

[2014] NZSHD 9

Application No: 14 / 013059

IN THE MATTER

of the Secondhand Dealers and Pawnbrokers Act 2004

AND

IN THE MATTER

of an application by **LLANNYS QUEN BURGESS** of Auckland for a Waiver of disqualification under s.23 of the Act, and an application for an Individual Licence pursuant to s.8 of the Act

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

DECISION

[1] Mrs Llannys Quen Burgess (“the applicant”) applied for an Individual Licence (“licence”) under s.8 of the Secondhand Dealers and Pawnbrokers Act 2004 (“the Act”) on 14 March 2014.

[2] Sections 24 to 27 of the Act relating to certificates of approval (“certificates”) apply to this application for a licence by virtue of s.9(2) of the Act.

[3] On 31 March 2014 the Police filed documents in opposition to this application with the Licensing Authority of Secondhand Dealers and Pawnbrokers (“the Authority”). Although the Police documents did not specifically allege in terms of s.25 of the Act that the applicant was “not a fit and proper person to hold a certificate” the Authority considers the Police opposition to be a “Police Objection” under s.25 and s.26 of the Act.

[4] A copy of the Police Objection was sent to the applicant on 2 April 2014.

[5] The basis of the Police Objection at that time was that the applicant was currently facing 10 charges jointly with her husband Robin Adrian Burgess of Receiving Stolen Property (“Receiving”) under s.246 and s.247 of the Crimes Act 1961, and one charge against her alone of Entering into Transactions on Behalf of a Secondhand Dealer without a Certificate (“Operating without a Certificate”), under this Act. These charges related to their joint secondhand business in Avondale.

[6] Attached to the Police Objection were copies of the 10 joint charges and the one charge against the applicant alone.

[7] The Police Objection noted that the applicant was due to appear next to answer the charges before the Waitakere District Court on 26 May 2014.

[8] On 22 April 2014 the applicant wrote to the Authority. In her letter she said "*I wish to lodge an appeal and request a hearing to have this matter adjudicated*". The Authority took this to mean that the applicant was requesting a hearing in person before the Authority pursuant to s.26(1) of the Act.

[9] In a Minute dated 26 April 2014 the Authority deferred the issue of setting down a hearing in person of the Police Objection until such time as the charges before the District Court were resolved one way or another.

[10] On 3 June 2014 the Police advised the Authority that all 10 of the Crimes Act charges against the applicant had been discharged pursuant to s.347 of that Act on 26 May 2014, but that she had been convicted on the one charge under this Act of Operating without a Certificate. This one charge however encompassed 44 separate transactions. The applicant was convicted and fined \$1,000 and ordered to pay Court Costs.

[11] The Police confirmed their opposition to the applicant obtaining a licence. The situation had however changed considerably. No longer was the applicant in danger of being convicted of serious Crimes Act charges which would have resulted in her automatically being disqualified from holding a certificate and a licence under the Act.

[12] On the other hand she now had a disqualifying conviction under s.22(b) of the Act which prevented her from obtaining a licence or certificate unless she successfully applied for a Waiver of this disqualification pursuant to s.23 of the Act.

[13] This conviction under the Act also removed the cloak in the form of the Criminal Records (Clean Slate) Act 2004 which hitherto would have prevented the Authority from taking into account her earlier previous convictions which were more than 7 years old.

[14] In terms of the Police Objection the discharge of the 10 Crimes Act charges and the conviction on the one charge under this Act also shifted the focus from whether or not the applicant was a fit and proper person to hold a certificate under s.25(1) of the Act, to whether the Authority should waive her disqualification from holding a certificate which was based upon her single recent conviction.

[15] Under s.23 of the Act the Authority is able to waive a disqualification (except in the case of a conviction for a "specified offence" as defined in s.4 of the Act) if the Authority is satisfied that there are 'special reasons' why the applicant should not be disqualified from holding a certificate.

[16] On 3 June 2014 the applicant was advised by the Authority that she was entitled to apply for a Waiver of disqualification. At the same time she was provided with a Waiver application form and information to assist her in her application for a Waiver. It was explained that in order to obtain a Waiver of disqualification she would have to provide 'special reasons' in writing to the Authority explaining why she should not be disqualified from holding a certificate

[17] The applicant was also provided with a copy of the information contained in the recent Police letter to the Authority which included details of her recent conviction and confirmation from the Police that they wished to continue with their opposition to her licence application.

[18] The applicant was given two weeks to provide the Authority with her 'special reasons' in writing explaining why she should not be disqualified from holding a certificate. This two week period would expire on 17 June 2014.

[19] As there had been no response from the applicant by 13 June 2014 an Authority case manager sent a repeat email containing the information about the Waiver of disqualification to the applicant.

[20] On 19 June 2014 the case manager tried to contact the applicant on both her supplied phone numbers without success and sent a follow-up email to her.

[21] On 20 June 2014 the case manager spoke to the applicant and extended the deadline for her Waiver application until 4 pm that day.

[22] Later that day the Authority received a brief email from Louise Brinsden (the daughter of the applicant) asking for a Waiver of disqualification on behalf of the applicant for the following reasons;

- [a] The applicant had previously held a licence, which was for life (*n.b. the Authority is unable to find any record of the applicant previously holding a licence or certificate*).
- [b] When the Act was amended she thought she could operate under her husband's licence.
- [c] Although her husband had been charged and convicted, all but one of the charges against her had been dropped.
- [d] The only conviction against her was not having a licence, which is the reason she is now applying for a licence to operate her business.

[23] Attached to this email was an *unsigned* letter from Ms Wendy Leslie. Ms Leslie made the following points:

- [a] She supports the applicant in her application.
- [b] The applicant has not been charged with a criminal act, only a breach of the Act, for which she was fined \$1,000.
- [c] The Police have made this a personal matter and have targeted the applicant for unknown reasons.
- [d] There are no convictions which prevent the applicant having a licence.

[e] Ms Leslie is a Social Worker who has known the applicant for 6 years and has found her to be honest in her dealings, and not to have caused her any concern.

[24] In response to the Waiver application the Police point out:

[a] The applicant's partner Robin Burgess pleaded guilty to the joint charges and was sentenced to three years and six months imprisonment.

[b] The applicant must have been aware of her partner's activities.

[c] The applicant and her partner are directors and shareholders in the companies Coffee and Gems Ltd and Dessen Investments Ltd.

[d] Both companies are registered to the same address in Avondale where their secondhand dealer premises (Rob's Trading Post) are located.

[e] Robin Burgess is not a suitable person to hold a certificate or licence.

[25] In a short further response from Ms Brinsden she states;

[a] The Police had spelled her parents names incorrectly.

[b] Mr Burgess did not plead guilty to the charges brought by the Police.

[c] The Police falsely claimed Mr Burgess received \$1.6 million worth of stolen gold when in fact he pleaded guilty to only \$250,000 of reckless Receiving.

[d] The applicant was only convicted of a minor charge.

[e] Mr Burgess is being removed as a director from Coffee & Gems 2 Go Ltd.

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

[27] 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.

[28] The applicant is disqualified from holding a certificate under s.22(b) of the Act by virtue of her recent conviction for Operating without a Certificate (which seems to be pursuant to s.20(1)(a) of the Act).

[29] Unless the Authority waives the disqualification the applicant will not be eligible to hold a certificate under s.28(1) of the Act and will not be entitled to a hearing in person under s.26(2) of the Act.

[30] The Authority must therefore now consider the question of Waiver.

Waiver

[31] On 3 June 2014 the Authority alerted the applicant to the provisions in s.23 of the Act whereby she could apply for a Waiver of disqualification and provided her with information about how to go about it.

[32] The applicant was supplied with copies of all the Police Objection material including copies of the 11 charges.

[33] The applicant was given two weeks to provide the Authority with her 'special reasons' in writing explaining why she should not be disqualified from holding a certificate. This two week period expired on 17 June 2014

[34] Despite a reminder from the Authority on 13 June 2014 the applicant had not provided any 'special reasons' in writing by 17 June 2014.

[35] Only after phone calls and an email on 19 June 2014 and a final ultimatum on 20 June 2014 did the Authority receive a brief Waiver request, not however from the applicant herself, but from her daughter Louise Brinsden.

[36] In essence the brief Waiver application written by Ms Brinsden puts forward two assertions, namely that the applicant thought she could operate under her husband's licence, and that ultimately the serious charges against her were dropped and she was convicted a much lesser offence. Ms Leslie is supportive and makes peculiar suggestions of a Police vendetta.

[37] The later submission by Ms Brinsden asserts that her father's convictions were considerably less serious than alleged by the Police and she repeats that her mother's conviction was for relatively minor matter.

[38] The Authority considers that in the circumstances the applicant is not really interested or fully committed to this Waiver application. She did not take advantage of the two weeks initially made available to her, and despite prompting eventually left it to her daughter to file the Waiver application only after additional time was made available. The applicant has made no effort on her own behalf.

[39] It is clear the applicant has been involved in the secondhand business for many years and would have or should have been well aware of the licensing and other provisions contained in the Act. The applicant's claim that she thought she could operate under Robin Burgess' licence is also a little difficult to accept particularly when her own list of convictions reveal one for Receiving, and a number for breaches of the Act on 14 August 2001, the same day on which her husband was also convicted of a breach of the Act (see *Re Burgess* [2006] NZSHD 7 (24 March 2006).

[40] It is noted that as a result of a Robin Burgess' recent (21 March 2014) Receiving conviction relating to their business in Avondale and which resulted in a prison sentence of three years and six months imprisonment this Authority was forced to cancel his secondhand dealers licence (*Burgess* [2014] NZSHD 6 (15 April 2014).

[41] The Authority has no doubt in the circumstances that the applicant is well aware of the charges against her husband, the sentence of imprisonment and the cancellation of his licence.

[42] The Authority considers that it is significant that the applicant has made no attempt to distance herself from the serious crime for which her husband and business partner, with whom she presumably worked closely, was recently convicted and sentenced to imprisonment.

[43] The applicant's other claim that she has only been convicted of a minor offence is in the circumstances and without more hardly a 'special reason' upon which she can rely to avoid disqualification, particularly as the conviction was for a representative charge which encompassed 44 separate transactions.

[44] It has not escaped the Authority also that in her written application for a licence the applicant specifically answered "None" to the question which asked about her business partner's name. Nor did she provide any details at all about her husband Robin Burgess in the application.

[45] The purpose of the Act (s.3) is to make it harder for criminals to dispose of stolen goods through secondhand dealers and pawnbrokers and to make it easier for the police to recover stolen goods and solve property crimes.

[46] The applicant and her husband both have a number of convictions for Receiving and various breaches of the Act, going back at least to 2001.

[47] In the circumstances of this case what was required from the applicant on this occasion was a genuine attempt in writing *from the applicant herself*, in a timely fashion, explaining why because of her own particular circumstances she should not be disqualified. She needed to address the circumstances of the secondhand business being operated by her and her husband/ business partner which resulted in him being jailed for three and a half years for receiving a significant quantity of stolen property. A number of letters or references in support may also have been helpful.

[48] Instead what the Authority received was tardy, inadequate, impersonal and ill-considered.

[49] Not one of the reasons put forward by the applicant or a combination of them amount to 'special reasons'.

[50] Accordingly the Authority is not satisfied on the basis of the written material before it that there are 'special reasons' why the applicant should not be disqualified from holding a certificate.

Decision

[51] The applicant is disqualified from holding a certificate because of her conviction under the Act on 26 May 2014.

[52] Her application for a Waiver of this disqualification is hereby Refused.

[53] Pursuant to s.26(2) of the Act the applicant's request for a hearing in person must be and is also hereby Refused.

[54] The applicant remains disqualified and is therefore ineligible to hold a certificate (and also a licence) under s.28(1)(a) of the Act.

[55] It follows that the Authority cannot issue a licence to the applicant.

[56] The application for a licence is therefore Refused.

[57] It is not necessary in the circumstances of this case to determine whether to uphold or dismiss the Police Objection.

DATED at AUCKLAND this 28th day of June 2014

S L Cole
Licensing Authority of Secondhand Dealers and Pawnbrokers