

[2014] NZSHD 2

Application Number: 13 / 011685

**IN THE MATTER**

of the Secondhand Dealers and  
Pawnbrokers Act 2004

**AND**

**IN THE MATTER**

of an application by **JOSEPH  
TEINAKORE** of Auckland  
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 JOSEPH TEINAKORE of Auckland (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 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. 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 26 November 2013. 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 16 December 2013.

[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 upon a conviction entered against the applicant at the North Shore District Court on 28 February 2012. The conviction is for *Making an Intimate Video Recording* in April 2011. Attached to the Police Objection was a printout of the conviction. The Authority does not intend here to go into the details of the offending. The Police submission is however that a conviction for an unpleasant type of offending like this means 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 20 December 2013. At the same time he was advised of his options which included the possibility of requesting a Hearing of his case or making written submissions in support of his application within 3 weeks.

[14] The applicant eventually responded by email on 18 February 2014. He apologised for not responding earlier but indicated he had nothing further to add.

### ***Discussion***

[15] The applicant has no disqualifying convictions. The Police objection to his application is based on his relatively recent criminal conviction which is of a very unpleasant nature.

[16] The applicant does not dispute any details of the Police objection nor does seek to support his application in any way.

[17] The absence of a response from the applicant suggests to the Authority that the applicant has lost interest in obtaining a certificate. In the Authority's experience, when applicants are keen to obtain a certificate so that they can continue in employment, the application is often supported by a letter from the applicant's employer.

[18] Had the applicant responded to the Police objection addressing his criminal conviction and perhaps providing supporting material from his employer and/or other persons, he may be able to persuade the Authority that he is currently a fit and proper person

[19] Because of the lack of response to the Police objection and in the light of the information in the Police objection, the Authority is of the view that the Police objection should be upheld.

***Decision***

[20] The Police objection is upheld and the applicant's application for a certificate is Refused.

[21] The applicant is of course entitled to make a further application at some stage in the future. If he does he would be wise to ensure he is prepared to support his application in the event that the Police once again lodge an objection.

**DATED** at AUCKLAND this 20<sup>th</sup> day of February 2014.

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S L Cole  
**Licensing Authority of Secondhand Dealers and Pawnbrokers**