

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE LIQUOR CONTROL ACT



- and -

IN THE MATTER OF alleged violations of Section 64(1) of the *Liquor Licensing Regulations*, and 47B(1) of the *Liquor Control Act* by Ellen Fickler Inc. o/a Aly Kat Lounge, located at 10 Beech Street, Lockeport, Nova Scotia, and holder of Eating Establishment Liquor License No. 006269 and Lounge License No. 006270

BEFORE: David J. Almon, LL.B., Member

PARTIES: **ELLEN FICKLER INC. o/a Aly Kat Lounge,**
Licensee
Brenda Anne Hynes

SERVICE NOVA SCOTIA
ALCOHOL GAMING FUEL and TOBACCO
Duane Eddy, LL.B.

HEARING DATE: October 28, 2019

DECISION DATE: January 7, 2020

DECISION: Four (4) day suspension of licensing privileges to be served on two (2) consecutive weekends, Friday and Saturday.

I INTRODUCTION

[1] On July 12, 2019, the Nova Scotia Utility and Review Board (Board) received a letter dated July 9, 2019, from John MacDonald, Executive Director, Alcohol Gaming Fuel and Tobacco Division of Service Nova Scotia (AGFT), which reads as follows:

In accordance with the *Liquor Control Act* section 47B(1)(b), I, as the Executive Director, am referring a disciplinary matter to the Nova Scotia Utility and Review Board for a formal hearing.

Please advise this office of the date, time and location of the hearing, once it has been determined.

Licensee:

Ellen Fickler Inc. - Operators of Aly Kat Lounge

Mailing Address:

10 Beech Street, Lockeport Nova Scotia, BOT 1LO

People:

Brenda Hynes, Principal Person

This office has provided the disclosure package relating to this matter to the licensee. Further, this office will provide any support required by the Review Board in relation to these proceedings.

[Exhibit K-1(i)]

[2] This Decision is further to a public hearing held in Bridgewater, Nova Scotia, on October 28, 2019, with respect to a disciplinary matter referred to the Board by the Executive Director for alleged violations of Section 64(1) of the *Liquor Licensing Regulations (LLR)*, by permitting activity in the licensed premises that is detrimental to the orderly control and operation of the premises and s. 47B(1) of the *Liquor Control Act (LCA)*, for repeated violations of Board Order M07726 (Board Order), which prohibits the playing of amplified music after 12:00 midnight, and for not filing with the Board a completed background check for all personnel involved in the “conduct, management or security of the premises.”

[3] The Licensee is Ellen Fickler Inc. o/a Aly Kat Lounge, which holds Eating Establishment Liquor License No. 006269 and Lounge License No. 006270.

[4] The Board issued a Notice of Disciplinary Hearing outlining the alleged infractions on August 10, 2019.

[5] Section 47B(1) of the *LCA* states:

Authority of Executive Director

47B (1) Where a licensee fails to comply with the terms and conditions of a license, has contravened this Act or the regulations or is convicted of an offence under the Criminal Code or a quasi-criminal statute, the Executive Director may, in accordance with the process prescribed in the regulations,

- (a) take any action set out in clauses 47(1)(b), (c) and (d);
- or
- (b) refer the matter to the Review Board.

(2) A licensee may appeal a decision made pursuant to clause (1)(a) to the Review Board in accordance with the appeal process prescribed in the regulations.

(3) Where the Executive Director has, in the course of performing the powers, duties or functions conferred upon the Executive Director pursuant to this Act, received information regarding the licensee or communicates with the licensee or with another person concerning the license, the Executive Director is not disqualified from taking any action pursuant to clause (1)(a). 2011, c. 21, s. 7.

[6] Section 64 (1) of the *Regulations* states:

Licensed Premises

Activities not permitted in licensed premises

64 (1) A licensee must not permit any activity in or about their licensed premises that is detrimental to the orderly control and operation of the licensed premises. Subsection 64(1) amended: O.I.C. 2010-269, N.S. Reg. 100/2010.

[7] The Board Order, with conditions, dated January 12, 2017, states:

IT IS HEREBY ORDERED that the Application by the Licensee for an Eating Establishment and Lounge Liquor License for premises known as Aly Kat Lounge, located at 10 Beech Street, Lockeport, Nova Scotia, is granted, subject to the following conditions:

1. **The management and control respecting the operation of the licensed aspects of the premises shall be limited to Ms. Brenda Hynes, on behalf of the Licensee, and to at least one other individual. All personnel involved in the conduct, management, and security of the premises must submit a completed background check for approval to the AGFT; [Emphasis added]**

...

3. Pursuant to the Board's Decision in this matter, the following document[s] must be filed with the Licensing Division, AGFT, prior to issuance of the Licenses:

- i. **Completed background checks for all personnel involved in the conduct, management or security of the premises; [Emphasis Added]**
- ii. a proposed security plan consisting of, but not limited to:
 - A policy for removing and barring patrons
 - An incident journal to record all disturbances in or about the premises including the identification of barred patrons, actions taken in response to disturbances, the reasons for the actions, and the length of the effect
 - Number of security personnel to be available during busy periods
 - Schedule of security checks/rounds and identified high problem areas
 - Actions to be taken to address issues of concern such as loitering, noise, public urination, littering, causing of disturbances
 - Contact information to be provided to neighbouring business residents to use in case of complaints
 - A policy for working with neighbouring businesses to proactively address potential concerns relating to special events or other activities likely to cause potential disturbances to quiet enjoyment

4. **There shall be no amplified music after 12:00 midnight. The Licensee may apply to the AGFT after the expiration of one (1) year to amend this condition providing no concerns have arisen. [Emphasis added]**

[8] Pursuant to s. 47E(3), where the Executive Director refers a matter to the Board, pursuant to s. 47B(1)(b), the Board may apply any remedy available pursuant to subsection 47E(2), that is, impose conditions on a license; rescind/amend conditions on a license; suspend all or any part of the license for such time as the Board deems appropriate; cancel all or any part of the license; and, order such remedy as the Board deems appropriate.

[9] Duane A. Eddy, LL.B., represented the AGFT. Mr. Eddy called two witnesses:

- Johnpaul Landry, Director of Licensing and Registration, AGFT; and
- Ryan MacLellan, Compliance Officer, AGFT.

[10] The Licensee, Alan Iannone, Brenda Hynes and Ashley Dexter gave evidence on behalf of the Licensee.

II EVIDENCE - ALCOHOL GAMING FUEL AND TOBACCO

Johnpaul Landry

[11] Johnpaul Landry is the Director of Licensing and Registration, which covers the licensing and registration of all permanent and temporary liquor licenses as well as the gaming registrations for Nova Scotia.

[12] In his evidence, Mr. Landry was asked why the AGFT wanted the condition on the licensed premises:

Mr. Eddy: And why did the AGFT want this particular condition placed on the license?

Mr. Landry: Through the course of the complaints that we received we had a fair amount of interaction with Allen [Iannone] and we weren't too sure who was the applicant so one of the biggest things we have during the licensing process is to make sure that we know who is applying for the license and who is responsible for the license. So that was a condition that we wanted because often the intervenors that we have referenced Allen as opposed to Ellen. So, one of the conditions was that everybody in the operation have background checks which is in accordance with the Regulations. We're just stipulating.

Mr. Eddy: Right and look at K-2, Clause 4, of the Board Order, states here: there should be no amplified music after 12 midnight. The Licensee may apply to the AGFT after the expiration of one year to amend this condition providing no concerns have arisen. Was this a condition which the AGFT wanted the Board to place?

Mr. Landry: That is correct.

Mr. Eddy: And, why?

Mr. Landry: That arose from complaints that we had received about noise and activity outside the premise after this hour.

[Sound file: 09:56:3]

[13] Mr. Landry testified that in October 2018, the Licensee acknowledged, in an Agreed Statement of Facts, that it had violated ss. 64(1), 65(b), 65(c), 65(d), and 65(f) of the *Regulations* and accepted responsibility for the violations.

Ryan MacLellan

[14] Ryan MacLellan is a Compliance Officer for AGFT. His primary responsibilities are observing activities at licensed premises and ensuring that licensed premises are abiding by the *LCA* and the *Regulations*. His jurisdiction in terms of servicing the Licensee was Territory Eight, which extends from Chester down to Lockeport, where the Licensee is located at 10 Beech Street, in Lockeport. Since October 2019, Mr. MacLellan's primary responsibilities are now in the metropolitan Halifax area.

[15] He testified that, on average, he might inspect the Aly Kat Lounge once every two weeks per year. It can vary, depending on activity. If there are events at the premises or within the community, it may increase or decrease the frequency of inspections. Since January 2017, he testified that he inspected the licensed premises at least 30 times and recalled only seeing Brenda Hynes on the licensed premises on seven occasions.

[16] Mr. MacLellan testified to violations of s.64(1) of the *Regulations* and s. 47B(1) of the *LCA* occurring on April 8, April 18 and July 1, 2018. He took notes concurrent with the events recorded in each of these report dates: April 23, 2018; May 7, 2018; and July 5, 2018, respectively.

[17] His testimony revolved around the details of the three events which he described in his reports. It was Mr. MacLellan's habit to produce notes on his cell phone, which are, basically, observations of the inspections he conducted, and at a later date,

reduced to a narrative in formal Inspection Reports. He referred to those reports constantly, in his evidence, which are reproduced below:

INSPECTION REPORT

TO: Andrew MacLean, Regional Manager

Date: April 23, 2018

FROM: Ryan MacLellan, Compliance Officer

Diary Due Date:

SUBJECT: 1. Licensee: Aly Kat Lounge
2. License Number: 006270
3. Topic: Control, Music after 24:00 hrs

Place: Lockeport

Occurrence Date: April 08, 2018

Time: 00:17hrs through
03:29 hrs

Violation: Activities not permitted in licensed premises. "There shall be no amplified music after 12:00 midnight"

Section: NSLLR s.64(1), LCA s. 47B(1) (NSUARB Order M07726 License #006270 Condition 6)

DETAIL/RECOMMENDATIONS:

The writer arrived at the premises at 00:17hrs and parked approximately 50m from the premises, in front of the RBC branch. The writer could see the main, front entrance, and with the premises doors closed and the writer's car windows up, the writer could hear the music from the prem. The writer could hear the bass/low tones easily, and with a car window down could make out the rest of the music but not lyrics.

The music was playing uninterrupted, as if a DJ was playing it, rather than the licensee allowing patrons to select music from a computer that would play through televisions as usually happens after 24:00 hrs.

As the writer approached the premises the music turned off as the writer moved through a crowd of patrons standing outside. The writer entered the premises at 00:35hrs, as televisions were being turned on and volume getting turned up. This was common at midnight to entertain patrons after amplified music is turned off. The DJ was sitting in front of his equipment at the opposite end of the bar from the writer.

Two female patrons entered the premises, sisters known to the employees, and said another female was outside and had made threats towards one of the sisters. Allan Ionnone made attempts to reassure the sisters there would be no problems, as they made comments about the third female several times. The alleged threatening female entered the premises shortly after.

The writer remained in the premises for an extended period as there was a sense there would be trouble soon. The writer recognized several patrons staring at others, some pointing, and several smaller groups gathering.

Liquor service stopped at 02:00hrs, but activity did not slow. Patrons continued to linger, some played pool, others just hung out, while finishing their drinks. No effort was made by the staff to encourage patrons to finish their drink and move to the exit.

At approximately 02:10hrs the third female patron, who allegedly threatened one of the sisters earlier, approached and instigated a physical altercation. A fight broke out between several female patrons. After the instigator and another female were removed from the premises several others continued to argue, yell at each other, and eventually ended up in another altercation, having to be physically separated by Allan Ionnone and several assisting patrons. Bartending staff attempted to engage in discussions with the patrons, who had been drinking, trying to explain what they observed to settle the crowd.

After the premises was cleared, the boyfriend of one of the removed female patrons arrived with a friend and confronted Allan. They were talking aggressively and appeared physically agitated as they did not stand still, were pacing, arms were flaring out and their fists were clenched. The female patron, that had been removed from the premises came to the door to ask the writer if she could talk to him. She said she had called the police, but they were not coming. She said they would follow up with her about her complaint against Allan being too aggressive when he removed her from the premises. The writer asked the patron to leave the premises, and said he would talk to the police if necessary.

One of the males who arrived was very angry, and made several threats about wanting to "bang some heads". The writer encouraged the males and the female to leave the premises, and directed Allan to do so as well. The threatening male would not allow Allan to retreat into the premises by forcefully holding the door closed. Once Allan convinced them to leave, he locked the door, but the male who had been threatening to "bang heads", punched and then headbutted the window in the door, fortunately it didn't break. He then continued with the verbal threats and angry pacing for several minutes before the three got in their truck and left.

The writer spoke with Allan Ionnone and the two other staff after the situation settled. The writer made several suggestions on diffusing such situations, and not to engage in discussions with angry patrons who were drinking, and suggested start encouraging patrons to finish their drinks and leave the premises starting at 02:00hrs.

The writer advised the licensee, Brenda Hynes, of the incident the following week. She said she had not been told of the incident.

RECOMMENDATIONS:

The writer recommends an infraction be issued for a violation of the LCA s.47B (1) NSUARB Order M07726 condition that states: "There shall be no amplified music after 12:00 midnight."

This is the second time the licensee has violated this condition in the past year. The licensee was required to attend a Compliance Meeting because of the previous violation.

The writer recommends an infraction be issued for a violation of NSLLR s.64(1). The licensee received an infraction for a similar violation in December 2017.

The writer recommends disciplinary action be taken against the licensee in consequence of these violations.

[Exhibit K-1(ii), Tab 3, pp. 11-12]

[18] Mr. MacLellan testified that Mr. Iannone was working primarily in the kitchen but was also out clearing tables, generally observing the licensed premises, monitoring

and managing the crowds. At one point in the evening Mr. Iannone commented to him that he didn't want his "girls," or bartenders, getting involved and that's why he broke up the fight, described in the April 23, 2018, Inspection Report.

[19] Mr. MacLellan next testified about a letter sent to Andrew MacLean, Regional Manager, AGFT, from Brenda Hynes, on April 18, 2018 where she referred to Allen Iannone as "on staff taking care of security" and who "holds a large level of respect from the patrons." As Mr. Iannone had still not completed a background check, Mr. MacLellan recommended in the Inspection Report that an infraction be issued:

INSPECTION REPORT

TO: Andrew MacLean, Regional Manager **Date:** May 7, 2018

FROM: Ryan MacLellan, Compliance Officer **Diary Due Date:**

SUBJECT: 1. Licensee: Aly Kat Lounge **Place:** Lockeport
2. License Number: 006269, 006270
3. Topic: License condition violation

Occurrence: **Date:** April 18, 2018 **Time:**

Violation: Any personnel involved in the conduct, management and security of the premises must submit to a complete background check for approval, to the AGFT

Section: LCA s. 47B(1) NSUARB Order M07726, Condition 3

DETAIL/RECOMMENDATIONS:

On April 18, 2018, Brenda Hynes, Licensee of The Aly Kat Lounge, in Lockeport, sent an e-mail to Alcohol, Gaming, Fuel and Tobacco Regional Manager, Andrew MacLean. The e-mail addressed the recently received disclosure package, and the penalty of a two-day license suspension. The last sentence of that e-mail reads as follows...

"Allen Iannone is still also on staff taking care of security, he holds a large level of respect from the patrons as they know he has a strict policy of any fighting in the lounge results in permanent expulsion from the premises."

The NSUARB Decision, M07726, January 12, 2017 stated the following...

"[31] Accordingly, the Board grants the Application for an Eating Establishment Liquor License and Lounge Liquor License on the following conditions:

1. Any personnel involved in the conduct, management and security of the premises must submit to a complete background check for approval, to the AGFT..."

The last sentence from Ms. Hynes, noted above, is in direct violation of the NSUARB Decision from January 12, 2017. Mr. Ionnone has not submitted information to complete a background check. Ms. Hynes described Mr. Ionnone as "on staff taking care of security" and stated, "he has a strict policy of any fighting."

The writer has conducted approximately 30 inspections since the NSUARB issued the January 17, 2017 Decision. The writer only has record of seeing the licensee, Brenda Hynes, at the premises seven times. The writer has met Ms. Hynes at her home several times to deliver documents and issue violation slips.

On January 16, 2018, the writer met with Brenda Hynes, at her home in Middlewood to issue infractions from violations on December 15 and 16, 2017. She was not aware there were concerns from those dates. The writer had discussed the concerns with Rachel Shankle and Allan Ionnone, but neither appeared to have passed the information on to the licensee.

On April 8, 2018, Mr. Ionnone had to physically remove several patrons who had been involved in altercations inside the premises. He commented he did not expect *his* female staff to break up fights and physically remove people.

On April 13, 2018, the writer delivered a document to Brenda Hynes at her residence in Middlewood. While there, the writer informed Ms. Hynes of late playing music and an altercation at the premises on April 8. She had not been made aware of that incident.

On May 5, 2018, the writer asked Mr. Ionnone how often Ms. Hynes is at the premises. He estimated three or four times monthly.

Mr. Ionnone is at the premises on a day-to-day basis. His personal residence is attached to the license[d] premises, with access between the two via a single door. When the weather is cold and/or wet, Mr. Ionnone allows patrons of the Lounge to use his personal residence as a smoking area.

Mr. Ionnone frequently talks to the writer of events and talent he has booked for the premises.

Mr. Ionnone is at all events at these premises. In the past, August of 2017, the premises did not operate at all while Mr. Ionnone was away on vacation.

Despite being the Princip[al] Person for these licenses, it appears Brenda Hynes has little to do with the regular operation of the licensed premises. Allan Ionnone appears to be directly, and solely, involved in the conduct, management and security of these premises.

RECOMMENDATIONS:

The writer recommends an infraction be issued for a violation of the LCA s.47B (1) NSUARB Order M07726 condition that states: Any personnel involved in the conduct, management and security of the premises must submit to a complete background check for approval, to the AGFT.

The writer recommends disciplinary action be taken against the licensee in consequence of this violation.

[Exhibit K-1(ii), Tab 4, pp. 13-14]

[20] In conducting another routine inspection on July 1, 2018, Mr. MacLellan observed similar violations, as noted in his report:

INSPECTION REPORT

TO: Andrew MacLean, Regional Manager **Date:** July 5, 2018

FROM: Ryan MacLellan, Compliance Officer **Diary Due Date:**

SUBJECT: 1. Licensee: Aly Kat Lounge **Place:** Lockeport
2. License Number: 006270
3. Topic: NSUARB Order violations

Occurrence: **Date:** July 1, 2018 **Time:** 01:30hrs 03:00hrs

Violation: "There shall be no amplified music after 12:00 midnight", "Completed background checks for all personnel involved in the conduct, management or security of the premises."

Section: LCA s. 47B(1) (NSUARB Order M07726 License #006270 Conditions 5 and 6)

DETAIL/RECOMMENDATIONS:

The writer visited these premises to conduct a routine inspection. The writer was at another event in the community and was able to walk to these premises. As the writer approached the premises on foot, at approximately 01:30hrs, from approximately 130m away, the writer could hear many patrons outside, and the writer could also hear the beat of music clearly, and at times could hear the full sound of the music clearly, likely when the door was opening.

As the writer approached the entrance he recognized the doorman, Todd, go inside quickly, and the writer heard the volume of the music go down, but the writer could still hear it from approximately 50m away. When the writer entered the premises, the music was still being played through the amplified speakers, one on a stand near the front of the premise, facing the entrance, and one near the back of the premises by the pool tables, also facing the entrance. No changes were made to the source of the music while the writer was in the premises.

A couple of patrons commented to the writer how the music changed when the writer arrived. One patron jokingly asked if the writer could leave because the music is much better when the writer is gone. Another patron, appearing quite serious, asked if the licensee was restricted to only playing lyric-free music after a certain time. He claimed that's what he was told by the licensee.

The writer did speak with Rachel Shankel, manager on file with AGFT, but she was quite busy as a bartender so did not have the opportunity to talk long. The writer did overhear Mrs. Shankel talking to another staff member. They were discussing whether the kitchen was open. Rachel said she wasn't sure "if Allan wants it open or closed, he keeps changing his mind."

Brenda Hynes was not at the premises.

There was a situation with a patron who was making threats to another near the end of the night. Allan Ionnone was giving staff direction and coordinating the security and

management of the potentially volatile patron. Mr. Ionnone and his staff managed it well, and removed all patrons involved without incident. Mr. Ionnone also made police, who were outside, aware of the situation, and they assisted in clearing the problem patrons from the area.

The writer was in the area until nearly 3am, and despite the bar being closed there was still a group of 20-25 people lingering outside the premises, some of them quite loud. Several patrons were drinking canned beer, seeming to have a supply hidden across the street. RCMP members remained in the area, and when the writer left there had been no further concern.

RECOMMENDATIONS:

The writer recommends an infraction be issued for a violation of the LCA s.47B (1), NSUARB Order M07726 condition that states:

“There shall be no amplified music after 12:00 midnight.”

This is the third time the writer has personally found the licensee has violated this condition since its imposition. The licensee was required to attend a Compliance Meeting, at the AGFT office, because of the second violation. Previous violations occurred on July 1, 2017, and April 8, 2018.

The writer recommends an infraction be issued for a violation of the LCA s.47B (1), NSUARB Order M07726 condition that states:

“Completed background checks for all personnel involved in the conduct, management or security of the premises.”

Allan Ionnone, who has not submitted a completed background check, was clearly in charge of the management and security of the premises while the writer was there. The writer observed him controlling patrons and giving staff direction. The licensee received an infraction, for a current alleged violation, of this condition on April 18, 2018.

The writer recommends disciplinary action be taken against this license as a result of these violations. The writer will discuss the violations with the Regional Manager and will then determine a suitable penalty.

[Exhibit K-1(ii), Tab 8, pp. 25-26]

[21] Mr. MacLellan testified that Infraction Reports (Exhibit K-1(ii), Tabs 11 & 12) were drawn up for the alleged violations and served on the Licensee on August 1, 2018.

[22] Before concluding his evidence, Mr. MacLellan was directed to an October 24, 2017, letter (Exhibit K-6) confirming the Licensee’s attendance at a Compliance Meeting to deal with a July 1, 2017, violation of section 47B(1) and where, he testified, a number of solutions were discussed, and spelled out in the letter, with steps to be taken to ensure compliance, including turning off the kicker box (speaker) at 11:00 p.m. nightly

and setting an alarm to sound at 11:50 p.m. nightly, as a reminder to turn off amplification. It was his evidence that he observed the kicker box in the licensed premises on April 1 and July 1, 2018.

III EVIDENCE – ELLEN FICKLER INC. o/a ALY KAT LOUNGE

Ashley Dexter

[23] Ashley Dexter became manager of the bar, in the licensed premises, in February 2019, and was a bartender in April 2018. Her brief evidence centered on her recollection of the amplified music which she described was not “crazy loud” and her observation of the two female employees, described in Mr. MacLellan’s April 23, 2018, report, speaking with Mr. Iannone.

Brenda Hynes

[24] Brenda Hynes is the principal person of the Licensee. Like Ms. Dexter, her evidence was brief, simply recalling that on August 1, 2018, she was given four Infraction Reports dated August 1, 2018 (Exhibit K-1(ii)), by Mr. MacLellan. She testified that she disagreed with his written narrative, writing “do not agree” above her acknowledgement signature, on each report.

Allan Iannone

[25] Allan Iannone is the son of Brenda Hynes. His evidence centered on his recollection of events at the licensed premises on April 8 and July 1, 2018, as well as speaking to the April 18, 2018, email that his mother sent to the AGFT. The email indicated that Mr. Iannone “is still also on staff, taking care of security,” and “he has a

strict policy of any fighting in the lounge results in permanent expulsion from the premises.”

[26] He challenged the accuracy of the notes “punched into” Mr. MacLellan’s phone and asked “when did the CO actually write in the details?”

[27] As far as the volume of the music, he testified that when the television music is being played, it is louder at the front door than when the amplified music is played. He explained that the amplified music speakers that are set higher are the three in the back of the bar. The speakers on the side and front of the bar are lowered. To deal with noise levels they added insulation in the ceiling, the walls are constructed of stone and they added a heat pump, so the doors are now kept closed. He testified that the Licensee spent approximately \$45,000 on insulation in an attempt to reduce any noise.

[28] As for the allegation that he is involved in the conduct, management and security of the premises Mr. Iannone testified that was not accurate. He described himself as a fisherman who fishes eight months of the year for a living and when he attended the licensed premises, it was as a “patron,” and acting as a floater and not “running” the bar.

IV FINDINGS

(i) Alleged Violations

[29] The burden of proof in disciplinary matters, such as the present one before the Board, is upon the AGFT, who must show, on the balance of probabilities, that the Licensee committed the alleged violations.

[30] The evidence is clear, and the Board so finds, that Mr. MacLellan is a compliance officer and was so at the time of the April 8, 18 and July 1, 2018 incidents,

and had the power or authority to enter into the licensed premises, and make any investigations he deemed necessary. The Board must then determine whether the offences occurred.

[31] In a previous decision of the Board (M07726) involving an application for liquor licenses by the present Licensee, two Beech Street neighbours intervened because of a breach of their quiet enjoyment by the Licensee. They sought Board assurance of some control of the Licensee's premises, resulting in the Board Order condition prohibiting amplified music after 12:00 midnight.

[32] As well, following incidents on December 15 and 16, 2017, in an Agreed Statement of Facts (Exhibit K-5) dated October 10, 2018, between the AGFT and the Licensee, the Licensee acknowledged a violation of the *Regulations* s. 64(1), the penalty of which was a one (1) day suspension of license.

[33] In the present matter, Mr. MacLellan described violations of s. 64(1) and *LCA* s. 47B(1) on April 8, 2018. He stated that at 2:00 a.m., while visiting the licensed premises, two fights erupted and Allan Iannone was observed attempting to diffuse the mêlée. As well, he noted a violation of *LCA* s.47B(1), after receiving an e-mail from Brenda Hynes, dated and received on April 18, 2018, as well as two further violations of *LCA* s.47B(1), on July 1, 2018. Because of the repeated violations and apparent disregard for the conditions set out in the Board Order, since the decision date of January 12, 2017, the Compliance Officer recommended disciplinary action.

[34] The evidence of Mr. MacLellan is based upon his observations and they are observations of an officer who has significant experience in the area of adherence to the *LCA* and *Regulations*.

[35] Mr. MacLellan presented his evidence in a straightforward manner. The Board finds his evidence to be credible and reliable and preferable to the evidence given by the witnesses for the Licensee. He took notes contemporaneous with the events recorded in each of those reports dated April 23, 2018, May 7, 2018, and July 5, 2018. The May 7, 2018, report was simply highlighting the fact that there was an admission by the Licensee with respect to not submitting a completed background check and breach of Condition 3(i) of the Board Order.

[36] Mr. MacLellan outlined the circumstances which led to the recommendation in both reports and, specifically, he was referred to, on direct examination, the email from Ms. Hynes in which she stated:

Allan Iannone is still also on staff taking care of security, he holds a large level of respect from the patrons as they know he has a strict policy of any fighting in the lounge results in permanent expulsion from the premises.

[37] With respect to the amplification of music, Mr. MacLellan, in his April 18, 2018, Inspection Report, gave evidence that he could hear music while sitting in his car with the windows closed. His evidence, as well, was that it is the only premises that was operating in the area and he testified in terms of how he determined from where the music was playing. In his estimation, he was approximately 50 metres away from the licensed premises. The Board notes that the Board Order condition is not about stifling the background or the entertainment but is, rather, to protect and ensure that neighbouring property owners are not disturbed by the licensed premises with music played past midnight.

[38] The Board finds that the music could be heard by neighbouring property owners in breach of Condition 3(i) of the Board Order. The Board finds that the violation occurred on the dates, as alleged by Mr. MacLellan.

[39] With respect to the July 1, 2018, Canada Day incident, Mr. MacLellan testified that after he attended another event in the community he walked to the licensed premises. As he approached the premises, on foot, at about 1:30 a.m., approximately 130 metres away from the premises, amplified music was blaring from the speakers. Despite Mr. Iannone's evidence that there was soundproofing in the premises, according to the evidence of Mr. MacLellan, it was insufficient to stifle the sound of the music, thus breaching the quiet enjoyment condition.

[40] The Board sees inconsistencies and implausibilities in Mr. Iannone's evidence. It is evident to the Board that despite a number of warnings, the Licensee has violated the no-amplification condition at least three times since its imposition. As well, orderly control in the licensed premises was lost on April 8, 2018, in the scuffle involving the female customers. Despite his protestations that he is, simply, a "patron" of the premises, the Board finds that Mr. Iannone has, in fact, been in charge of the management and security of the premises, controlling patrons and giving staff direction. Yet he has still not submitted a completed background check, again, in violation of the condition in the Board Order.

[41] Having reviewed the evidence, the Board finds, on the balance of probabilities, that the Licensee has committed the infractions, as alleged.

(ii) Sentencing

Did License submit on sentence?

[42] With respect to sentencing, the AGFT seeks a suspension of licensing privileges for four days, to fall on two weekends, Friday and Saturday, consecutively. The Board finds the AGFT's recommended sentence is appropriate. The Licensee was previously sanctioned for a prior offence and the situation has only gotten worse.

[43] Accordingly, it is the decision of the Board to suspend the Eating Establishment Liquor License No. 006269 and Lounge License No. 006270 held by Brenda Anne Hynes, principal person for premises known as Ellen Fickler Inc. o/a Aly Kat Lounge, located at 10 Beech Street, Lockeport, Nova Scotia, for two consecutive weekends. This suspension is subject to the following conditions:

- i. The suspension shall be served on dates to be determined by the Director of Licensing and Registration, AGFT, in consultation with the Licensee.
- ii. The suspension is to be served within 30 days of the date of this Decision.
- iii. The premises shall be posted with a Notice of Suspension by a member of the Investigation and Enforcement Division, AGFT. The Notice of Suspension is to be removed at the conclusion of the suspension by a member of the Investigation and Enforcement Division, AGFT.
- iv. While the Licenses are suspended, the video lottery terminals are not to be operated.

[44] In ending, the Board notes the rather serious circumstances that resulted in this matter being brought before the Board. The incidents are symptomatic of a Licensee who is not properly managing her licensed activities. Such a situation will not be tolerated, given the purpose and intent of the *LCA* and the *Regulations*. The Board urges Ms. Hynes to address this situation, including immediately taking appropriate steps to ensure there is another person designated to have management and control of the daily operation


when Ms. Hynes is not present, as well as completed background checks. Should this Licensee come before the Board again under similar circumstances, it may consider a much longer suspension, or potentially cancellation of the License.

V CONCLUSION

[45] In three separate reports to Andrew MacLean, Regional Manager, AGFT, dated April 23, 2018, May 7, 2018 and July 5, 2018, Compliance Officer Ryan MacLellan described violations of the *Regulations*, s.64(1) and *LCA* s.47B(1). Having considered the evidence of Mr. MacLellan, on behalf of AGFT, and the witnesses for the Licensee, because of the repeated violations and apparent disregard for the conditions set out in the Board Order, the Board finds that the Licensee has committed the infractions, and the Board has ordered the suspension of the licensing privileges for four days, to fall on the Friday and Saturday of two consecutive weekends.

[46] An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 7th day of January, 2020.




David J. Almon

NOVA SCOTIA UTILITY AND REVIEW BOARD
IN THE MATTER OF THE LIQUOR CONTROL ACT

- and -

IN THE MATTER OF alleged violations of Section 64(1) of the *Liquor Licensing Regulations*, and 47B(1) of the *Liquor Control Act* by Ellen Fickler Inc. o/a Aly Kat Lounge, located at 10 Beech Street, Lockport, Nova Scotia, and holder of Eating Establishment Liquor License No. 006269 and Lounge License No. 006270

BEFORE:  David J. Almon, LL.B., Member

ORDER

WHEREAS the Alcohol, Gaming, Fuel and Tobacco Division of Service Nova Scotia and Municipal Relations (AGFT) referred a request for a disciplinary hearing, pursuant to section 47B(1)(b) of the *Liquor Control Act*, to the Nova Scotia Utility and Review Board on July 9, 2019, with respect to alleged repeated violations of section 64(1), of the *Liquor Licensing Regulations (Regulations)* by Ellen Fickler Inc. o/a Aly Kat Lounge (Licensee), holder of Eating Establishment Liquor License No. 006269 and Lounge Liquor License No. 006270 (Licenses), for premises located at 10 Beech Street, Lockport, Nova Scotia;

AND WHEREAS the Licensee was notified to appear before the Board at a Disciplinary Hearing to respond to the charges;

AND WHEREAS the Board heard the matter on October 28, 2019, in Bridgewater, Nova Scotia, and issued its Decision on today's date;

AND WHEREAS the Board determined in its written Decision that a four (4) day suspension of the Licenses, to be served on two (2) consecutive weekends, Friday and Saturday, was warranted;

IT IS HEREBY ORDERED that Ellen Fickler Inc. o/a Aly Kat Lounge holder of Eating Establishment Liquor License No. 006269 and Lounge Liquor License No. 006270, for premises known as the Aly Kat Lounge, located at 10 Beech Street, Lockeport, Nova Scotia, shall have its Licenses suspended for 4 (four) days, to be served on two (2) consecutive weekends subject to the following conditions:

- i. The suspension shall be served on dates to be determined by the Director of Licensing and Registration, AGFT, in consultation with the Licensee.
- ii. The suspension is to be served within 30 days of the date of this Order.
- iii. The premises shall be posted with a Notice of Suspension by a member of the Investigation and Enforcement Division, AGFT. The Notice of Suspension is to be removed at the conclusion of the suspension by a member of the Investigation and Enforcement Division, AGFT.
- iv. While the Licenses are suspended, the video lottery terminals are not to be operated.

DATED at Halifax, Nova Scotia this 7th day of January 2020.


Clerk of the Board