

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN  
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

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IN THE MATTER OF DISCIPLINARY

PROCEEDINGS AGAINST:

JOHN ROYCE,

FINAL DECISION AND ORDER

RESPONDENT

LS0109141RSG  
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The State of Wisconsin, Department of Regulation and Licensing, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Department of Regulation and Licensing.

The Division of Enforcement and Administrative Law Judge are hereby directed to file their affidavits of costs with the Department General Counsel within 15 days of this decision. The Department General Counsel shall mail a copy thereof to respondent or his or her representative.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated this 28<sup>th</sup> day of November, 2001.

Oscar Herrera

Department Secretary

**STATE OF WISCONSIN**  
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

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IN THE MATTER OF

DISCIPLINARY PROCEEDINGS

AGAINST:

**JOHN L. ROYCE,**

**PROPOSED DECISION**

RESPONDENT

LS0109141RSG  
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**PARTIES**

The parties in this matter under section 227.44 of the Statutes and section RL 2.037 of the Wisconsin

Administrative Code, and for purposes of review under sec. 227.53, Stats. are:

Complainant:

Division of Enforcement

Department of Regulation and Licensing

1400 East Washington Ave.

Madison, WI 53708-8935

Respondent:

John L. Royce

1915 South 83rd Street

West Allis, WI 53219

Disciplinary Authority:

Department of Regulation and Licensing

1400 East Washington Ave.

Madison, WI 53703

### **PROCEDURAL HISTORY**

A. This case was initiated by the filing of a complaint (DOE case # 01 RSG 013) with the Department of Regulation and Licensing on September 14, 2001. A disciplinary proceeding (hearing) was scheduled for October 9, 2001. Notice of Hearing was prepared by the Division of Enforcement of the Department of Regulation and Licensing and sent by certified mail on September 14, 2001, to John L. Royce. As of October 9, 2001, no certified mail receipt had been returned. No answer was filed by Mr. Royce. The disciplinary proceeding was held as scheduled on October 9, 2001. Mr. Royce did not appear. The Department of Regulation and Licensing was represented by attorney Steven Gloe of the Department's Division of Enforcement. Mr. Gloe moved that Mr. Royce be found in default under sec. RL 2.14, Wis. Admin. Code, and the motion was granted. The hearing was recorded. No transcript was prepared.

B. Following the hearing on October 9, 2001, it was noticed that the address used for mailing the Notice of Hearing to Mr. Royce was 1915 South 83rd Street, West Allis, WI 53219, which appeared as his address on a Milwaukee County Criminal Complaint dated December 11, 2000, but that this address conflicted with his address of record with this department, 2123 South 5th Place, Milwaukee, WI 53207. The ALJ requested that Mr. Gloe send the complaint to Mr. Royce at his address of record along with a new hearing date.

C. An Amended Complaint was filed on October 18, 2001, and a second disciplinary hearing was scheduled for November 1, 2001. Notice of Hearing was prepared by the Division of Enforcement of the Department of Regulation and Licensing and sent by certified mail sent to Mr. Royce at his address of record on October 18, 2001. As of the hearing date, no certified mail receipt had been returned. No answer was filed by Mr. Royce. The hearing was held as scheduled on November 1, 2001. Mr. Royce did not appear. The Department of Regulation and Licensing was again represented by Mr. Gloe, who again moved that Mr. Royce be found in default under sec. RL 2.14, Wis. Admin. Code, and the motion was granted. The hearing was recorded. No transcript was prepared. The testimony and exhibits entered into evidence at both hearings form the basis for this Proposed Decision.

### **APPLICABLE STATUTES**

440.26 Private detectives, investigators and security personnel; licenses and permits.

...

(6) DISCIPLINE.

...

(b) Subject to the rules promulgated under s. 440.03 (1), the department shall revoke the license or permit of any person who has been convicted of a felony in this state or elsewhere and who has not been pardoned for that felony.

...

440.22 Assessment of costs

...

(2) In any disciplinary proceeding against a holder of a credential in which the department or an examining board, affiliated credentialing board or board in the department orders suspension, limitation or revocation of the credential or reprimands the holder, the department, examining board, affiliated credentialing board or board may, in addition to imposing discipline, assess all or part of the costs of the proceeding against the holder. ....

...

### **FINDINGS OF FACT**

1. The respondent, John L. Royce, holds a Private Security Permit issued by the Wisconsin Department of Regulation and Licensing.
2. The last-known address on file with the Department of Regulation and Licensing for Mr. Royce is 2123 South 5th Place, Milwaukee, WI 53207.
3. On March 13, 2001, Mr. Royce was convicted in Milwaukee County Circuit Court of the felony offense of Criminal Damage to Highway/Vehicle as a Party to the Crime, contrary to sections 943.01 (1) and 939.05 of the Wisconsin Statutes.

### **ANALYSIS**

This is a disciplinary proceeding conducted under the authority of ch. 227, Stats. and ch. RL 2, Wis. Admin. Code. The Division of Enforcement in the Department of Regulation and Licensing filed a complaint with the department alleging that the respondent, John L. Royce, violated rules regulating the practice of Private Security Persons. The burden of proof is on the Division of Enforcement to prove the allegations of the complaint by a preponderance of the evidence. Sec. 440.20(3), Stats.; 75 Att. Gen. 76; Gandhi v. Medical Examining Board, 168 Wis.2d 299, 483 N.W.2d 295 (Ct.App. 1992).

Mr. Royce did not answer or appear to contest the allegations. The Division presented evidence of Mr. Royce's felony conviction and it met its burden of proof. Although there is no indication that Mr. Royce ever received the complaint, the administrative rules regarding disciplinary proceedings permit the Department to act if the complaint was sent to the respondent's last-known address of record, which was done, and if the respondent fails to answer or appear. Certified court documents establish that Mr. Royce was convicted of a felony, and no evidence of a pardon was presented. The statute regulating Private Security Persons requires that the Private Security Permit issued to a person who has been convicted of a felony be revoked.

The assessment of costs against a disciplined professional is authorized by sec. 440.22(2), Wis. Stats. The Department has the discretion to impose all, some, or none of the costs of the proceeding. An order that Mr. Royce pay the entire cost of the proceeding is included, as a matter of fairness to the other members of the profession. The Department of Regulation and Licensing is a "program revenue" agency, which means that the costs of its operations are funded by the revenue received from its licensees. Moreover, licensing fees are calculated based upon costs attributable to the regulation of each of the licensed professions, and are proportionate to those costs. This budget structure means that the costs of prosecuting cases for a particular licensed profession will be borne by the licensed members of that profession. It is fundamentally unfair to impose the costs of prosecuting a few members of the profession on the vast majority of the licensees who have not engaged in misconduct. Rather, to the extent that misconduct by a licensee is found to have occurred, that licensee should bear the costs of the proceeding. In this case, Mr. Royce could have reduced the costs by reaching an agreement with the prosecuting attorney for the voluntary surrender of his permit. His failure to communicate with the Department prevented that, and imposition of the entire cost of the proceeding is appropriate.

### **CONCLUSIONS OF LAW**

I. The Department of Regulation and Licensing has personal jurisdiction over the respondent, John L. Royce, based on his holding a credential issued by the Department, and based on notice under sec. 801.04 (2), Stats. Under sec. RL 2.08 (1), Wis. Admin. Code, a respondent may be served by mailing to his last-known address.

II. The Department is the legal authority responsible for issuing and controlling credentials for Private Security Persons, under section 440.26, Stats., and it has jurisdiction over the subject-matter of a complaint alleging unprofessional conduct, under sec. 15.08(5)(c) and sec. 440.26 (6), Stats.

III. Mr. Royce is in default, under sec. RL 2.14, Wis. Admin. Code, and the Department may enter an order on the basis of the complaint and other evidence.

IV. Mr. Royce's felony conviction requires the revocation of his Private Security Permit, under section 440.26 (6) (b), Stats.

### **ORDER**

THEREFORE, IT IS ORDERED that the Private Security Permit issued to John L. Royce is hereby revoked.

IT IS FURTHER ORDERED that John L. Royce pay the costs of this proceeding, as authorized by sec. 440.22 (2), Stats., and sec. RL 2.18, Wis. Admin. Code.

Dated and signed: November 5, 2001

John N. Schweitzer

Administrative Law Judge

Department of Regulation and Licensing