

[2015] NZSHD 13

SHD Number 15-025101

IN THE MATTER

of the Secondhand Dealers and
Pawnbrokers Act 2004

AND

IN THE MATTER

opposition to the granting of a
certificate to PHILLIP ARTHUR
KNIGHT

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

HEARING at Auckland on 24 November 2015

APPEARANCES

P A Knight (certificate applicant)
Senior Constable M C Wilson and Sergeant B Campbell-Howard – NZ Police

DECISION

[1] Mr Knight works for a scrap metal dealer. His employer requires him to be involved in the purchase of scrap metal and accordingly Mr Knight has applied for a certificate under s 21 of the Secondhand Dealers and Pawnbrokers Act 2004 (the Act). The Police oppose granting a Mr Knight a certificate. They say he is a prospect for the Hells Angels Motorcycle club Nomads chapter and his association with the club makes him an unsuitable person to hold a certificate.

[2] Mr Knight however says he is not, nor ever has been, a prospect for the Hells Angels, Nomads, or any other motorcycle club. He accepts he has friends who are members of the Nomads and Headhunters motorcycle clubs and that he on occasions he joins them for motorcycle rides and other events. However he does not consider this makes him an unsuitable person to hold a certificate.

[3] With every objection filed by the Police the question for the Authority is whether the applicant is a fit and property person to hold a certificate.¹ Therefore the key issues for me to decide are:

- Is Mr Knight a prospect for the Nomads Chapter of the Hells Angels Motorcycle club or does he associate with gang members?

¹ Secondhand Dealers and Pawnbrokers Act 2004, ss25–29.

- If so is this sufficient to establish that he is not a fit and proper person to hold a certificate?

Is Mr Knight a prospect for the Nomads?

[4] Sergeant Campbell-Howard gave evidence in support of the Police opposition. He said that on 11 February 2015 he stopped Mr Knight and issued him an infringement notice for an unsafe passing manoeuvre while riding his motorcycle. Sergeant Campbell-Howard said that at the time Mr Knight was wearing a black leather vest which had a white rocker on the front with the word "Nomads" in red. He also gave evidence that on 25 March 2015 he stopped a Harley Davidson motorcycle that was in the system as belonging to Mr Knight. The rider advised that he had bought the motorcycle from Mr Knight that day. Sergeant Campbell-Howard said that he noted that the motorcycle had a red and white sticker on the side cover with "81" on it. He says this number and the colours are associated with the Hells Angels.

[5] Mr Knight however says he has never owned a black leather vest with the word "Nomads" on it. He brought to the hearing the leather vest he was wearing on the day he was stopped by Sergeant Campbell-Howard which has a red and white badge with the word "Hoodlum" on it. Mr Knight says this is the only black leather vest he owns and the only one he wears riding his motorcycle. Mr Knight further said that there had only ever been one badge on his vest and invited an inspection of his vest to establish that there were no other stitch marks on his vest to suggest the badge had at any point been changed.

[6] Mr Knight said that when he sold his motorbike in March 2015 it did not have an "81" sticker on it. Mr Knight accepts he is familiar with the type of sticker being referred to and says that it says "Support 81 Nomads". He says it is not a sign of membership of the Nomads. Mr Knight advises that he is not, never has been, and is never likely to be a prospect or member of the Nomads.

[7] I accept Mr Knight's evidence that he is not, nor ever has been, a prospect or member of the Nomads or any other similar motorcycle club. I consider that Sergeant Campbell-Howard was mistaken when he recorded that Mr Knight was wearing a Nomads badge when he was stopped him on 11 February 2015. There is no other evidence to support the allegation that Mr Knight is a prospect for such a club. Therefore the Police have failed to establish that Mr Knight is, or ever has been, a prospect or member of the Nomads or any other motorcycle club.

[8] Mr Knight however accepts that he has long standing friends who are members of motorcycle clubs that the police consider to be gangs. He also accepts he sometimes goes on rides organised by such clubs and has on occasions allowed friends who are members of such motorcycle clubs to ride his motorcycle.

Is Mr Knight a fit and proper person to hold a certificate?

[9] The Police submit that even if Mr Knight is not a member of a motorcycle club the fact that he associates with gang members is sufficient to establish he is not a fit and proper person to hold a certificate. The Police however did not provide any evidence of what crimes his friends and associates had committed. Nor did they provide any information to show the types of illegal activity members of the Auckland Nomads motorcycle club were involved in or the number of convictions entered against such members in recent years. All they submitted was that gangs such as the Nomads and Hells Angels fall under s 98A of the Crimes Act.

[10] Mr Knight however produced a reference from his employer that records that Mr Knight has been employed by his company since September 2014. His employer says that Mr

Knight's former employer provided a very positive verbal reference which highlighted Mr Knight's work ethic and honesty and the fact that his conduct was "above and beyond that normally expected of an employee". Mr Knight's employer further stated that Mr Knight worked in full view and in very close proximity to three or four other staff and often on camera. No inappropriate activity had ever been observed or reported. Mr Knight's current employer endorsed the high opinion Mr Knight's previous employer had of him.

[11] I do not accept that the fact someone associates with motorcycle club members, or has friends who are motorcycle club members, is sufficient to establish that they are not a fit and proper person to be granted a certificate. Nor do I accept that being a friend of someone who has committed criminal offences is sufficient in itself to disqualify a person from holding a certificate. There is no evidence to suggest that Mr Knight has committed anything other than minor traffic offences or been involved in any disqualifying illegal activity.

[12] 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, and who is aware of the need to be vigilant and to use their best endeavours to ensure stolen goods do not pass through their business. On the other hand a person who actively encourages the transit of stolen property through their premises or who turns a blind eye when stolen property is offered to them is clearly not a fit and proper person.

[13] There is no evidence that Mr Knight is likely to either encourage or turn a blind eye to the transit of stolen property through the premises at which he is employed. Based on the evidence presented I am satisfied that Mr Knight is aware of the need to be vigilant and can be trusted to comply with his obligations as a secondhand dealer under Part 3 of the Act.

Conclusion

[14] I conclude that the Police have failed to establish that Mr Knight is not a fit and proper person to hold a certificate. The Police opposition to Mr Knight's certificate is therefore dismissed and his certificate is granted.

DATED at Wellington this 4th day of December 2015

P A McConnell
Licensing Authority of Secondhand Dealers and Pawnbrokers