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Before The
State Of Wisconsin
DEPARTMENT OF REGULATION AND LICENSING

In the Matter of the Disciplinary Proceedings
Against **WILLIAM P. STACK AND WSI, LTD.**,
Respondent

FINAL DECISION AND ORDER
ORDER 0000133

Division of Enforcement Case No. 05 RAL 031

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, make 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 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 at Madison, Wisconsin on the 2nd day of April, 2010.



Celia M. Jackson, Secretary
Department of Regulation and Licensing



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of the Disciplinary Proceedings
Against **WILLIAM P. STACK AND WSI, LTD.**,
Respondent

PROPOSED DECISION AND ORDER
DHA Case No. DRL-09-0026

Division of Enforcement Case No. 05 RAL 031

The parties to this proceeding for purposes of Wis. Stat § 227.53 are:

Mr. William P. Stack
1309 Reserve Street
P. O. Box 1043
Stevens Point, WI 54481

Department of Regulation and Licensing, by

Attorney Lara Herman
Department of Regulation and Licensing
Division of Enforcement
PO Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

The Department of Regulation and Licensing, Division of Enforcement's (the Complainant's) Amended Complaint dated April 20, 2009, alleged that Mr. William P. Stack (the Respondent) violated several laws governing the private detective profession in two separate incidents. The first incident occurred on November 10, 2005, at Blackhawk Repossession ("Blackhawk") in Lomira, Wisconsin. The second incident occurred on January 18, 2009 in Wautoma, Wisconsin.

The Amended Complaint also alleged that the Respondent engaged in unprofessional conduct by altering his Department issued firearms permit. A third count, relating to an alleged lack of liability insurance, was dismissed by Stipulation of the parties.

Pursuant to due notice, hearing was held at Madison, Wisconsin, Jeffrey D. Boldt, administrative law judge presiding, on November 5, 2009. The parties requested an opportunity to submit written briefs, and the last submittal was received on December 29, 2009.

FINDINGS OF FACT

The November 10, 2005 Incident at Blackhawk Repossession

1. On November 10, 2005, Mr. William P. Stack (Stack) accompanied an old friend, Kenneth Efange (Efange), to Blackhawk Repossession to recover a vehicle belonging to Efange. Stack was not on duty as a private investigator at this time and location. (Stack) He was "on call," but not "on duty performing security work" at this time. (Id.) Rather, he was simply giving a ride and doing a favor for his friend.
2. Stack was armed with a handgun in a shoulder holster. Stack testified that he was aware of the concealed carry laws, and that he made no effort to conceal the weapon when he entered Blackhawk Repossession.
3. Blackhawk Repossession owner Gregory Kottke disputed that the weapon was in plain view. Kottke testified at hearing that Stack displayed the weapon to him during a conversation about the repossession and investigation businesses. (TR p. 53)
4. However, in Officer Sharon Fox's supplemental police report, she reported that Mr. Kottke stated that he had observed Mr. Stack had a concealed weapon under his jacket *prior* to entering the business. (Ex. 4, p.5) The language of this report is somewhat confusing: "Mr. Kottke stated that the two gentlemen (Stack & Efange) had walked into his business and prior to entering his business he did observe that the one subject did have a concealed weapon under his jacket." (Id.) It is not entirely clear how the weapon could be both "concealed" and "observed" by Kottke prior to the moment when Stack and Efange entered Blackhawk Repossession. Concealed means "hidden from ordinary observation." The record on this point is sufficiently confusing that it is not possible to make an unequivocal finding that Stack's weapon was concealed at all times on November 10, 2005.
5. Assuming that Kottke observed a weapon on Stack while he was outside, before Stack and Efange entered Blackhawk Repossession, the fact remains that once he entered Blackhawk his weapon was concealed to some extent to the people present inside Blackhawk. Both Kottke and another Blackhawk employee, Ms. Lambrecht, testified that when Stack was inside Blackhawk, his firearm was not visible until he opened his jacket to reveal the gun. (Tr. p. 52, p. 41-42) Lambrecht testified that she did not know Stack had a weapon on him, and it was not visible to her, until he opened his jacket (*id.*). Both Kottke and Lambrecht testified that Stack did not tell them who he was, why he was at Blackhawk, or tell them up front that he was carrying a gun. (Tr. p. 41-42; p. 52-54)
6. Stack also testified (and argues in his brief) that he did not carry a concealed weapon because his weapon was clearly visible to the police when they arrived on the scene.

The fact that his weapon was visible to the police when they arrived at Blackhawk does not negate the fact it may have been previously concealed from the view of at least Ms. Lambrecht (and perhaps Mr. Kottke) when Mr. Stack was inside Blackhawk with his jacket on.

7. Similarly, Mr. Stack testified that he had his firearms permit clearly displayed around his neck, and the police report corroborates his testimony. The police report indicates that Stack showed Officer Ebert an ID card that was hanging around Mr. Stack's neck. (Ex. 4, p. 3) Officer Sharon Fox's supplemental report also indicates that when she arrived, Officer Ebert was speaking with Mr. Stack and she could see that he had a chain around his neck with some kind of identification on it. (Ex. 4, p. 5) The fact that his permits were around his neck and that he provided them to police when questioned undermines to some extent the testimony of Gregory Kottke and Julie Lambrecht who both testified that they did not see Mr. Stack wearing any kind of badge, patch, lettering that clearly identified him as a security guard. (Tr. pp. 41, 48, 53, 58) However, this identification was not as a "security guard" but, rather, as a private detective.

8. Mr. Stack maintains that he had a constitutional right to wear a firearm while not on duty as a private investigator. Even assuming that to be true, Stack does not have a right to carry a concealed weapon under Wisconsin law. Moreover, the fact that Stack was not arrested and criminally prosecuted does not negate the fact he may have been carrying a concealed weapon at Blackhawk. The police left Blackhawk rather abruptly to respond to a burglary in progress (Ex. 4, p. 5), but did refer the matter to the district attorney. (Ex. 4, p. 1) The fact the district attorney's office exercised its discretion in not charging Stack with a crime does not mean no crime was committed.

9. Nonetheless, it is clear that the Lomira police did not believe that Stack was threatening anyone at Blackhawk sufficiently to charge him with any crime. Overall, the Blackhawk incident appears to have been largely a misunderstanding occasioned by Stack bringing a firearm where it was strictly prohibited by company policy. While both Gregory Kottke and Julie Lambrecht felt threatened, this was likely because of Blackhawk's strict prohibition against bringing any firearms on site during any redemption of repossessed property, and their heightened sensitivity due to prior incidents involving weapons at Blackhawk. However, Stack had no way of knowing of these incidents, nor of the policy of Blackhawk. Stack was at Blackhawk to provide a ride to his friend and was not personally privy to any correspondence sent to Efangé. While intent is not an element of the crime of "carrying a concealed weapon," under Wisconsin law (See: Wis. Stat. § 941.23), there was no showing that Stack intended to keep the weapon "concealed" while he was at Blackhawk. Rather, Stack pointed the weapon out to Kottke in an innocent gesture that was misinterpreted because of the context of past incidents and the company policy prohibiting any firearms on the property.

10. The record is simply too ambiguous as to whether Stark "concealed" the weapon or whether it was in "plain view." Part of this confusion may have been due to the fact that the weapon was apparently in plain view when Stack had his winter coat off, but only partly so when he had it on. (Stack) The Department has not carried its burden of proof with respect to whether William Stack carried a concealed weapon on November 10, 2005, in Lomira, Wisconsin.

William Stack Knowingly Carried Multiple Concealed, Loaded Weapons
on January 18, 2009, in Wautoma, Wisconsin

11. The facts of the incident on January 18, 2009, in Wautoma, Wisconsin are much less ambiguous than the Blackhawk matter. While on duty as a private investigator doing undercover surveillance of a putative wayward husband, and seated in his car next to a dummy to give the appearance that there were two people in the automobile, William Stack was confronted by Wautoma Police Officer Justin Jackson. Though “on-call,” Stack was not doing private security work for the ATM service which would have allowed him to be armed if he was clearly marked while actually doing security work (as opposed to merely being on-call). Officer Jackson testified that he discovered two loaded, concealed handguns inside a bag located in the right rear passenger seat and hidden from plain view. (Tr. pp. 129-130) Jackson also discovered a third loaded weapon on Mr. Stack’s person in a hip holster that only became visible when Stack exited the car at the officer’s request. (Id.)

12. Stack admitted at hearing that the two guns in the camera bag in his vehicle were concealed. (Tr. p. 200, lines 1-7, 22-23) Furthermore, Officer Jackson’s testimony demonstrates that all three weapons—the one on Stack’s person and the two in a camera bag in rear passenger floor area—were in fact concealed, i.e., hidden from ordinary observation. (Tr. pp. 129-130; Ex. 6, p. 4) Stack placed the concealed weapons there on purpose, because he wanted to keep them warm inside the car rather than placing them in the cold trunk. (Tr. p. 200)

13. Mr. Stack maintains that the third handgun he had was in a holster on his person, and was therefore in plain view. However, Officer Jackson testified that even that gun was not visible to him until after Mr. Stack exited the vehicle—it was hidden from ordinary observation and therefore concealed. (Tr. p. 130)

14. A clear preponderance of the credible evidence established that William Stack violated state law and the terms of his license by knowingly carrying concealed weapons on January 18, 2009, in Wautoma, Wisconsin. Further, it is clear that Stack did so willfully because his case relating to the (more ambiguous) Blackhawk Repossession matter was pending and well known to him at the time of the 2009 violation.

15. Stack altered his state-issued license and permit by placing a photo of himself on his credentialing permits, laminating them and essentially wearing them as a makeshift “badge.” (Ex. 12, pp. 14-17)

16. Stack admitted that he had placed the photo on his firearms permit, at the suggestion of a firearms instructor, in part to facilitate his entry into correctional facilities in connection with doing work for the public defender’s office. (Tr. p. 186) There was no showing that laminating his credentials was an unprofessional action. Finally, Stack admitted adding the gold seal of the PAWLI, a Wisconsin trade group, to the back of his identification. (Tr. p. 186) In itself, the alterations constitute a minor violation, but it appears to be part of a troubling pattern of using his state-issued credentials to justify carrying concealed weapons. (Tr. p. 177 and p. 227)

DISCUSSION

Under state regulations, uniformed security guards can carry weapons, when “on duty performing security work” when there is a substantial need for being armed. Wis. Admin. Code § RL 34.01 (1) Private detectives must meet all of these same requirements, including being uniformed and on duty performing security work, to carry a weapon at all (unless they are also a peace officer). See: RL 34.01 (3) and (4). It is not at all persuasive that Stack was “on call” as security guard at the same time he was expressly on duty as a private investigator (Wautoma) or off-duty and simply giving a ride to his friend (Lomira). He was neither “uniformed” nor “on duty performing security work” during either incident and had no specific legal basis as a security guard to carry a weapon.

The first incident appeared to have been an innocent mistake by Mr. Stack. There was no reason for him to be intimidating anyone at Blackhawk Repossession, and the incident appears to have arisen because Mr. Stack struck up a conversation with the very nervous owner of the firm, Mr. Kottke—apparently under the mistaken impression that Kottke was also a private investigator. The Blackhawk proprietor and his staff, understandably on guard against angry patrons whose vehicles or property had been repossessed, had a strict policy against bringing firearms on its property. When Mr. Stack pointed out his weapon, Blackhawk called the police. The police did not believe that Stack had done anything threatening or intimidating. That incident could largely be seen as an unfortunate misunderstanding and both the police and District Attorney appeared to interpret it as such. Stack had no reason to know of the policies of Blackhawk with respect to firearms, and the record is not entirely clear that his weapon was concealed. Stack may have well believed it was exposed, or he would not have pointed it out to Mr. Kottke.

However, the second incident was far more serious and warrants the revocation of his firearms permit and suspension of his private investigator licenses. Even after having been warned about carrying concealed weapons from the 2005 Blackhawk incident, Stack was heavily armed with concealed weapons as the 2009 incident unfolded in Wautoma. This represents a willful disregard for the limits of his role as a private investigator and his lack of authority to carry concealed weapons of any kind. Further, none of Stack’s legal arguments hold up with respect to the Wautoma incident.

Mr. Stack claims in his brief that the weapons found in his vehicle in Wautoma “were encased, in the back of the car on the floor on the right passenger seat area of the floor of the vehicle,” apparently in some effort to justify his carrying the weapons. Wisconsin Stat. § 167.31 addresses the safe use and transportation of firearms, and defines “encased” to mean “enclosed in a case that is expressly made for the purpose of containing a firearm.” Two loaded guns in a camera bag are simply not “encased” within the meaning of the law. But even if they were considered “encased” within the meaning of the law, that does not help Mr. Stack at all, and in fact supports the Department’s allegation of concealment. Being “encased” means they were concealed. Wis. Admin. Code § RL 34.011 requires loaded firearms being transported in a vehicle by a licensee to be in plain view. The mere fact of putting the guns in the bag rendered them concealed.

Officer Jackson testified that the guns in the bag were not at all visible to him from outside the vehicle. (Tr. pp. 129-130) Mr. Stack reiterates his claim that the guns were in the bag on the floor of his car to prevent them from freezing, but, as DRL counsel notes, there is no exception to Wis. Stat. § 941.23 or Wis. Admin. Code § RL 34.011 based on the outdoor temperature.

Mr. Stack maintains that he had a constitutional right to wear a firearm while not on duty as a private investigator in the 2005 Lomira incident, and further asserts that the circumstances of his private detective work gave him the same right in the 2009 Wautoma incident. However, the undersigned ALJ does not have authority to rule on the constitutionality of the Wisconsin concealed carry law. Stack's reliance on such arguments to this tribunal are therefore preserved but are not a factor in this decision. (See: *Kuechmann v. La Crosse School Dist.*, 170 Wis. 2d 218, 225 (WI Ct. App 1992) ("Constitutional issues must be raised before an administrative agency even if *the agency lacks the power to resolve them.*") (Emphasis added)

The Department has carried its burden of proof on the second alleged violation by establishing by a preponderance of the credible evidence that William Stack violated state law and the terms of license by knowingly carrying concealed weapons while on duty as a private investigator on January 18, 2009 in Wautoma, Wisconsin. Wisconsin Statute § 941.23 prohibits any person except a peace officer from carrying a concealed weapon. Wisconsin Administrative Code § RL 34.01(2) provides, in part, that "an owner or employee of any [private detective] agency may not carry on, about or near the person any concealed firearm at a time when he or she is on duty." Further, this violation expressly constitutes "unprofessional conduct" by a private detective within the meaning of § RL 35.01(8), which prohibits "violating any state or federal rules or regulations related to care, handling or use of firearms or other dangerous weapons"

The third violation relates to altering his state-issued license and permit by placing a photo of himself on his permits, laminating them and essentially wearing them as a makeshift "badge." Stack argues that the lamination was simply to preserve the document. He makes a good point that such a practice was common with driver licenses years ago, and that the code does not expressly forbid lamination. The lamination itself is not found to be unprofessional conduct. Rather, adding the photo and seal did create a sort of "badge" that Mr. Stack used in an unprofessional manner, by displaying them to give the impression that he was authorized to carry weapons in manner in which he was not while either on-duty or off-duty as a private detective. It should be noted that, private detectives are banned from wearing or displaying "any badge, shield or star in the course of acting as a private detective", but the Department did not specifically make this allegation in the Amended Complaint. (See: Wis. Admin. Code RL § 35.01(4)).

While minor in itself, the proven violation of the Respondent altering his firearms permit underscores the need for revocation of Mr. Stack's firearms permit. Mr. Stack seems intent on using his state permits and license to rationalize his unlawful and unprofessional use of weapons.

The Division of Enforcement proposed two alternative disciplinary recommendations, and, given the fact that the first incident was not established to be a proven violation, the lesser

discipline seems more appropriate. This involves suspension of his private detective and private detective agency licenses for a period of six months. The Division of Enforcement also suggested revocation of Mr. Stack's firearms permit. This seems appropriate, given the willful disregard of the concealed carry prohibition represented by the 2009 incident and Mr. Stack's use of his license and permit to rationalize his unlawful and unprofessional use of weapons.

However, the Division urged a five-year ban for Mr. Stack to apply for or be issued any new firearms permit in the context of working for any private detective agency. Given Mr. Stack's lack of prior discipline and the fact that no one was harmed in either incident, a three year prohibition period seems more appropriate. Mr. Stack is a man of obvious intelligence and resourcefulness. The shorter period of time should be a sufficient period for him to put this matter behind him, and to be ready to apply for any new firearms permit in the context of working for any private detective agency.

Costs

Because one count was unproven, and another dismissed prior to hearing it does not appear appropriate to assess costs against the Respondent. This is particularly so, given his lack of prior discipline, and the fact that he was not charged criminally for any of the alleged violations.

CONCLUSIONS OF LAW

1. The Complainant, the Department of Regulation and Licensing Division of Enforcement, bears the burden of proof in this matter by a preponderance of the evidence pursuant to Wis. Stat. § 440.20(3).

2. Wisconsin Statute § 941.23 prohibits any person except a peace officer from carrying a concealed weapon. Wisconsin Administrative Code § RL 34.01(2) provides, in part, that "an owner or employee of any [private detective] agency may not carry on, about or near the person any concealed firearm at a time when he or she is on duty."

3. Uniformed security guards can carry weapons, when "on duty performing security work" when there is a substantial need for being armed. Wis. Admin. Code § RL 34.01 (1) Private detectives must meet all of these same requirements, including being uniformed and on duty performing security work, to carry a weapon at all (unless they are also a peace officer). See: RL 34.01 (3) and (4). The Respondent did not meet these conditions for any of the alleged violations because he was not in uniform and not "on duty performing security work" at the time of either incident.

4. Wisconsin Admin. Code § RL 34.011. provides: No owner or employee of an agency may transport a loaded firearm in a vehicle, unless all of the following apply:

- (1) The firearm is in plain view. In this section "in plain view" means it is visible from ordinary observation to a person outside the vehicle.

- (2) If the firearm is a handgun, the owner or employee transports the firearm in a holster which is in plain view.
- (3) If the firearm is other than a handgun, the owner or employee transports the firearm in a device inside the vehicle which locks the firearm in position and prevents an unauthorized person from removing the firearm from the locking device and which is in plain view.
- (4) The owner or employee complies with the requirements in s. RL 34.01.

The Respondent did not meet the requirements to “transport a loaded firearm in a vehicle” in Wautoma in 2009 because the weapons were not in plain view.

5. The Department has carried its burden of proof on the second alleged violation by establishing by a preponderance of the credible evidence that William Stack violated state law and the terms of license by knowingly carrying concealed weapons while on duty as a private investigator on January 18, 2009 in Wautoma, Wisconsin. This violation constitutes “unprofessional conduct” within the meaning of s. RL 35.01(8).

6. The Department has also carried its burden of proof in demonstrating that, by altering his Department issued firearms permit, Mr. Stack engaged in conduct reflecting adversely on his professional qualification pursuant to Wis. Admin. Code RL § 35.01(4).

PROPOSED ORDER

REVOCATION of Mr. Stack’s firearms permit.

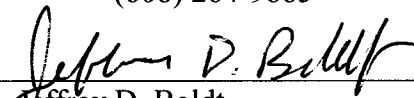
1. Mr. Stack shall not apply for or be issued any new firearms permit, to work for any private detective agency, for a minimum of THREE (3) years from the date of the Order. Before any application for a firearms permit will be considered by the Department for Mr. Stack, Mr. Stack shall successfully complete a minimum of 36 hours of training on firearms proficiency, safety, and laws and regulations under Wis. Admin. Code § RL 34.03 in the six (6) months preceding any application for a firearms permit.
2. SUSPENSION of Mr. Stack’s private detective license for six (6) months.
3. SUSPENSION of Mr. Stack’s private detective agency license for six (6) months.
4. During the six-month suspension of Mr. Stack’s private detective and private detective agency licenses, Mr. Stack shall not apply for or be issued a private security permit.

5. If after the suspension is over Mr. Stack seeks to transfer his employment to another private detective agency, Mr. Stack shall provide that private detective agency with a copy of the Order issued in this case prior to his seeking to transfer employment to another agency.

Dated at Madison, Wisconsin on January 26, 2009.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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FAX: (608) 264-9885

By: _____



Jeffrey D. Boldt
Administrative Law Judge