

[2016] NZSHD 3

SHD Number 16-029822

IN THE MATTER

of the Secondhand Dealers and
Pawnbrokers Act 2004

AND

IN THE MATTER

opposition to the granting of a
certificate to **EDWARD JOSEPH
MARTIN**

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

HEARING on the papers

DECISION

[1] Mr Martin has a managerial position with a local branch of an international retail chain. He has applied for a certificate under s 21 of the Secondhand Dealers and Pawnbrokers Act 2004 (the Act) as his employer requires him to hold a certificate as part of his employment.

[2] The Police oppose granting Mr Martin a certificate. They say that in January 2010 Mr Martin was charged with assault and although he was not convicted of the offence the circumstances were such that it makes him an unsuitable person to hold a certificate. They consider the only reason why he was not convicted was because the elderly complainants were not in a position to be able to give evidence against him.

[3] Mr Martin however says that the events happened more than six years ago and he has no convictions of any sort, not even traffic infringements. He says that the incident that resulted in him being charged was a domestic dispute between his husband and his husband's family. Mr Martin says that he only intervened to defend his partner who was being assaulted. He further says that he was not convicted because there was insufficient evidence to support the allegations against him, not due to the unavailability of the alleged victims.

[4] With every objection filed by the Police the question for the Authority is whether the applicant is a fit and proper person to hold a certificate.¹ Therefore the key issue for me to decide is whether there is sufficient evidence to establish that Mr Martin is not a fit and proper person to hold a certificate?

[5] In making this decision the purpose of the Act as set out in s 3 of the Act must be my primary consideration. The Authority has generally taken the view that an example of a fit and proper person under the Act is someone who can be trusted to comply with his or her obligations as a secondhand dealer and pawnbroker under Part 3 of the Act, and who is aware of the need to be vigilant and to use his best endeavours to ensure stolen goods do not pass through their business. On the other had a person who encourages the transit of

¹ Secondhand Dealers and Pawnbrokers Act 2004, ss25–29.

stolen property through their premises or who turns a blind eye when stolen property is offered to them is clearly not a fit and proper person.

[6] Section 22(a) of the Act states that a person is disqualified from holding a certificate if he has been convicted of a specified offence within the last five years. Specified offence is defined in s 4 of the Act and includes any offence under ss 217 to 265 of the Crimes Act 1961. Assault is not a specified offence under the Act and in any event the events occurred more than five years ago and Mr Martin was not convicted.

[6] The Police submit that the circumstances that led to Mr Martin being charged are sufficient to establish he is not a fit and proper person to hold a certificate. However I do not accept that the fact someone was charged with assault following a family argument more than six years ago is sufficient in itself to establish that they are not a fit and proper person to be granted a certificate. There is no evidence to suggest that Mr Martin has committed any other offence or been involved in any disqualifying illegal activity. In addition he was not convicted on the assault charge due to insufficient evidence.

[7] Mr Martin has worked for his current employer for five and a half years and has produced a very positive reference from the proprietor of the business where he works. The proprietor refers to Mr Martin as being "professional and friendly" "capable, competent and trustworthy" and he has no hesitation in recommending Mr Martin for a certificate under the Act.

[8] Based on the evidence presented I am satisfied that Mr Martin is aware of the need to be vigilant and will use his best endeavours to ensure stolen goods do not pass through the business in which he is employed. I am also satisfied he can be trusted to comply with his obligations as a secondhand dealer under Part 3 of the Act.

Conclusion

[9] I conclude that the Police have failed to establish that Mr Martin is not a fit and proper person to hold a certificate. The Police opposition to Mr Martin's certificate is therefore dismissed and his certificate is granted.

DATED at Auckland this 26th day of July 2016

P A McConnell
Licensing Authority of Secondhand Dealers and Pawnbrokers