser, on the licensed premises in violation of C.R.S. §12-47-901(1)(a.5)(I) entitled "Unlawful Acts-exceptions". Count I of the Order to Show Cause is sustained.
22. In determining the appropriate penalty to be imposed for Licensee's violations of the Colorado Liquor Code in ¶21 above, the Hearing Officer is mindful of the recommended Compliance Check Penalties as set forth in 1 CCR 203-2 Regulation 47-604.

In this case, a number of aggravating factors are present.

At the time of the sale the underage purchaser did not have any form of valid identification. A licensee that elects to sell and serve an alcohol beverage without checking a valid id does

so at their own peril.

Further Dennis Trujillo who engaged in the unlawful and prohibited conduct is a 50% owner of Licensee.

23. This is Licensee's second violation of a sale to a minor occurring within a 1 year period. *See Exhibit 6.*

24. Licensee did not appear for the hearing. Licensee's non-appearance combined with the fact that this is Licensee's second violation in less than 1 year leads the Hearing Officer to conclude that Licensee has a willful disregard for the law.

ORDER

NOW THEREFORE, based on Licensee's violations of the Colorado Liquor Code as set forth above it is hereby ORDERED that:

25. For the violations of the Colorado Liquor Code as set forth above Licensee's Hotel & Restaurant Liquor License shall be suspended for a period of **forty five (45) days, twenty (25)** of said days to be held in abeyance for a period of **one (1)** year from the date of this ORDER of the LLA, on the following conditions:

- a. That Licensee commit no further violations of any of the following:
 - i. Any violation of Chapter 2 of the Code of the City of Colorado Springs, 2001 as amended, or of Title 12, Articles 46 and 47 of the Colorado Revised Statutes, 1973 as amended;
 - ii. Any violation of any local rules adopted by the Board or of any rules or regulations promulgated pursuant to Title 12, Articles 46 and 47 of the Colorado Revised Statutes, 1973, as amended.
- b. Licensee shall furnish proof to the City Clerk's Office that all employees engaged in the sale of alcohol beverages have successfully completed a Responsible Alcohol Vendor course that has been certified by the Department of Revenue within 60 days of this ORDER.

26. For the violations of the Colorado Liquor code as set forth in Paragraphs 21 above:

- a. The license shall be actively suspended for twenty **(20)** days, commencing on August 18, 2018 at 12:01 AM and ending on September 6 at 11:59 PM. During such active suspension, the Licensee shall post the notices described in Regulation 47-600(F) upon the licensed premises.
- b. The LLA finds that the violations in this matter are aggravated and that a fine in lieu of active suspension is not appropriate nor would a fine achieve the desired

disciplinary purposes.

If during the period of one (1) year from the date of this ORDER Licensee is in violation of or fails to comply with any of the terms of this ORDER or if Licensee is in violation of any provision of the Colorado Liquor Code, as determined by either the LLA or the State, then the LLA may, in addition to any other penalty imposed as the result of any other violation of Colorado Liquor Code, order Licensee to serve any or all days of the suspension presently held in abeyance pursuant to this ORDER.

DONE this 17th day of August, 2018



Kristen L. Hoffecker
Hearing Officer

CERTIFICATE OF SERVICE

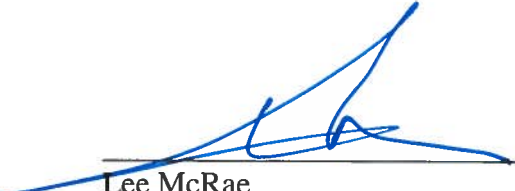
I, Lee McRae, hereby certify that I have served the foregoing **FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER** on this 17th day of AUGUST, 2018 by personally delivering to:

Name: MAIA CONKEY, General Manager
Address: 2514 W. COLORADO AVE, #102

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 17th day of AUGUST, 2018 to the following address of record:

Dat's Italian, LLC
DAT'S ITALIAN
2514 W. Colorado Avenue, #102
Colorado Springs, CO 80904



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

<p>BEFORE THE LOCAL LIQUOR AND BEER LICENSING AUTHORITY, CITY OF COLORADO SPRINGS, STATE OF COLORADO</p> <p>Address: 30 South Nevada Avenue, Suite 101 Telephone: (719) 385-5901 Fax Number: (719) 385-5114 Email: cityclerk@springsgov.com</p>	<p>CITY CLERK'S OFFICE</p> <p>2018 JUL 16 P 12:49</p>
<p>IN THE MATTER OF:</p> <p>DAT'S ITALIAN, LLC d/b/a DAT'S ITALIAN 2514 W. Colorado Avenue, #102 Colorado Springs, CO 80904 LICENSEE</p>	<p>▲ CLERK USE ONLY ▲</p>
<p>Michael Curran, Division Chief - Prosecution P.O. Box 1575, Mail Code 1540 224 East Kiowa Street, Suite 410 Colorado Springs, CO 80903 Telephone: (719) 385-5925 Fax number: (719) 385-6438 Atty. Reg. # 28590</p>	<p>License No: 717104</p>
<p>ORDER TO SHOW CAUSE AND NOTICE OF HEARING</p>	

WHEREAS, it has been made to appear to the Local Licensing Authority, City of Colorado Springs, State of Colorado that Dat's Italian, LLC d/b/a Dat's Italian, 2514 W. Colorado Avenue, #102, Colorado Springs, CO 80904 ("Licensee") has violated the statutes and/or the rules and regulations of the State of Colorado, or City of Colorado Springs governing its Hotel & Restaurant Liquor License in the following particulars:

- I. On June 26, 2018 the licensee, and/or its managers, employees or agents, did sell, serve, give away, dispose of, exchange, or deliver or permit the sale, serving, giving, or procuring of an alcohol beverage to or for a person under the age of twenty-one (21) years, a Confidential Informant, on the licensed premises in violation of C.R.S. §12-47-901(1)(a.5)(I) entitled "Unlawful Acts-exceptions".

NOW THEREFORE, you are hereby **ORDERED** to appear before the Local Licensing Authority, City of Colorado Springs, State of Colorado on Friday **August 17, 2018 at 9:00 A.M.** at the Municipal Court Building, in Division 2, 224 East Kiowa Street, Colorado Springs, CO 80903, or at such other time and place as the Local Licensing Authority may direct to **SHOW CAUSE** why your Hotel & Restaurant Liquor License should not be suspended or revoked as by law provided. Said hearing is conducted pursuant to C.R.S. §12-47-601 and §2.5.601 of the Code of the City of Colorado Springs, 2001 as amended ("City Code") and governed by the Liquor and Beer Rules and Regulations for the City of Colorado Springs ("Local Rules").

You are entitled to have an attorney represent you at the hearing. If you should retain an attorney, you should do so well in advance of the hearing.

You are entitled to utilize the services of a qualified foreign language interpreter pursuant to Rule 9.10 of the Local Rules. Any interpreter must meet the requirements of that rule, and any relationship to you may disqualify a proposed interpreter. You will be responsible for securing and paying the costs associated with foreign language interpretation services and you should do so well in advance of the hearing. A foreign language interpreter will not be provided for you. If you are unable to locate a qualified foreign language interpreter, you should contact the City Clerk's Office well in advance of the hearing to obtain a list of qualified interpreter services.

If you are hearing impaired and require the services of a sign interpreter, you should notify the City Clerk's office in advance of the hearing and one will be provided for you free of cost.


A postponement of the hearing will not be granted except for good cause shown. **If you should fail to appear at the scheduled time and place for the hearing, or appear despite an inability to present evidence in the absence of a qualified interpreter or counsel, testimony may be taken in reference to the allegations, upon which evidence your Hotel & Restaurant Liquor License may be suspended or revoked.**


If you have any questions concerning these proceedings, you should contact Michael Curran, Division Chief - Prosecution at (719) 385-5925.

IT IS FURTHER ORDERED that a copy of this Order and Notice shall be served upon the above-mentioned Licensee.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of my office this

16th day of July 2018.


Sarah Johnson
City Clerk



CERTIFICATE OF SERVICE

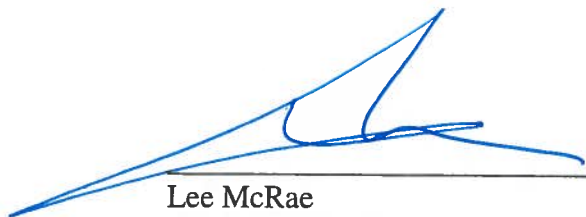
I, Lee McRae, hereby certify that I have served the foregoing **ORDER TO SHOW CAUSE AND NOTICE OF HEARING** on this 19th day of JULY, 2018 by personally delivering to:

Name: Jerome Carono, Manager on Duty
Address: 2514 W. Colorado Ave, #102

AND

I hereby certify that I have mailed a true copy of the foregoing **ORDER TO SHOW CAUSE AND NOTICE OF HEARING** by United States mail, first class postage paid, this 19th day of JULY, 2018 to the following address of record:

Dat's Italian, LLC
DAT'S ITALIAN
2514 W. Colorado Avenue, #102
Colorado Springs, CO 80904



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