

IN THE MATTER

of the Secondhand Dealers and
Pawnbrokers Act 2004

AND

IN THE MATTER

of an Individual Licence held by
ROBIN ADRIAN BURGESS of
Auckland

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

DECISION

Background

[1] Mr Robin Adrian Burgess of Auckland holds Individual Licence no. 711946 (“the licence”) issued under the Secondhand Dealers and Pawnbrokers Act 2004 (“the Act”).

[2] The licence was originally issued in 2006. It was renewed in 2011 and is currently due to expire on 20 March 2016.

[3] By way of a message dated 11 April 2014 the Avondale Police have notified the Licensing Authority of Secondhand Dealers & Pawnbrokers (“the Authority”) that Mr Burgess has recently been convicted on a charge of Receiving Stolen Property involving his secondhand business which is located in Avondale and is called Rob’s Trading Post.

[4] The Police advise that Mr Burgess was sentenced to a term of three years and six months imprisonment on 21 March 2014 at the Auckland District Court following a plea of Guilty, and they have provided the Authority with a printout of the relevant conviction details.

Statutory provisions

[5] Section 16(1)(a) of the Act provides that the Authority *must* cancel a licence held by an individual if the licence holder ceases to be eligible to hold a certificate.

[6] 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.

[7] 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.

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

[9] 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.

[10] 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

[11] The Authority is satisfied that licence holder Robin Adrian Burgess is the same Robin Adrian Burgess who was convicted of Receiving and sentenced to imprisonment on 21 March 2014. The full name, date of birth, home address and business address as supplied by the Police are identical with details held by the Authority.

[12] By virtue of being convicted of the offence of Receiving under the Crimes Act 1961 Mr Burgess is disqualified from holding a certificate for a period of five years pursuant to s.22(a) of the Act.

[13] Mr Burgess is in the position where the Authority has no power to waive his disqualification from holding a certificate under s.23 of the Act because he has been convicted of a 'specified offence'.

[14] Mr Burgess is no longer eligible to hold a certificate under s.28 of the Act.

[15] Where a licence holder ceases to be eligible to hold a certificate their licence must be cancelled.

[16] Mr Burgess' licence must therefore be cancelled under s.16(1)(a) of the Act.

Decision

[17] The individual licence held by Mr Burgess is cancelled with effect from the date of this decision.

[18] The attention of Mr Burgess is drawn to the provisions of s.16(5) of the Act which provide for a fine on conviction if a licence holder fails without reasonable excuse to return a cancelled licence, and every copy of it, to the Authority immediately on cancellation.

[19] Mr Burgess has a right of appeal to the District Court against this decision which must be brought within 20 days of the date of the decision, or within any longer period that the District Court, on application made before or after the expiration of that period, allows.

DATED at AUCKLAND this 15th day of April 2014

S L Cole
Authority of Secondhand Dealers and Pawnbrokers