

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE LIQUOR CONTROL ACT

- and -

IN THE MATTER OF VIOLATIONS OF THE *NOVA SCOTIA LIQUOR LICENSING REGULATIONS* by **Stern Wheeler (1992) Limited**, holder of Eating Establishment Liquor License No. 003796, Lounge Liquor License No. 003797, and Video Lottery Registration Certificate No. VL003797, for premises known as Sam's Place Dining Room and Lounge, located at 26 Portland Street, Dartmouth, Nova Scotia

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

DECISION AND ORDER

WHEREAS the Alcohol and Gaming Division, Service Nova Scotia and Municipal Relations (the "AGD"), made a request to the Nova Scotia Utility and Review Board (the "Board") on April 4, 2011, with respect to an alleged violation of Section 64(1) of the *Nova Scotia Liquor Licensing Regulations* (the "*Regulations*") by Stern Wheeler (1992) Limited, holder of Eating Establishment Liquor License No. 003796, Lounge Liquor License No. 003797, and Video Lottery Registration Certificate No. VL003797, for premises known as Sam's Place Dining Room and Lounge, located at 26 Portland Street, Dartmouth, Nova Scotia (the "Licensee");

AND WHEREAS the AGD made further requests to the Board on July 18, 2012, with respect to alleged violations of Sections 34(2) and 64(1) of the *Regulations* by the Licensee, and on December 18, 2012, with respect to alleged violations of

Section 48(3)(a) of the *Liquor Control Act* and Section 64(1) of the *Regulations* by the Licensee;

AND WHEREAS the Licensee was notified to appear before the Board at a disciplinary hearing on January 3, 2013, to respond to the allegations, and on that date, counsel for the AGD and counsel for the Licensee requested an adjournment of the hearing and informed the Board they expected to submit an Agreed Statement of Facts;

AND WHEREAS the Board adjourned the hearing to January 14, 2013, and on that date, an Agreed Statement of Facts, executed by Chris Manning, on behalf of the Licensee, and Darlene T. Hancock, Acting Regional Manager, Western and Metro Region, Investigation and Enforcement Division, AGD, was submitted to the Board;

AND WHEREAS the Board heard the matter on January 14, 2013, at which time, the Agreed Statement of Facts and a joint recommendation on penalty was read into the record by Duane Eddy, counsel for the AGD;

AND WHEREAS the Licensee acknowledges that it was in violation of Sections 34(2) and 64(1) of the *Regulations* and it accepts responsibility for the violations;

AND WHEREAS the Agreed Statement of Facts included the following recommendation on penalty:

The Licensee and the Alcohol and Gaming Division jointly recommend that Eating Establishment Liquor License No. 003796, Lounge Liquor License No. 003797, and Video Lottery Registration Certificate No. VL 003797 be suspended for a period of 30 (thirty) consecutive days to commence on February 1, 2013.

The following conditions shall attach to the License and shall be made a condition of license:

- a. The Licensee shall conduct criminal background checks for all staff every 2 (two) years.

- b. Staff who have received a criminal conviction within the previous 5 (five) years shall not be permitted to work within the Licensed Premises.
- c. The Licensee shall take all reasonable steps to ensure that a manager is at the Licensed Premises during licensed hours.

In accordance with sections 83(1) and (2) of the *Nova Scotia Liquor Licensing Regulations* a Suspension Notice will be posted at the licensed premises stating that the Liquor Licenses have been suspended. The suspension does not prevent the Licensee from providing the sale of food or other non-liquor related services.

AND WHEREAS it is within the Board's discretion whether or not to accept the Agreed Statement of Facts and joint recommendation on penalty that has been submitted to the Board for approval;

AND WHEREAS having considered the submissions, the Board accepted the joint recommendation and condition, and rendered its decision orally on January 14, 2013;

IT IS HEREBY ORDERED that Stern Wheeler (1992) Limited, holder of Eating Establishment Liquor License No. 003796, Lounge Liquor License No. 003797, and Video Lottery Registration Certificate No. VL003797, for premises known as Sam's Place Dining Room and Lounge, located at 26 Portland Street, Dartmouth, Nova Scotia have the Licenses suspended for 30 (thirty) consecutive days, to be served from and including Friday, February 1, 2013 until and including Saturday, March 2, 2013, as penalty for the Licensee's violations of the *Regulations*, subject to the following conditions:

1. The premises shall be posted with a Notice of Suspension by a member of the Investigation and Enforcement Division, AGD. The Notice of Suspension is to be removed at the conclusion of the suspension period by a member of the Investigation and Enforcement Division, AGD. The suspension does not prevent the Licensee from providing the sale of food or other non-liquor related services.

2. While the Licenses are suspended, the video lottery terminals are not to be operated.

IT IS FURTHER ORDERED that the following conditions shall attach to the Licenses and shall be made a condition of license:

- a. The Licensee shall conduct criminal background checks for all staff every 2 (two) years.
- b. Staff who have received a criminal conviction within the previous 5 (five) years shall not be permitted to work within the Licensed Premises.
- c. The Licensee shall take all reasonable steps to ensure that a manager is at the Licensed Premises during licensed hours.

DATED at Halifax, Nova Scotia this 24th day of January, 2013.



Clerk of the Board

NSUARB	LD-11-002
	LD-12-001
EXHIBIT	S-4

IN THE MATTER OF the *Liquor Control Act*, R.S.N.S. 1989, c. 260, as amended

- and -

IN THE MATTER OF ALLEGED VIOLATIONS OF NOVA SCOTIA LIQUOR LICENSING REGULATIONS 34(2) and 64(1) by Stern Wheeler (1992) Limited, the holder of Eating Establishment Liquor License No. 003796, Lounge Liquor License No. 003797, and Video Lottery Registration Certificate No. VL003797.

AGREED STATEMENT OF FACTS

1. Stern Wheeler (1992) Limited is the holder of Eating Establishment Liquor License No. 003796, Lounge Liquor License No. 003797, and Video Lottery Registration Certificate No. VL003797, which covers the premises known as Sam's Place Dining Room & Lounge, located at 26 Portland Street, Dartmouth, Nova Scotia (hereinafter "the Licensed Premises").
2. The Licensee acknowledges that it has violated regulations 34(2) and 64(1) of the *Nova Scotia Liquor Licensing Regulations* and accepts responsibility for the violations.
3. The circumstances of the violations are as follows:
 - a. Det./Cst. Todd Blake of the Halifax Regional Police Integrated Drug Section was the lead investigator with respect to the police investigation entitled "Operation Indigo". Operation Indigo began as a result of information received by police indicating that marijuana was being sold at the Licensed Premises by staff on a daily basis.
 - b. On July 28th, 2010, July, 30th, 2010, August 31, 2010, September 1, 2010, September 10, 2010, and September 15, 2010, a surveillance team was established inside the Licensed Premises.
 - c. On September 16, 2010, Halifax Regional Police executed a Search Warrant for the Licensed Premises. Police seized marijuana, cannabis resin, oxycontin and drug paraphernalia from the Licensed Premises. On September 16, 2010, staff members A.M. ; J.K. ; L.L. and S.J. were arrested and charged with offences under the *Controlled Drugs and Substances Act*.
 - d. On May 16, 2012, staff member J.K. was found guilty of having in his possession for the purpose of trafficking, not in excess of three kilograms, Cannabis (Marijuana) and was convicted under s. 5 (2) of the *Controlled Drugs and Substances Act*. The

charges that were laid against A.M. ; L.L. and S.J. were withdrawn by the Crown.

ALCOHOL AND GAMING DIVISION INVESTIGATION

- a. On April 4, 2012, Eric Trowell, a Compliance Officer working within and for the Alcohol and Gaming Division (AGD), conducted a routine inspection of the Licensed Premises. During his inspection CO Trowell observed a yellow becel margarine container located in the kitchen of the Licensed Premises. CO Trowell observed tobacco and marijuana residue inside of the container. CO Trowell smelled what he determined to be a strong odour of marijuana coming from the container.
 - b. On April 11, 2012, CO Trowell met with the designated manager for the Licensed Premises - Bosch Toulany. Mr. Toulany advised CO Trowell that J.K. leased the kitchen area located within the Licensed Premises. CO Trowell obtained a copy of the lease agreement and cross-referenced the agreement with AGD records. CO Trowell did not find any record within the AGD's file database to confirm that the lease agreement that was executed between the Licensee and J.K. had been approved by the AGD. Based on CO Trowell's review of the AGD's file database CO Trowell concluded that the lease agreement was not approved.
 - c. On December 7, 2012, Kathy Williams, a Compliance Officer working within and for the Alcohol and Gaming Division, conducted a routine inspection of the Licensed Premises. CO Williams was accompanied by CO Trowell. During the inspection CO Trowell discovered a zip lock bag inside the deep fryer basket located within the kitchen area of the Licensed Premises. CO Trowell determined that the zip lock bag contained a large quantity of marijuana.
 - d. CO Williams called Halifax Regional Police and requested that Officers be dispatched to the Licensed Premises. When police officers arrived at the Licensed Premises on December 7, 2012, the Officers seized the bag of marijuana and a measuring scale which was also located within the kitchen area. J.K. was arrested by police and transported to booking. J.K. was subsequently charged under the *Criminal Code*.
4. This matter has been brought before the Nova Scotia Utility and Review Board for the imposition of a penalty with respect to the Licensees violations of sections 34(2) and 64(1) of the *Nova Scotia Liquor Licensing Regulations*.
 5. The Licensee and the Alcohol and Gaming Division jointly recommend that

Eating Establishment Liquor License No. 003796, Lounge Liquor License No. 003797 , and Video Lottery Registration Certificate No. VL 003797 be suspended for a period of 30 (thirty) consecutive days to commence on

February 1, 2013.

The following conditions shall attach to the License and shall be made a condition of license:

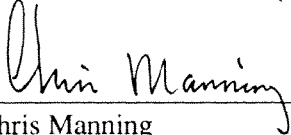
- a. The Licensee shall conduct criminal background checks for all staff for 2 (two) years.
- b. Staff who have received a criminal conviction within the previous 5 (five) years shall not be permitted to work within the Licensed Premises.
- c. The Licensee shall take all reasonable steps to ensure that a manager is at the Licensed Premises during licensed hours.

In accordance with sections 83 (1) and (2) of the *Nova Scotia Liquor Licensing Regulations* a Suspension Notice will be posted at the licensed premises stating that the Liquor Licenses have been suspended. The suspension does not prevent the Licensee from providing the sale of food or other non-liquor related services.

6. ENTIRE AGREEMENT

This Agreed Statement of Facts contains the entire agreement between the parties. There are no undertakings or representations expressed or implied, other than those contained in this agreement.

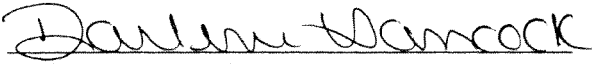
On behalf of Stern Wheeler (1992) Limited:



Per: Chris Manning
Authorized Agent

14 Jan 2013
Date

On behalf of the Alcohol and Gaming Division:



Darlene T. Hancock
Acting Regional Manager, Western and Metro Region
Investigation and Enforcement Division

Jan 14, 2013
Date