

[2014] NZSHD 3

Application Number: 13 / 011768

IN THE MATTER

of the Secondhand Dealers and
Pawnbrokers Act 2004

AND

IN THE MATTER

of an application by **JASMINE
ALYSSA MURRAY** of Papakura
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 Jasmine Alyssa Murray (the applicant) of Papakura, 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.

[3] A certificate is defined in s.4 as a certificate of approval issued under s.28.

Eligibility to Hold a Certificate

[4] 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 of Secondhand Dealers and Pawnbrokers (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.

[5] Section 22 of the Act sets out the events and circumstances which could result in a person being disqualified from holding a certificate. These include a minimum age of 18 years for an applicant. If an applicant has not reached the age of 18 they are thereby disqualified from holding a certificate.

[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* (as defined) 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 there are special reasons why the person should not be disqualified from holding a certificate, 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 (Police). If the report indicates that the applicant is disqualified, it is also referred to the applicant.

[9] The 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 Police object, it is known as a "*Police Objection*". When there is a Police Objection the Authority must decide whether the applicant is a fit and proper person to hold a certificate.

The Present Application

[10] The application was received on 6 December 2013. In form, the application complied with the requirements of s.21(1) of the Act and the report on the applicant obtained by the Authority under s.24 of the Act revealed no disqualifying convictions.

[11] The application and the report were sent to the Police.

[12] In a letter dated 23 December 2013 the Police wrote to the Authority objecting to the applicant on the basis that she was disqualified from holding a certificate by virtue of being under the age of 18.

[13] In her application the applicant has listed her date of birth as 21 January 1997. This means that at the time of the Police Objection the applicant was 16 years of age and at the time of the issue of this Decision she is still only 17 years of age.

[14] A copy of the Police Objection was sent to the applicant on 13 January 2014 and she was advised that in response she could apply to the Authority for a Hearing in person or make submissions in support of her application despite the fact that she was not yet 18 years of age.

[15] On 21 February 2014 the Authority again wrote to the applicant advising her that it was still open to the Authority to waive her disqualification and issue her with a certificate if she was able to provide special reasons in writing within two weeks as to why she should not be disqualified because of her age.

Discussion

[16] The position is that the applicant is presently disqualified from holding a certificate by virtue of s.22(c) of the Act in that she has not yet reached the age of 18 years.

[17] *Prima facie* therefore she is deemed to be not mature enough yet to hold a certificate under the Act.

[18] The applicant has not responded to the Authority after receiving a copy of the Police Objection nor after being given the opportunity to write to the Authority applying for a waiver of her disqualification on the basis of special reasons.

[19] Therefore the applicant remains disqualified from holding a certificate pursuant to s. 22(c) of the Act because of her age until 20 January 2015 when she turns 18 years of age.

Decision

[20] The Police Objection is upheld and this application is Refused.

DATED at AUCKLAND this 11th day of March 2014.

S L Cole
Licensing Authority of Secondhand Dealers and Pawnbrokers