

[2014] NZSHD 5

Application No: 13 / 009898

IN THE MATTER

of the Secondhand Dealers and
Pawnbrokers Act 2004

AND

IN THE MATTER

of an application by **CHAIWAT
KANGSATHIEN** of Auckland for
an Individual Licence pursuant to
s.8 of the Act

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

DECISION

[1] Chaiwat KANGSATHIEN (“the applicant”) applied for an Individual Licence under s.8 of the Secondhand Dealers and Pawnbrokers Act 2004 (“the Act”) on 22 August 2013.

[2] On 4 September 2013 the Police filed an Objection to this application with the Licensing Authority of Secondhand Dealers and Pawnbrokers (“the Authority”) under s.25 of the Act.

[3] The basis of the Police Objection was that the applicant was currently facing a charge under s.6 of the Act before the Auckland District Court of “Carrying on Business as an Unlicensed Secondhand Dealer”. The Police Objection noted that the applicant was due to appear next to answer the charge on 30 October 2013.

[4] On 5 December 2013 the Police advised the Authority that the applicant had pleaded Not Guilty and his case had been further adjourned until 4 February 2014 for a Defended Hearing.

[5] In the meantime (on 7 October 2013) the applicant had requested a ‘hearing in person’ of the Police Objection before the Authority pursuant to s.26 of the Act.

[6] In a minute dated 12 December 2013 the Authority determined that there was no point setting down a hearing in person before the Authority in respect of the Police Objection at that stage for the following reasons;

- [a] The basis of the Police Objection was an unproven allegation. The likely result of a hearing in person before the Authority *before* 4 February 2014 would be an adjournment of that hearing until *after* the result of the District

Court hearing was known. The hearing in person before the Authority would effectively be a waste of time.

- [b] If the applicant was convicted in the District Court on 4 February 2014 he would become disqualified from holding a certificate under s. 22(b) of the Act. This would mean that the Authority would have to deal with the issue of 'Waiver' of the disqualification under s.26(2)(a) of the Act before a hearing in person of the Police Objection could take place.
- [c] If the applicant was acquitted of the Police charge on 4 February 2014 the Police may withdraw their Objection.

[7] In a letter dated 5 February 2014 the Police advised the Authority that the applicant had been convicted on 4 February 2014 of the charge of Carrying on Business as a Secondhand Dealer without a Licence. He was convicted and discharged and ordered to pay court costs of \$130.00. The Police confirmed their opposition to the applicant's application for a licence.

[8] A conviction for an offence under the Act within the past 5 years which is punishable by a fine of more than \$2,000.00 (as is the case here) means that the applicant is disqualified from holding a certificate (and thus a licence) pursuant to s.22(b) of the Act.

[9] The applicant is however entitled to apply for a Waiver of this disqualification pursuant to s.23 of the Act.

[10] On 7 February 2014 the applicant was advised by the Authority that he was entitled to apply for a Waiver. He was provided with a Waiver application form and a relevant extract from the Act, and was advised that he should forward an affidavit setting out his 'special reasons' if he wished to apply for a Waiver of disqualification.

[11] On 27 February and 28 February 2014 an Authority case manager tried to contact the applicant by phone and left messages for him without success.

[12] On 11, 13 and 19 March 2014 the case manager managed to contact the applicant and speak with him and provide advice in respect of his application for a Waiver of disqualification. He said he would still like to proceed with a hearing in person and would file his Waiver application by 14 March 2014. He later said he would do so by 21 March 2014.

[13] Nothing further has been heard from the applicant as at the date of this Decision.

[14] The applicant has been given ample time and advice by the Authority in respect of his ability to apply for a Waiver of disqualification. No Waiver application or other correspondence has however been received from him. It seems that he has lost interest in this application.

[15] In respect of the applicant's request for a hearing in person the Authority notes that pursuant to s.26 of the Act he would only be entitled to such a hearing before the Authority if he applied for and was granted a Waiver of disqualification.

[16] In the absence of an application for a Waiver of disqualification, and in the absence of any 'special reasons' put before the Authority which might satisfy the Authority that the applicant should not be disqualified, there can be no Waiver of disqualification and accordingly no hearing in person pursuant to s.26(2) of the Act.

[17] Section 9 of the Act requires an applicant for a licence to hold or be eligible to hold a certificate.

[18] Under s.28 of the Act a person is eligible to hold a certificate if the person is not disqualified under s.22 from holding a certificate or if disqualified, the disqualification has been waived by the Authority under s.23, and if there has been a Police Objection to the application, the Authority has dismissed the Objection.

[19] The Police Objection here is on the basis that the applicant is disqualified from holding a certificate under s.22(b) of the Act by virtue of his recent qualifying conviction pursuant to s.6 of the Act.

[20] The Authority has not been provided with any 'special reasons' or any reasons at all why the disqualification should be waived.

[21] The Authority is satisfied that the applicant is disqualified from holding a certificate under s.22(b) of the Act and that he is not eligible to hold a certificate under s.28(1) of the Act.

[22] Accordingly the Police Objection is upheld and this application is Refused.

DATED at AUCKLAND this 7th day of April 2014

S L Cole
Licensing Authority of Secondhand Dealers and Pawnbrokers