

# 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 THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	FINAL DECISION
	:	AND ORDER
ANGEL L. MONTERO,	:	LS 0608091 RSG
RESPONDENT.	:	
	:	

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Division of Enforcement Case No. 05 RSG 024

TO: Angel L. Montero  
9314A W. Burleigh Street  
Milwaukee, WI 53222

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 Colleen M. Baird. The Complainant, the Division of Enforcement, appeared by Attorney Lara M. Herman. The Respondent, Angel L. Montero, did not appear and failed to file an Answer to the Complaint. On September 27, 2006, Complainant submitted a Notice of Motion and Motion for Default. The Administrative Law Judge issued a Proposed Decision on November 3, 2006.

Upon review of the Proposed Decision, the Department of Regulation and Licensing adopts and issues the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Angel L. Montero (“Montero”), whose date of birth is 4/15/1962, holds Wisconsin private security permit # 108-4029. This permit was first granted on July 1, 1997 and expired on August 31, 2006.
2. Montero’s last reported address on file with the Department of Regulation and Licensing is 9314A W. Burleigh Street, Milwaukee, WI 53222.
3. According to Department records, Montero worked as a private security guard for private detective agency MJ Protection & Investigation LLP (“MJ Protection”) from June 28, 2005 to August 8, 2005.
4. On June 29, 2005, Montero and three other employees of MJ Protection—Michael Walden (the owner of MJ Protection), Thomas Brusky and Herman 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.

5. Evers protested and told Walden, Montero, Montero and Brusky that they had no authority to arrest him.
6. When Evers attempted to re-enter his home, he was restrained and handcuffed. Walden, Montero, 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.
7. Montero, 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.
8. Montero 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. Montero was not involved in the rest of the events of the evening.
9. The police station refused to accept Evers and told Montero and Brusky to take Evers to the Milwaukee County Jail.
10. Montero and Brusky took Evers to the Milwaukee County Jail where Evers was placed in a holding cell while Montero and Brusky spoke with jail staff.
11. Jail staff advised Montero and Brusky that they had no authority to place Evers in jail on a tax warrant and that Evers had to be released. Montero and Brusky then took Evers home.
12. According to Evers, he was in the Respondent's custody for approximately five hours.
13. 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 Montero, Walden, Montero and Brusky picked up Evers, they were not working for any contracted client.
14. Montero informed the Department investigator that he has worked in the security industry for about 20 years. Montero indicated that he attended training in Florida when he worked as a security guard there and was told by the police officers putting on the training that security guards have no greater arrest powers than those held by private citizens.
15. Montero told the Department investigator that he was concerned about whether he and the other Respondents could take Evers into custody on a tax warrant, but felt that he had to follow the direction of his supervisors, Walden and Montero, or risk losing his job.

### 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 restraining Cary Evers on a civil tax warrant without his consent and without any lawful authority to do so, Angel L. Montero falsely imprisoned Evers, in violation of Wis. Stat. § 940.30. Such conduct reflects adversely on his professional qualification and subjects Montero to discipline pursuant to Wis. Stat. § 440.26(6)(a)2 and Wis. Admin. Code § RL 35.01(intro) and § RL 35.01(2).
3. 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, Angel L. Montero 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.

### ORDER

NOW THEREFORE, IT IS HEREBY ORDERED that effective on the date of this Order, the private security permit of Angel L. Montero, permit # 108-4029, and the right to renew that permit, is SUSPENDED for an INDEFINITE PERIOD OF TIME. Upon application for a stay of suspension, the Department may, in its sole discretion, determine whether and under what terms and circumstances a return to active licensure status may be granted to Mr. Montero.

IT IS FURTHER ORDERED that Angel L. Montero 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 AND EXPLANATION OF VARIANCE

### *Opinion.*

The evidence submitted at the hearing shows that the Notice of Hearing and Complaint was duly served upon Mr. Montero on August 9, 2006 (Exhibit 4) and again on August 28, 2006 (Exhibit 7). Mr. Montero's signature appears on the certified return receipt card, acknowledging receipt of the notice and complaint on August 25, 2006. (Exhibit 5) However, Mr. Montero 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. The Notice provided that the motion would be heard on October 5, 2006. The hearing on the Motion for Default was heard on the date stated in the notice of motion. Again, Mr. Montero did not appear at the hearing or make any contact with the Department or the Administrative Law Judge prior to or at the time of the hearing. Nor has there been any contact, written communication or entry of appearance by any attorney on behalf of Mr. Montero.

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. The record evidence showed that Mr. Montero was properly served with the Complaint and Notice of Hearing and with the Notice of Motion for Default. Despite having been served with notice of the proceedings, Mr. Montero did not file an answer to the Complaint or appear at the hearing in this matter. At the hearing, the Complainant introduced sixteen (16) exhibits in support of the allegations in the Complaint, including the proof of service of the Complaint and Notice of Motion for Default.

As a result of Mr. Montero's failure to file an answer to the Complaint, and failure to appear at the hearing, the allegations in the Complaint are admitted and establish that Mr. Montero engaged in unprofessional conduct. Mr. Montero failed to appear at his hearing to offer any evidence to explain or defend his actions.

The imposition of significant discipline is appropriate under the factual circumstances of this case. A private security person is supposed to guard and protect the physical beings or belongings of another; which by its nature involves an allotment of trust and confidence. A private security person should not abuse or exceed his or her trust and authority by engaging in improper or unlawful acts. False arrest, imprisonment and restraint are improper coercive and unlawful acts. A security guard must also recognize and refuse to be complicit with unlawful activities.

In addition, 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. 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. Montero is found to have engaged in unprofessional conduct, he alone should be held responsible for the full costs of this proceeding.

### *Explanation of Variance.*

The Administrative Law Judge proposed revocation of Mr. Montero's license. While the imposition of significant discipline is warranted by Mr. Montero's behavior, Mr. Montero's conduct seems less culpable than others involved in the false imprisonment of Carey Evers. Mr. Montero told the Division's investigators that he recognized his involvement in taking Evers into custody was improper. It is undeniable that Mr. Montero's participation is blameworthy. However, it should be recognized that he was a subordinate employee and to some extent an unwilling participant. Therefore, the discipline imposed is an indefinite suspension, rather than revocation. The Order as revised allows Mr. Montero the opportunity to produce evidence to convince the Department that he is fit to safely resume practice as a security guard.

Dated at Madison, Wisconsin, this 5th day of January, 2007.

Celia M. Jackson  
Secretary  
1400 East Washington Avenue  
P.O. Box 8935  
Madison, Wisconsin 53708