

[2015] NZSHD 6

Application Number: 15 / 021831

IN THE MATTER

of the Secondhand Dealers and Pawnbrokers Act 2004

AND

IN THE MATTER

of an Application by **MS D** of Papakura pursuant to s.21 of the Act for a Certificate of Approval

AND

IN THE MATTER

of an Objection by the **NEW ZEALAND POLICE** pursuant to s.25 of the Act

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

HEARING at Papakura on 29 June 2015

APPEARANCES

Constable Pillay and Sergeant Duder - NZ Police
Ms D - Applicant

DECISION

The Application

[1] This is an application by Ms D (“the applicant”) of Papakura to the Licensing Authority of Secondhand Dealers and Pawnbrokers (“the Authority”) for the issue of a Certificate of Approval (“certificate”) under the Secondhand Dealers and Pawnbrokers Act 2004 (“the Act”). The Police have objected to the application under s.25 of 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 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.

[5] Under s.22(a) of the Act a conviction for a "*specified offence*" within the past five years automatically disqualifies a person from holding a certificate. "*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) and any offence under the Fair Trading Act 1986.

[6] Section 22 of the Act also refers to other matters which could result in a person's disqualification from holding a certificate. Although these do not apply to 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.

[7] 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.

[8] 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

[9] 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.

[10] 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 Licensing Authority must decide whether the applicant is a fit and proper person to hold a certificate.

The Present Application

[11] The application was received on 8 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 of the Act revealed no disqualifying convictions.

[12] The application and the report were sent to the Commissioner of Police. In a letter dated 24 April 2015 the Police objected to the application under s.25 of the Act on the basis that the Police considered that the applicant was not a fit and proper person to hold a certificate.

[13] When notified of the Police Objection the applicant requested a hearing in person ("the hearing") pursuant to s. 26(1) of the Act.

[14] A hearing date was then set down at the Papakura District Court and the parties were supplied with a copy of the Authority's Guidelines.

[15] Written submissions in the form of a statement from Constable Martine Erceg were subsequently received by the Authority on 23 June 2015 and a copy promptly forwarded to the applicant.

[16] No material was received from the applicant prior to the hearing.

The Hearing on 29 June 2015

[17] Constable Erceg testified on oath as the only Police witness. She read and adopted her prepared and signed statement and produced it as Exhibit 1. An identical statement with Police incident printouts and submissions was also produced as Exhibit 2. Constable Erceg was then cross-examined briefly by the applicant.

[18] The applicant then testified on oath and produced three signed references as Exhibits A, B and C. She was then cross-examined by Constable Pillay.

[19] The applicant's partner attended the hearing in support of the applicant but did not take part.

[20] The proceedings were audibly recorded.

The Police Evidence

[21] In support of the Police Objection the Authority takes into account the following allegations from the Police in the form of Constable Erceg's written statement and appendices and the testimony of the parties. It is noted that Constable Erceg's evidence is not first-hand but has been printed out from Police computer records.

[22] The Police say that the applicant was part of a group who were drinking on the side of the road in Clendon Park on 21 December 2014. The group became aggressive towards the Police and one of the persons was arrested. The applicant interfered with the arrest despite warnings and was arrested for Obstruction. Ms D was dealt with by way of formal caution.

[23] The Police say that later that morning when the applicant was released from custody she got into an argument with her partner. They both started pushing one another and as a result they were given a Police warning for common assault.

[24] The Police say that on 7 October 2012 they were called to a noisy party in Manurewa. The applicant tried to interfere when the Police were trying to make an arrest. The applicant didn't comply with Police directions and was arrested for Obstruction. She was dealt with by way of formal caution.

[25] The Police say that on 5 May 2012 they attended a domestic incident at the applicant's home. The applicant was arguing with her sister and their father had to step in. Both parties were warned by the Police.

[26] The Police say that on 9 January 2012 they were called to an address in Papakura. The occupier alleged that the applicant and her partner threatened to assault the occupier's partner because of an incident involving their children. The Police say the applicant and her partner denied the threats and received a Police warning.

[27] The Police say that their records reveal a total of 14 family violence occurrences between 11 March 2001 and 5 May 2012 which are associated with the applicant. On two separate occasions the applicant was the offending party.

The Applicant's Evidence

[28] In respect of the incident on 21 December 2014 the applicant testified that she became concerned when her niece was arrested and handcuffed. After she herself was arrested she later assisted the Police (at their request) to help settle her niece down.

[29] In respect of the incident later that morning the applicant says her partner turned up intoxicated and refused to believe she had been arrested earlier. This merely resulted in some pushing.

[30] In respect of the incident on 7 October 2012 the applicant says the Police attended an incident on the street. She remained inside her property but her partner was arrested. She had little involvement.

[31] The incident on 5 May 2012 was as a result of her sister stealing a phone and selling it. Their father stopped the argument.

[32] The applicant says that the incident on 9 January 2012 was in respect of her son being bullied. She says that the other woman threatened them with gang member involvement. She herself she did not yell at or threaten the woman.

[33] The applicant says she and her partner have three children together. She is the main provider. She also looks after her father after her mother passed away. Her elder daughter attends a special school. Two nephews live with them also. The applicant says she lives 10 minutes from her work and the special school and needs her certificate so she can continue to work for her current employer in an expanded role. She says she has not consumed alcohol for six months.

[34] The applicant has produced a reference from her regional manager (Exhibit B). He speaks of her in extremely glowing terms and is totally supportive of her application. He notes that a certificate would allow the applicant to engage in a wider variety of work within the business.

[35] The applicant has also produced a reference from a fellow employee (Exhibit C). He has known her for seven to eight months and speaks very highly of her personality, character and her excellence in customer service,

[36] The applicant has also produced a reference from her immediate supervisor at her previous employment (Exhibit A). He has known her for four years, speaks very highly of her as a worker and as a person and endorses her as a candidate for a certificate.

Discussion

[37] The Police evidence is based on material extracted from Police records and not upon Constable Erceg's first hand observations. Constable Erceg was only able to relay the information to the Authority. For the most part the applicant accepts she was involved in these incidents but disputes the extent and nature of her involvement in some cases. Where there is a dispute in the evidence it comes down to the applicant's testimony against a Police record. Having heard and observed the applicant the Authority assesses her as being truthful in her evidence.

[38] In any event none of the incidents referred to by the Police were serious enough to warrant a prosecution and the applicant was not convicted of any criminal charges.

[39] The evidence as to family violence incidents over a period of 11 years is lacking in detail and is a little difficult to comprehend, but seems to comprise a number of Police attendances at domestic disputes. In most instances however the applicant is listed as the victim or complainant. There is no indication that anyone was arrested. It is also noted that the Police did not fully expand upon the written records about these domestic incidents.

[40] When considering the allegations and warnings relied upon by the Police in this case the Authority does not consider that they reach the level of seriousness of the grounds of disqualification contained in s.22 of the Act, and referred to in paragraph 6 above.

[41] The applicant is a mature woman in her 30s. Clearly alcohol was a common denominator in the past and the applicant realises this. She says she has now abstained from alcohol for the last six months as a result of the last incident in December 2014.

[42] The applicant has a good job and her prospects within the company will be enhanced were she to obtain a certificate. She is spoken of very highly by her regional manager, a fellow employee and her former supervisor.

[43] The applicant's partner was at the hearing to support her. Together they are supporting the applicant's father, their three children (one with special needs) and two nephews.

[44] No doubt the catalogue of incidents involving the applicant as contained in the Police evidence has now brought it home to the applicant that her involvement in such incidents must be a thing of the past.

[45] The applicant's past involvement with the Police is regrettable and does her no credit. On the other hand the impression gained by the Authority is that she has now moved on and left her past behind her.

[46] Overall the Authority considers that the Police have not made a sufficiently compelling case that the applicant should be regarded at present as not a fit and proper person to hold a certificate.

Decision

[47] The Police Objection is dismissed and the applicant's application for a certificate is granted.

DATED at AUCKLAND this 7th day of July 2015.

S L Cole

Licensing Authority of Secondhand Dealers and Pawnbrokers