

[2014] NZSHD 10

LASDP Number: 14 / 014541

IN THE MATTER

of the Secondhand Dealers and
Pawnbrokers Act 2004

AND

IN THE MATTER

of an application for a Certificate
of Approval by **RAYMOND**
PATRICK MILLANE of
Christchurch

BEFORE THE LICENSING AUTHORITY OF
SECONDHAND DEALERS AND PAWNBROKERS

DECISION

The Application

[1] On 2 July 2014 Mr Raymond Patrick Millane of Christchurch (“the applicant”) applied to the Licensing Authority of Secondhand Dealers and Pawnbrokers (“the Authority”) for a certificate of approval (“certificate”) to be issued to him under the Secondhand Dealers and Pawnbrokers Act 2004 (“the Act”).

[2] Section 19 of the Act requires that every person who, with the authority of a licensed secondhand dealer, enters into a transaction on behalf of the dealer or, with the authority of a licensed pawnbroker, issues a pledge ticket on behalf of the pawnbroker, and every person who manages, controls or supervises such a person must hold a certificate. A certificate is defined in s.4 of the Act as a certificate of approval issued under s.28.

Eligibility to Hold a Certificate

[3] Section 28(1)(a) of the Act provides that 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 of the Act and, if there has been a Police objection to the person, the Authority has dismissed the objection. If a Police objection is upheld by the Authority, the person is ineligible to hold a certificate.

[4] Section 22(a) to (h) of the Act sets out the various grounds upon which a person is deemed to be disqualified from holding a certificate under the Act.

[5] Under s.22(a) of the Act in particular a person is disqualified from holding a certificate if that person has been convicted of a '*specified offence*' within the past five years.

[6] A '*specified offence*' is defined in s.4 of the Act as an offence under sections 217 to 265 of the Crimes Act 1961 (which relate to crimes against rights of property), or an offence under the Fair Trading Act 1986.

[7] Section 23 of the Act gives the Authority discretion to waive a disqualification from holding a certificate resulting from 1 or more of the grounds for disqualification as set out in s.22(b) to (h) of the Act, but not for a disqualification resulting from a conviction for a '*specified offence*' under s.22(a).

Discussion

[8] The Authority has completed checks on this application pursuant to sections 21(3) and 24 of the Act.

[9] These checks reveal that the applicant has four criminal convictions dated 22 June 2011 from the Christchurch District Court. One of these convictions is for 'Demanding with Intent to Steal' under s.239 of the Crimes Act 1961.

[10] The Authority is satisfied that the applicant Raymond Patrick Millane is the same Raymond Patrick Millane who was convicted of the four charges in Christchurch on 22 June 2011 which include the conviction under s.239 of the Crimes Act 1961. The full name, the date of birth and the driver licence number of the convicted person are identical with details supplied by the applicant in his application.

[11] Such a conviction under s.239 of the Crimes Act 1961 is a '*specified offence*' as defined in 4 of the Act.

[12] By virtue of being convicted of this '*specified offence*' the applicant is disqualified from holding a certificate for a period of five years from the date of the conviction pursuant to s.22(a) of the Act.

[13] Because the disqualification results from a '*specified offence*' the Authority has no power to waive the disqualification under s.23 of the Act.

[14] The applicant is therefore ineligible to hold a certificate under s.28 of the Act and his application for a certificate must therefore be refused.

[15] The Authority notes here that the applicant made a similar application to the Authority for an individual licence on 14 May 2013. On 28 June 2013 that application was refused because the applicant was disqualified on the basis of the same conviction under s.239 of the Crimes Act 1961.

[16] The applicant's conviction for Demanding with Intent to Steal on 22 June 2011 was an absolute bar to his obtaining an individual licence in 2013, is still an absolute bar to his obtaining a certificate at present, and will continue to be a bar to any further applications for a period of five years from the date of conviction, namely until 22 June 2016 or unless the current law is amended.

Decision

[17] The application by Mr Raymond Patrick Millane for a certificate is REFUSED.

DATED at AUCKLAND this 14th day of July 2014

S L Cole

Licensing Authority of Secondhand Dealers and Pawnbrokers