

[2014] NZSHD 7

LASDP Number: 776696

**IN THE MATTER**

of the Secondhand Dealers and  
Pawnbrokers Act 2004

**AND**

**IN THE MATTER**

of a Police Complaint against  
**KRISHNA JEWELLERS (NZ)**  
**LIMITED** of Auckland pursuant to  
s.29 of the Act

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

**DECISION**

***Introduction***

[1] This is a Complaint by the Police against KRISHNA JEWELLERS (NZ) LIMITED (“Krishna Jewellers”) of Auckland in respect of Company Licence number 776696 (“the licence”) issued to this company on 13 July 2012 by the Licensing Authority of Secondhand Dealers and Pawnbrokers (“the Authority”) under the Secondhand Dealers and Pawnbrokers Act 2004 (“the Act”).

[2] The licence is currently due to expire on 13 July 2017.

[3] The company premises are located at 150 Great South Road, Papatoetoe, Auckland.

[4] The directors of Krishna Jewellers are Ms Krishna Suresh Raninga and Mr Suresh Bhagvanji Raninga.

[5] Ms Krishna Raninga also holds a certificate of approval (“certificate”) under the Act. This expires on 2 August 2017. There is no Police Complaint against Ms Raninga personally.

[6] The Police Complaint against Krishna Jewellers was received by the Authority on 9 January 2014.

[7] In their Complaint the Police say that they carried out a routine inspection of Krishna Jewellers on 11 March 2014 and discovered a number of breaches of the Act including poor or inadequate recording of purchased articles. They say that when she was asked Ms Raninga was unable to provide a proper explanation for the inadequate record keeping.

[8] The Police have photocopied the relevant dealer’s records (“records”) from Krishna Jewellers and attached them to their formal complaint.

[9] Krishna Jewellers has engaged lawyer Mr Victor Raman who has filed written submissions on the company's behalf.

### **Relevant Provisions of the Act**

[10] Part 3 of the Act (Subparts 1 and 2) spells out the obligations for licensed secondhand dealers under the Act.

[11] Licence holders are required to display their licences, keep proper employee records and comply with certain requests from the Police. They have obligations to report and hold stolen goods, keep proper dealers records, verify the identity of sellers, label articles and retain articles in an unaltered state for a period of 14 days from the date of the transaction.

[12] These provisions are in line with the purpose of the Act which is defined in s.3 of the Act:

- [a] To make it harder for criminals to dispose of stolen goods through secondhand dealers and pawnbrokers; and
- [b] to make it easier for the Police to recover stolen goods and solve property crimes.

[13] Breaches of these provisions are offences against the Act. Penalties are provided, typically with a maximum fine of \$10,000. This reflects how seriously breaches of the provisions are to be regarded.

[14] The Police Complaint was filed under s.29(1) of the Act and a copy of the Complaint was sent to Krishna Jewellers pursuant to s.29(2). At the same time the company was advised, in terms of s.26(1) of the Act, that it was entitled to request a hearing in person before the Authority, or instead could make written submissions in response to the Complaint.

[15] It is noted here that sections 26 and 27 of the Act, although referring specifically to Police 'Objections' rather than Police 'Complaints', are also applicable to Police 'Complaints' by virtue of s.29(2) of the Act.

[16] Krishna Jewellers has chosen to forgo its right to a hearing in person before the Authority and has instead filed written submissions through its counsel Mr Raman pursuant to s.26(1)(b) of the Act.

[17] Section 26(3) of the Act provides that in such a situation the Authority must, on the basis of the written material before him or her, determine whether to uphold or dismiss the Police Complaint.

[18] The question for the Authority is whether, in light of the information communicated to it, Krishna Jewellers as a company is *fit and proper* to continue to hold a certificate, and thus a licence.

### **The Police Evidence**

[19] The information contained in the initial Police Complaint is a rather brief summary of the Police visit to Krishna Jewellers on 11 March 2014.

[20] The Police have attached to their Complaint copies of 6 purchase records from Krishna Jewellers and make the following points in their submissions:

- [a] Five of the seven records from 2014 do not have all of the required information,
- [b] None of the seven purchase records have accurate item descriptions or unique identifiers noted,
- [c] One record in particular, dated 14 February 2014 and for a purchase valued at \$3,500, fails to note details of the actual purchased item or the seller's address,
- [d] Five of the records fail to record either the seller's address, date of birth or the type of identity verification presented by the seller.

[21] Following a request from the Authority for further information about specific responses from the licence holder when confronted with the inadequate records at the time of the Police visit, the Police provided a statement from Constable Allan Pirtle containing the following information:

- [a] Proprietor Ms Krishna Raninga was unable to provide a reasonable explanation for the record for 14 February 2014 for \$3,500 which did not record what particular article was purchased. Constable Pirtle says however that Ms Raninga did suddenly remember that the article was a bangle, but was unable to provide any further detail.
- [b] Ms Raninga was unable to provide sufficient reasons as to why some records had missing addresses.
- [c] Ms Raninga did not provide a reason why descriptions of some articles were inadequate and referred to articles as simply a 'ring' or a 'necklace'.

[22] Following a request from the Authority for further information about their visit to Krishna Jewellers and details of any follow-up Police enquiries, the Police responded as follows:

- [a] The Police did not contact any of the sellers referred to in the records (*even though copies of their driver's licences were attached*).
- [b] The visiting Police were told that all the articles in question had been melted down, so they could not be inspected.
- [c] The records supplied were stated to be all the available records for the recent period.
- [d] The Police are not aware of any warnings being given to Krishna Jewellers.
- [e] The Police have not returned since their initial visit to Krishna Jewellers to check its more recent compliance.

[23] The Police did not respond to questions from the Authority about the following:

- [a] Whether the Police were satisfied that the relevant purchased articles were not stolen property?
- [b] In relation to specific illegible descriptions of articles in the records, whether the Police enquired what these articles were?
- [c] What was the general state of the record keeping, storing and labelling etc in respect of other purchased items on the premises?
- [d] Were there any relevant Police job sheets or notebook entries?

[24] The Authority notes here that the Police have not spelled out anywhere in their Complaint exactly which provisions of the Act they believe have been breached by Krishna Jewellers, and have left it to the Authority to ascertain and determine this.

[25] There is no information from the Police about whether or not any or all of the purchased articles in question were properly labelled or whether they were retained by Krishna Jewellers for the required period of 14 days.

### ***Submissions on Behalf of Krishna Jewellers***

[26] In a letter dated 1 April 2014 Mr Raman addresses the information in the original Police Complaint. He says:

- [a] A copy of a current driver's licence with a photo was attached to all seven of the purchase records referred to by the Police. Accordingly the identities of the sellers were verified.
- [b] A date of birth need only be supplied by a seller under the Act if their photo ID has not been verified pursuant to s.42(2)(a)(iii) of the Act.
- [c] Contact numbers and signatures were supplied by all seven sellers and properly recorded.
- [d] Although the sellers did not provide their addresses, the primary reason for this was that the sellers were hesitant to supply this information when requested by Krishna Jewellers.
- [e] Krishna Jewellers has since rectified its records which now show the addresses and dates of birth of the sellers.
- [f] Krishna Jewellers deals primarily in gold jewellery which does not have serial numbers or unique identifiers. Therefore the only description which can be recorded is the description of the gold jewellery item being purchased.
- [g] An adequate description has been recorded in most of the seven records in question.
- [h] In respect of the record for the purchase from Mr Manish Kumar for \$3,500, Mr Kumar has now provided a supplementary statement about the jewellery item he sold to Krishna Jewellers.

- [i] Krishna Jewellers now has a new blank form to be completed in respect of the purchase of gold jewellery.
- [j] Krishna Jewellers regrets its mistakes or omissions and confirms they will not be repeated. A letter of apology has been attached.
- [k] Krishna Jewellers welcomes any such future routine Police checks.

[27] In response to the further additional information provided by the Police Mr Raman submits:

- [a] The Police were advised it was a 'bracelet' rather than a 'bangle' that was purchased from Mr Manish Kumar.
- [b] Krishna Jewellers disputes the Police allegation that it did not provide sufficient reasons for the discrepancies. The Police were in fact advised that the purchase from Mr Manish Kumar was completed by an employee who must have forgotten to complete the entry correctly and properly.

### ***The Dealers Records***

[28] Although the Police and Mr Raman refer to seven records of purchase there are before the Authority as evidence only copies of six records from Krishna Jewellers. The answer for this may be that one record refers to "2 x bangles" but the status of the seventh record has not been made clear to the Authority.

[29] The Authority notes that at the time of the Police visit blank record forms were comprised of a single page with spaces where details of a seller's name, address, phone, mobile, item, amount paid, date and signature should be entered.

[30] The blank record forms do not however contain, in terms of s.42 of the Act, a specific area for entering a seller's date of birth, for entering any number assigned to a purchased article or for entering the name and signature of the person who conducted the transaction.

[31] All of the six records in question contain a photocopy of the seller's driver's licence.

[32] All six records show the name of the seller, a home or mobile phone number, amount paid, date and seller's signature.

[33] Only two of the records contain an address.

[34] Five records contain a description of the purchased article although two of these are illegible. The three which can be read describe the purchased articles as "Balls Gold", "1 x chain" and "2 x bangles".

[35] The record in relation to the purchase of an article from Mr Manish Kumar for \$3,500 on 14 February 2014 has no description of the article purchased.

## ***Discussion***

[36] All six completed records of purchase contain a photocopy of the driver's licence of the seller complete with photo. In addition to the photo the photocopies contain the following details of the driver's licence holder:

- [a] Name
- [b] Date of birth
- [c] Signature
- [d] Address
- [e] Issue date
- [f] Expiry date
- [g] Licence number
- [h] Card version
- [i] Classes

[37] There is no suggestion by the Police that Krishna Jewellers did not check and verify the photos or the other details on the driver's licences with the persons presenting the articles for sale and it seems the details contained in the copies of drivers' licences were overlooked by the Police in their submissions.

[38] The photocopies of drivers' licences produced by the Police in fact clearly refute their allegation that five of the records failed to record the seller's *date of birth* or "*identification type presented*".

[39] In terms of s. 42 of the Act, and concentrating just on the photocopies of the drivers' licences, the six records produced as evidence by the Police contain much of the information which a licensed secondhand dealer is required to record when purchasing an article.

[40] In the absence of any evidence to the contrary before the Authority the photocopies of drivers' licences also serve as identity verification for the purposes of s.42(2)(a)(ii), s.43(1) and s.43(2)(a) of the Act.

[41] The Authority notes too that by using the details contained in the photocopies of the drivers' licences the Police could have, and should have in a case where they file a Complaint, made enquiries with and of the holders of the drivers' licences. They did not do this however.

[42] Such enquiries could possibly have confirmed one way or another whether the sellers and/or Krishna Jewellers were involved in knowingly dealing with stolen property, and may have suggested a reason as to why Krishna Jewellers was not recording a full or any description of gold jewellery.

[43] There is no comment by the Police or by Mr Raman in respect of any numbers which were assigned or should have been assigned by Krishna Jewellers to the purchased articles in terms of s.42(2)(d) of the Act.

[44] There is no comment by the Police or by Mr Raman in respect of the requirement in s.42(2)(e) of the Act that the name and signature of the person conducting each transaction on behalf of Krishna Jewellers is missing from the records. For example who is the employee who incorrectly filled out the record for the purchase from Manish Kumar?

[45] There is no comment by the Police or by Mr Raman on the requirement in s.47 of the Act that acquired articles must be retained by the secondhand dealer in an unaltered state for 14 days from the date of the transaction.

[46] Whereas the Police do say that they were told by Krishna Jewellers that all the articles had been melted down, there is no information before the Authority as to when this occurred and therefore no suggestion that it was within 14 days of the date of the transaction.

[47] It seems that the Police made no enquiries about how or when the gold jewellery was disposed of in terms of the requirements contained in s.42(2)(g) of the Act. The only information available to the Authority is that somehow, somewhere and by someone the gold was melted down. What is required of a secondhand dealer is that they must record the date that an article with an apparent resale value of more than \$40 was sold, or an account of how and when the article was otherwise disposed of.

[48] There is no comment by the Police or by Mr Raman about whether the articles in question were or were not properly labelled in terms of s.48 of the Act.

[49] The Police have advised the Authority that "*the records supplied were stated to be all the available records for the recent period*". The Authority takes this to mean that Krishna Jewellers told the Police that there are only seven records in total for purchases of secondhand jewellery for the period covered by the records namely 14 December 2013 to 14 February 2014.

[50] Where the Police file a Complaint the Authority expects that the Police have been thorough in their investigation, that they have identified specific breaches of the Act if any and that they are able to point to and produce evidence in support of their allegations.

[51] The Authority should not have to chase the Police for further information to better comprehend their Complaint. The Authority suggests here that the Police prepare a Complaint in the same way that might prepare a prosecution for Court.

[52] On the other hand the Authority does not agree with the suggestion by Mr Raman that in all cases the Authority must base its decision only on the material contained in an initial Police Complaint and may not seek further information from the Police.

[53] There is nothing in the Act which specifically permits or prevents the Authority from making further enquiries, and this Authority intends to follow the practice of the former Authority in seeking further information from either party where it might assist

in reaching a fair and just decision. This is not to say that a Police Complaint will never fail in the first instance if it is not of a sufficient standard.

[54] The Authority is very aware that many licence holders face losing their livelihood if a Police Complaint is upheld and accordingly a Complaint needs to be carefully considered and prepared by the Police if they hope to effect the cancellation of a licence.

[55] The Authority would hope also that proper consideration is given by the Police to the question of whether in fact a prosecution before the District Court is a preferable option in the first instance rather than filing a Complaint.

[56] In the current case it seems the Police were of the mistaken views that once a Complaint is filed it is taken over by the Authority who then conducts a prosecution, and that there cannot be a prosecution as well as a Complaint by the Police as this "would be doubling up on the same offence".

### ***Decision***

[57] The Police Complaint is not as thorough or comprehensive as it could have been. This is partly due to a mistaken understanding of the Act and the processes and powers of the Authority.

[58] The result is that even after seeking clarification and further information from the Police, the state of the written material before the Authority is insufficient to establish that Krishna Jewellers is not fit and proper as a company to hold a certificate and thus a licence, although there is much room for improvement.

[59] The Authority is concerned that Krishna Jewellers has not been as careful as it should have been and has not been complying fully with its obligations under the Act. The Authority notes in particular:

- [a] Non-description of a purchased article is a significant omission.
- [b] Accurate descriptions of purchased articles are essential.
- [c] It is no excuse for the non-recording of an address that the seller is hesitant and does not wish to provide an address. In fact any such hesitancy should put a dealer on guard and wary of such a seller.
- [d] Articles need to be numbered, labelled and kept unaltered for 14 days.
- [e] The name and signature of the person conducting the transaction for the dealer needs to be recorded.
- [f] The date or means of disposal of articles must be recorded.

[60] However in this case all six records include photocopies of the drivers' licences of the sellers with their photos.

[61] In addition all six records include a phone number and a signature.

[62] Krishna Jewellers has to an extent now improved its records by including most, but not all, of the missing information in the records in question.



[63] Krishna Jewellers has produced a comprehensive new purchase form. The Authority suggests that including a photo of purchased jewellery in future would greatly assist for identification purposes.

[64] Krishna Jewellers says it has created new procedures and recordkeeping in light of the Complaint.

[65] Krishna Jewellers has produced a statement from Mr Manish Kumar in relation to the missing description for the article valued at \$3,500 purchased from him.

[66] Krishna Jewellers has produced a letter of apology for its inadequate record keeping. It assures the Authority that its failures will not be repeated in the future.

[67] Ms Raninga has been operating the business for 24 years without a Complaint.

[68] The Police say they are unaware of any warnings issued by the Police to Krishna Jewellers in the past.

[69] Although there are a number of issues and possible breaches which might have been investigated further by the Police and which may have resulted in further information which supported the Police Complaint, the Authority is unable to assume or infer anything against Krishna Jewellers in this regard.

[70] The Authority notes here that the Police had ample opportunities to clarify and amplify the Complaint but in the end they did not avail themselves fully of these opportunities.

[71] Krishna Jewellers may consider itself a little fortunate that it may now retain its licence. After 24 years in business its record keeping was not up to standard.

[72] In the final analysis, although there are obvious failings by Krishna Jewellers in terms of its record keeping, the written material does not satisfy the Authority that it is presently not fit and proper to hold a certificate.

[73] Because of the circumstances described above this is not an appropriate case for a licence to be cancelled

[74] It is the view of the Authority that the Police Complaint should be dismissed.

[75] The Police Complaint is dismissed.

**DATED** at AUCKLAND this 20<sup>th</sup> day of April 2014.

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S L Cole  
**Licensing Authority of Secondhand Dealers and Pawnbrokers**