

# 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	:	FINAL DECISION
	:	AND ORDER
HERMAN P. WEBER,	:	LS0608093RSG
RESPONDENT.	:	

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Division of Enforcement Case No. 05RSG024

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 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 21st day of November, 2007.

Celia M. Jackson, Secretary  
Department of Regulation and Licensing

STATE OF WISCONSIN  
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

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IN THE MATTER OF THE DISCIPLINARY :  
PROCEEDINGS AGAINST : PROPOSED FINAL  
: DECISION AND ORDER  
HERMAN P. WEBER, :  
RESPONDENT. : LS 0608093 RSG

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Division of Enforcement Case No. 05 RSG 024

TO: Herman P. Weber  
503 N. Dries Street  
Saukville, WI 53080

Herman P. Weber  
245 5<sup>th</sup> Street SE C313  
East Wenatchee, WA 98802

Herman P. Weber  
General Delivery, USPS  
Port Orchard, WA 98366

Lara M. Herman  
Attorney for Complainant  
Department of Regulation and Licensing  
Division of Enforcement  
P.O. Box 8935  
Madison, WI 53708

PROCEDURAL HISTORY

A hearing in the above-captioned matter was conducted on October 5, 2006, before Administrative Law Judge (ALJ) Colleen M. Baird. The Complainant, the Division of Enforcement, appeared by Attorney Lara M. Herman. The Respondent, Herman P. Weber, did not appear and failed to file an Answer to the Complaint which was served upon the Respondent on August 9, 2006 and again on August 28, 2006. A Notice of Motion and Motion for Default was submitted by the Complainant on September 27, 2006. Based upon the entire record in this case, the ALJ recommends that the Department of Regulation and Licensing adopt as its final decision and order in this matter the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Herman P. Weber ("Weber"), whose date of birth is 6/25/1968, holds Wisconsin private security permit # 108-28232. The permit was first granted on April 11, 2005 and expired on August 31, 2006.
2. Weber's last reported address on file with the Department of Regulation and Licensing is 503 N. Dries Street, Saukville, WI 53080.
3. Weber left the state of Wisconsin in June, 2006 and moved to the state of Washington. The Division of

Enforcement had two addresses in Washington state for Mr. Weber: 245 5<sup>th</sup> Street SE C313, East Wenatchee, WA 98802 and GENERAL DELIVERY, USPS, Port Orchard, WA 98366. Upon information and belief, the Division of Enforcement believes that Weber is now in the state of Florida. His exact whereabouts are unknown.

4. According to Department records, Weber began working for private detective agency MJ Protection & Investigation LLP (“MJ Protection”) on June 28, 2005. At all times relevant to the alleged conduct, Weber was an employee of MJ Protection until he left the state in June 2006.

5. While employed at MJ Protection, Weber became the “Deputy Chief” of MJ Protection and in that capacity had supervisory responsibilities.

6. On June 29, 2005, Weber and three other employees of MJ Protection—Michael Walden (the owner of MJ Protection), Thomas Brusky and Angel Montero—went to the home of Carey Evers (“Evers”) wearing their MJ Protection security guard uniforms and duty belts containing pepper spray, handcuffs, batons and firearms. They asked Evers to step outside, which he did, and advised Evers that they were there to take him into custody on a Department of Revenue tax warrant.

7. Evers protested and told Weber, Walden, Montero and Brusky that they had no authority to arrest him.

8. When Evers attempted to re-enter his home, he was restrained and handcuffed. Weber, Walden, Montero and Brusky placed the handcuffed Evers in an unmarked MJ Protection van. At the time Evers was handcuffed and placed in the van, he was wearing a t-shirt, sweatpants and socks, but no shoes. Evers was not allowed to get any shoes before being placed in the van.

9. Weber, Montero and Brusky transported Evers to the 6<sup>th</sup> District Station of the Milwaukee Police Department with the intent of turning Evers over to the police. Walden had another assignment that evening and did not accompany the others to the police station.

10. Weber and Brusky took Evers inside the police station and Walden arrived in another vehicle to pick up Montero to take him to a security assignment for the evening.

11. The police station refused to accept Evers and told Weber and Brusky to take Evers to the Milwaukee County Jail.

12. Weber and Brusky took Evers to the Milwaukee County Jail where Evers was placed in a holding cell while Weber and Brusky spoke with jail staff.

13. Jail staff advised Weber and Brusky that they had no authority to place Evers in jail on a tax warrant and that Evers had to be released. Weber and Brusky then took Evers home.

14. According to Evers, he was in the custody of the Respondent for approximately five hours.

15. Prior to arresting Evers on the tax warrant, Weber and Brusky investigated the tax warrant against Evers by going to the Wisconsin Department of Revenue office in Milwaukee to verify that the tax warrant information they had obtained from the Consolidated Court Automation Programs (CCAP) website was valid. Weber and Brusky contend that they were told by a Department of Revenue employee that it was okay for them to pick up Evers on the outstanding tax warrant.

16. The Department of Revenue maintains that while they did verify that there was an outstanding tax warrant for Evers, they did not tell Weber and Brusky that the warrant provided a basis to arrest Evers. The Department of Revenue employee explained to Weber and Brusky that tax warrants are not used to arrest people, but are instead used for such actions as garnishments and supplemental hearings in court

17. Neither MJ Protection nor any of its employees had any kind of contract with the Wisconsin Department of

Revenue to pick up citizens on tax warrants or provide any services for the Wisconsin Department of Revenue. When Weber, Walden, Montero and Brusky picked up Evers, they were not working for any contracted client.

18. Weber informed the Department investigator that he has worked in the security industry since 1990 in several states. Weber told the investigator that he held a security guard license in California, worked as a transit officer in San Diego, was an assistant manager and security officer at a security firm in Florida, and owned a security firm in the State of Washington. Weber reported that he attended a police academy in Florida and worked as a deputy sheriff for the Glades County Sheriff's Department.

## CONCLUSIONS OF LAW

1. The State of Wisconsin Department of Regulation and Licensing has jurisdiction to act in this matter pursuant to Wis. Stat. § 440.26(6) and Wis. Admin. Code § RL 35.01 (intro).

2. By failing to file an Answer as required by Wis. Admin. Code § RL 2.09, and by failing to appear at the hearing, the Respondent Herman P. Weber, is in default under Wis. Admin. Code § RL 2.14, and the Department of Regulation and Licensing may make findings and enter an order on the basis of the Complaint and the evidence presented at the hearing.

3. By restraining Cary Evers on a civil tax warrant without his consent and without any lawful authority to do so, the Respondent falsely imprisoned Evers, in violation of Wis. Stat. § 940.30. This conduct reflects adversely on the Respondent's professional qualifications and subjects him to discipline pursuant to Wis. Stat. § 440.26(6)(a)2 and Wis. Admin. Code § RL 35.01(intro) and § RL 35.01(2).

4. Pursuant to Wis. Stat. §§ 440.26(1) and 440.26(1m), and Wis. Admin. Code § RL 30.02(13)(a), a private security permit authorizes the permit holder to stand watch for security purposes. By restraining Cary Evers on a civil tax warrant, the Respondent exceeded the scope of his private security permit and is subject to discipline pursuant to Wis. Stat. § 440.26(6)(a)2. and § 440.26(6)(a)4.

5. By investigating the tax warrant status of Cary Evers, the Respondent was acting as a private detective without being licensed as a private detective in violation of Wis. Stat. § 440.26(1), Wis. Admin. Code §§ RL 30.02(12)(a)2.b. and RL 31.01(2).

### ORDER

NOW THEREFORE, IT IS HEREBY ORDERED that effective on the date of this Order, the private security permit of Herman P. Weber, permit # 108-28232, and the right to renew that permit, is REVOKED.

IT IS FURTHER ORDERED that Herman P. Weber shall pay the costs of the Department in this matter, pursuant to Wis. Stat. § 440.22(2). Payment shall be made payable to the Wisconsin Department of Regulation and Licensing, and mailed to:

Department Monitor  
Department of Regulation and Licensing  
Division of Enforcement  
1400 East Washington Ave.  
P.O. Box 8935  
Madison, WI 53708-8935  
Telephone (608) 261-7904 Fax (608) 266-2264

### OPINION

The evidence submitted at the hearing shows that the Notice of Hearing and Complaint was duly served upon Mr. Weber on August 9, 2006 (Exhibit 4) and again on August 28, 2006 (Exhibit 7). Mr. Weber's signature appears on the certified return receipt card, acknowledging receipt of the notice and complaint on August 25, 2006. (Exhibit 8) However, Mr. Weber did not file an answer or defense to the Complaint. On September 27, 2006, the Complainant filed a Notice of Motion and Motion for Default. A Notice of Motion was served by mail at the Respondent's last known address in the Department of Regulation and Licensing records. The hearing on the Motion for Default was held on October 5, 2006, as stated in the Notice of Motion. Again, Mr. Weber did not respond, appear, or make any contact whatsoever with the Department or the Administrative Law Judge prior to or at the hearing. Nor has there been any contact, written communication or entry of appearance by any attorney on behalf of Mr. Weber.

Section RL 2.14 of the Wisconsin Administrative Code provides that a respondent who fails to answer a complaint or fails to appear at a hearing is in default. If found to be in default, the disciplinary authority may make findings and enter an order based upon the averments in the complaint. Mr. Weber did not file an answer to the Complaint or appear at the hearing in this matter. The record evidence showed that Mr. Weber was properly served with the Complaint and Notice of Hearing and with the Notice of Motion for Default. The Complainant introduced twenty-one (21) exhibits in support of the allegations in the Complaint, twelve of which pertained to the service of the documents. These service exhibits demonstrated that the

Complainant went above and beyond in its multiple and repeated efforts to notify the Respondent of the proceedings, including service by mail to his forwarding addresses in the states of Washington and Florida.

Based upon Mr. Weber's failure to file an answer to the Complaint, and his failure to appear at the hearing, the allegations in the Complaint have been effectively admitted and establish that Mr. Weber has engaged in unprofessional conduct. The only question remaining is the appropriate discipline for Mr. Weber's conduct and his violation of the laws regulating the practice of a private security person. Mr. Weber's conduct suggests a profound lack of professionalism and abuse of his authority. The profession of a private security person involves the guarding and protection of the physical beings or belongings of another; which by its nature involves an allotment of trust, confidence and authority.

A private security person must not abuse or exceed his or her trust and authority by engaging in conduct such as false arrest, imprisonment, restraint or investigation. Clearly, such coercive and improper acts are contrary to the legitimate duties of a private security person. Mr. Weber's conduct demonstrates that he willingly and knowingly engaged in conduct which is unbecoming and unlawful for a private security person. Furthermore, Mr. Weber's failure to file an answer to the Notice of Complaint or respond to the Notice of Motion for Default shows a troubling lack of respect for the disciplinary authority and an indifference to the standards of his profession. Mr. Weber had an opportunity to resolve this matter by stipulation, as did others who were involved in the misconduct. (*In the Matter of Disciplinary Proceedings Against MJ Protection & Investigation LLP, Michael Walden, Angel Montero, Thomas Brusky and Herman Weber, LS 0608035RSG*). However, Mr. Weber chose not to enter into a stipulation, but then failed to appear at his hearing to offer any evidence to explain or defend his actions.

Based upon the evidence of his misconduct and the lack of any mitigating evidence, the recommendation for revocation is appropriate. In fact, there is nothing in the record to suggest that imposing anything short of revocation would have a rehabilitative effect. Imposing anything less than revocation would also not aid in deterrence of others, but may instead wrongly encourage others to engage in similar conduct. Accordingly, revocation is the only appropriate way to safeguard the public. It is well established that the objective of professional discipline includes the protection of the public and the deterrence of other licensees from engaging in similar conduct. State v. Aldrich, 70 Wis. 2d 206, 209 (1976).

The imposition of full costs in this proceeding is reasonable and appropriate. The imposition of costs against a disciplined professional is authorized by §440.22(2), Wis. Stats. and §RL 2.18, Wis. Admin. Code. The Department has the discretion to impose all, some, or none of the costs of the proceeding. As a "program revenue" agency, the Department operations are funded by the revenue received from its licensees and those fees are calculated based upon costs attributable to the regulation of each of the licensed professions. This budget structure means that the costs of prosecuting cases for a particular licensee 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 upon the members of the profession who abide by the law. Since Mr. Weber is found to have engaged in unprofessional conduct, he alone should be held responsible for the full costs of this proceeding.

Based upon the substantial evidence of record, it is recommended that the Department adopt as its final decision in this matter, the Proposed Findings of Fact, Conclusions of Law and Order as set forth herein.

Respectfully submitted,

Dated this 3rd day of November, 2006.

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Colleen M. Baird  
Administrative Law Judge