

[2015] NZSHD 10

SHD Number 15 / 024357

IN THE MATTER

of the Secondhand Dealers and
Pawnbrokers Act 2004

AND IN THE MATTER

of an application by **DORIS
WAKEFIELD** of Dargaville for a
waiver of disqualification under
s/23 of the Act

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

DECISION

The Application

[1] Doris Wakefield (“the applicant”) applied to the Licensing Authority of Secondhand Dealers and Pawnbrokers (“the Authority”) for an Individual Licence (“licence”) under the Secondhand Dealers and Pawnbrokers Act 2004 (“the Act”) on 15 July 2015. She had previously held a licence between 2007 and 2012.

[2] On 11 August 2015 the Authority received an Objection from the Police in respect of this application, and in respect of a similar application from the applicant’s husband.

[3] The basis of the Objection against the applicant was that she was convicted on 25 June 2015 in the Dargaville District Court on a charge under the Act of being an unlicensed dealer, having been similarly convicted on 11 October 2007. The Police also alleged further problems with the way both applicants operated their business.

[4] The effect of the applicant’s conviction on 25 June 2015 is to render her disqualified from holding a certificate (and therefore a licence) for a period of five years under s.22(b) of the Act. While she is disqualified from holding a certificate, the Authority cannot issue her with a licence unless she has applied for and been granted a Waiver of disqualification under s.23 of the Act.

[5] A copy of the Police objection was sent to the applicant and her husband. The applicant was advised that she could apply for a Waiver of her disqualification, and both applicants were advised that they could apply for a “hearing in person” (“hearing”) before the Authority to decide whether the Police Objection should be upheld or dismissed.

[6] The applicant subsequently applied in writing for a Waiver of her disqualification and for a hearing into the Police Objection. She also provided some very limited written material in support.

[7] The applicant's husband has made no application for a hearing and accordingly a decision will be made by the Authority "on the papers" in due course in respect of this application.

Discussion

[8] Pursuant to s.23(2)(a) of the Act the Authority is now required to make a decision on whether to waive the applicant's disqualification before a hearing can be held into the Police Objection against the applicant.

[9] It is noted here that it is only after the application for Waiver is *granted* that this case can proceed to a hearing.

[10] The decision that the Authority must make is whether pursuant to s.23(1)(d) of the Act there are any '*special reasons*' why the applicant should not be disqualified from holding a certificate.

[11] The applicant is an elderly woman of 73 years. Her husband, who assists her to some extent in their secondhand business, is 79. It is clear from their written and verbal correspondence with the Authority that both applicants are having some difficulty grasping the exact nature of a Police Objection and are also having some difficulty putting together a comprehensive and relevant written response to the Objection.

[12] The Authority considers however that in the particular circumstances of this case and considering the written material filed by the applicant as to her current situation and the state of the business, there is sufficient information to warrant an investigation of her claims at a hearing on oath.

[13] If the Waiver application is refused at this stage the applicant would not be entitled to put her case in person at the hearing and she would be deprived of her day in court. The result may be that she could possibly lose her business and her livelihood.

[14] The Authority is loath to refuse a Waiver in a case of an elderly applicant, without legal assistance and who is potentially handicapped by virtue of her age and/or her inability to present a full written response to a Police Objection, but who may well be able to present a proper defence in person.

[15] In this case the Authority considers that the applicant's licence application should not be refused without first giving her the opportunity to speak on her own behalf.

[16] These circumstances seem to the Licensing Authority to constitute '*special reasons*' why the applicant should not be disqualified from holding a certificate and why a Waiver should be *granted*.

[17] It is to be emphasised however, that a decision to grant a Waiver is not a decision that the applicant is a fit and proper person to hold a licence. That question is to be decided after a hearing which will be held in due course.

Decision

[18] The application for a Waiver of the applicant's disqualification from holding licence is Granted.

DATED at Auckland this 10th day of October 2015

S L Cole
Licensing Authority of Secondhand Dealers and Pawnbrokers