

[2015] NZSHD 5

Application Number: 15 / 022048

IN THE MATTER

of the Secondhand Dealers and
Pawnbrokers Act 2004

AND

IN THE MATTER

of an application by **MR C** of
Lower Hutt pursuant to s.21 of the
Act for a certificate of approval.

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

DECISION

The Application

[1] This is an application by MR C of Lower Hutt (“the applicant”) for the issue of a certificate of approval (“certificate”) 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] 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 Licensing Authority (“the Authority”) under s.23 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 of the Act sets out the events and circumstances which could result in a person being disqualified from holding a certificate. The first of these, under s.22(a), is that the person has been convicted of a “*specified offence*” within the past five years. A *specified offence* is an offence under ss.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. If a person does not meet this requirement then he or she is disqualified from holding a certificate.

[5] Section 22 of the Act also refers to other matters which could result in a person being disqualified from holding a certificate. Although these are not relevant in this

application, it is useful to set them out here as they indicate the type of circumstance which the legislature considered would render a person unfit to hold a certificate. A person is disqualified if that person:

- has been convicted within the past five years of an offence under the Act (other than an offence punishable by no more than a fine not exceeding \$2,000); or
- Is under the age of 18 years; or
- has been convicted of any offence under the Pawnbrokers Act 1908 or the Secondhand Dealers Act 1963, within the past five years; or
- has been subject, at any time within the past five years, to a sentence of imprisonment; or
- has had a certificate or licence cancelled, or had renewal of a certificate or licence refused, within the past five years; or
- holds a certificate that is suspended; or
- is, or was at the relevant time, a person concerned in the management of a company that has had a licence cancelled within the past five years.

[6] Section 23 of the Act gives the Authority power to waive a disqualification resulting from any of these events, except a disqualification resulting from a conviction for a *specified offence* within the past five years, if the Authority is satisfied that there are 'special reasons' why the applicant should not be disqualified from holding a certificate.

[7] The scheme of the Act is thus, that only a conviction for a *specified offence* is an absolute bar to holding a certificate. So long as an applicant has not been convicted of a *specified offence* within the past five years and 'special reasons' exist in cases where the applicant would otherwise be disqualified under the provisions of s.22(b) to s.22(h) of the Act, the Authority may issue a certificate to that person.

Procedure on an Application

[8] When an application for a certificate is made which complies with s.21(1) of the Act, it is first referred for a report on the checks described in s.24, which are principally checks as to whether the applicant has had any disqualifying convictions within the past five years. Whether or not the report indicates that the applicant is disqualified, both the report and the application are referred to the Commissioner of Police. If the report indicates that the applicant is disqualified, it is also referred to the applicant.

[9] The Commissioner of Police may object to an applicant regardless of the content of the report obtained by the Authority on whether the applicant is disqualified. If the Commissioner objects, it is known as a "*Police Objection*". When there is a Police Objection the Authority must decide whether or not the applicant is a fit and proper person to hold a certificate.

The Present Application

[10] The application was received on 10 April 2015. In form, the application complied with the requirements of s.21(1) of the Act. The report on the applicant obtained by the Authority under s.24 revealed no disqualifying convictions.

[11] The application and the report were sent to the Commissioner of Police. The Authority subsequently received an objection to this application from the Police in a letter dated 14 May 2015.

[12] Section 25 of the Act requires that a Police Objection must set out the reasons for the objection. The Police Objection in this case is based solely upon a number of previous convictions on the applicant's record, principally three convictions for Assault in 2014 and one conviction for Breaching a Protection Order in 2015. These are not disqualifying convictions. The Police did not include Summaries of Facts in relation to the convictions or other details relating to them. It seems that the Police were of the view that the convictions speak for themselves and clearly indicate that the applicant is not a fit and proper person to hold a certificate.

[13] A copy of the Police Objection was sent to the applicant on 25 May 2015. At the same time he was advised of his options which included the possibility of requesting a 'Hearing in Person' (hearing) of his case under s.26 of the Act or making written submissions in support of his application.

[14] The applicant responded by email on 27 May 2015 requesting a hearing.

[15] When advised by the Authority that the applicant had requested a hearing, the Police confirmed that they would not be submitting any further evidence and that they would leave it to the Tribunal to make a decision.

[16] On being advised by the Authority that the Police would not be presenting any further evidence the applicant withdrew his request for a hearing and notified the Authority he would instead make written submissions in support of his application.

[17] Written submissions were subsequently received from the applicant on 19 June 2015 and a copy was forwarded to the Police.

[18] The Authority is now required under s.26(3) of the Act to determine on the basis of the written material submitted by the parties whether to uphold or dismiss the Police Objection.

The Police Objection

[19] The applicant has no disqualifying convictions under s.22 of the Act.

[20] The Police Objection to his application is essentially based upon his four most recent convictions (three Assaults and one of Breaching a Protection Order) in the past two years. It is noted that the Assaults themselves occurred in 2013.

[21] It is noted that there have been no Summaries of Facts provided by the Police which would have placed the applicant's offending in context and might have better assisted the Authority to determine the seriousness of the offending.

[22] However the penalties imposed for the applicant's offending do assist to an extent in assessing the seriousness of that offending. The applicant was sentenced to Community Work and Supervision on the Assault charges, and given a nine month suspended sentence (known as COTCUFS) in respect of the most recent conviction (Breaching a Protection Order). This indicates to the Authority that the offending was not at the higher end of the scale.

The Applicant's Submissions

[23] The applicant has provided the following material in response to the Police Objection and in support of his application;

- [a] A respectful letter from the applicant himself providing an explanation for his offending. He also describes *inter alia* how he has made positive changes in his life, obtained a new job and has since been promoted, and has been honest with his boss about his past "*from word go*".
- [b] A report from Folau Alofa Trust dated 16 January 2014 confirming that as at that date the applicant had attended 11 of 16 sessions of the Living Without Violence Programme, that his condition/attitude was improving appropriately and that he was gaining insight into his issues. It notes also that the applicant had agreed to continue with the programme.
- [c] A further report from Folau Alofa Trust dated 29 January 2014 confirming that the applicant had completed the Living Without Violence Programme without missing a session.
- [d] A letter from the applicant's Probation Officer dated 9 October 2014 confirming the applicant had completed an alcohol counselling programme and a violence prevention programme with distinction and had further regular support from an alcohol and drug counsellor. The letter concludes "*in my mind [the applicant] is simply trying to get on with his life by working hard and surrounding himself with the appropriate support*".
- [e] A letter of support from TePaePae Arahi Trust dated 20 February 2015. It notes that the applicant has been supported by a counsellor from this organisation since 17 May 2014, has been attending a number of sessions on a weekly basis for substance and anger management, and has also been attending Alcoholics Anonymous on a regular basis. The letter goes on to say that the applicant has accepted responsibility for his offending and expressed remorse for his actions and is doing all he can to avoid any further problems from the legal system in future.
- [f] A further letter from a Probation Officer dated 24 February 2015 confirming the applicant's successful completion of his sentence of 12 months' Supervision, and that he has also completed his sentence of 200 hours Community Work "*well within the required timeframe*".
- [g] A letter from the applicant's employer confirming that he took the applicant on as an employee knowing full well about his troubled past. He says the applicant is now a proven worker with a new role which requires a

certificate under the Act, and that he “*fully supports Mr C in his application for a certificate*”.

Discussion

[24] On the face of it and on their own, previous convictions such as those of the applicant in the past two years could in certain circumstances support a finding that the applicant is not a fit and proper person to hold a certificate under the Act, particularly in cases where there was no response from an applicant.

[25] This applicant has however provided the Authority with significant positive material from himself and other persons showing that despite his convictions he has made significant progress in dealing with his past issues and trying to improve his life.

[26] The Police Objection relies on the applicant’s previous convictions alone and without more. The Police have since been supplied with the applicant’s submissions and have chosen not to file any further material or to respond other than commenting that”*we would like the Authority to make a decision on the material provided*”.

Decision

[27] The applicant may not have been considered a fit and proper person to hold a certificate in terms of s.25(1) of the Act two years ago as evidenced by his previous convictions, and noting that the more serious offending occurred in 2013.

[28] His positive efforts since then however seem to have turned his situation around. He has successfully completed several counselling programmes, completed his sentences of Supervision and Community Work, has obtained employment and promotion within that employment and has the support of his employer.

[29] In the circumstances I am NOT satisfied that MR C is at present not a fit and proper person to hold a certificate.

[30] The Police Objection is DISMISSED.

DATED at AUCKLAND this 23RD day of June 2015.

S L Cole
Licensing Authority of Secondhand Dealers and Pawnbrokers