

[2016] NZSHD 8

LASDP Number: 16-035559

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IN THE MATTER OF

the Secondhand Dealers and
Pawnbrokers Act 2004

AND

IN THE MATTER OF

opposition to the granting of an
application for a license filed by
CASH N TRADE LIMITED

AND

IN THE MATTER OF

opposition to the granting of a
certificate filed by **GAVIN PAUL
CLEARY**

**BEFORE THE LICENSING AUTHORITY OF
SECONDHAND DEALERS AND PAWNBROKERS**

HEARING by telephone on 7 December 2016

DECISION

[1] Cash N Trade Limited has filed an application with the Licensing Authority of Secondhand Dealers and Pawnbrokers for a licence under s 8 of the Secondhand Dealers and Pawnbrokers Act 2004 (the Act). Its director Gavin Cleary has applied for a certificate under s 21 of the Act.

[2] The Police oppose granting Mr Cleary's certificate and Cash N Trade Ltd's licence as Mr Cleary was convicted of drug charges in June 2015 for which he was sentenced to nine months' home detention.

[3] Section 10 of the Act provides that the Authority can only issue a licence to a company if every person concerned in the management of the company is eligible to hold a certificate. Section 25 of the Act provides that the Police can object to an applicant being granted a certificate on the grounds that the applicant is not a fit and proper person to hold a certificate.

[4] The issue I therefore need to decide is whether Mr Cleary's convictions are sufficient to establish he is not a fit and proper person to hold a certificate. In making this decision the purpose of the Act as set out in s 3 of the Act must be a key consideration. The Authority has generally taken the view that an example of a fit and proper person under the Act is someone who can be trusted to comply with his or her obligations as a secondhand dealer and pawnbroker under Part 3 of the Act. In particular it requires the applicant to be aware of the need to be vigilant and to use his best endeavours to ensure stolen goods do not pass through his business. On the other hand a person who encourages the transit of stolen property through his premises or who turns a blind eye when stolen property is offered to him is clearly not a fit and proper person.

[5] Mr Cleary was convicted of possessing and supplying morphine and other psychoactive substances in June 2015. The Police believe Mr Cleary was drug dealing out of his work premises. They also submit that a sentence of home detention is similar to a sentence of imprisonment and that if Mr Cleary had been sentenced to a term of imprisonment he would be disqualified from holding a certificate for five years. The Police say that more time is needed before they can be satisfied that Mr Cleary is a fit and proper person to hold a certificate.

[6] The concerns raised by the police are reasonable. Mr Cleary has only recently finished his term of home detention and his post detention conditions. I therefore understand why the Police consider more time is needed before they are satisfied Mr Cleary is a fit and proper person to hold a certificate.

[7] Mr Cleary does not deny the seriousness of his offending. He however says his offending resulted from him 'falling into a hole' after the death of his wife combined with his failure to deal with other traumatic events earlier in his life. He says he is now a changed man as 44 weeks of counselling have helped him face his grief and address his issues.

[8] Mr Cleary owned and operated a secondhand business for approximately 17 years prior to being charged in early 2015. He was granted an individual licence on 1 May 2006 after the Act came into force. His licence was renewed on 8 July 2011. Apart from one largely technical breach, which did not result in a conviction, Mr Cleary says he complied with his obligations under the Act. Mr Cleary is nearing retirement and it would be difficult for him to retrain or obtain employment in a new field.

[9] If Mr Cleary had not run a secondhand business without any significant breach for many years prior to his conviction I would agree with the Police and conclude that more time or evidence would be required to establish that Mr Cleary is a fit and proper person to hold a certificate. However Mr Cleary operated a secondhand business for 17 years prior to his conviction without any significant incidents or breaches.

[10] I accept that Mr Cleary's offending appears to be out of character and that he has taken steps to address the issues that led to his offending. In addition I am satisfied that Mr Cleary is aware of his obligations under the Act as he successfully ran a secondhand business for many years. He is well aware of, and can be trusted to, comply with his obligations under that Act and will not turn a blind eye when stolen property is offered to him.

Conclusion

[11] I therefore conclude that Mr Cleary is a fit and proper person to hold a certificate. His application for a certificate and Cash N Trade Limited's application for a company licence are therefore granted.

DATED at Auckland this 14th day of December 2016

P A McConnell
Licensing Authority of Secondhand Dealers and Pawnbrokers