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STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

FINAL DECISION AND ORDER
FOR PUBLIC SAFETY OF
WI, INC., HEATHER M.LEE AND
JASON S. CHITWOOD

PUBLIC SAFETY OF WISCONSIN, INC
HEATHER M. LEE, JASON S CHITWOOD,
PUBLIC SAFETY & INVESTIGATIONS.,
INC., AND TERRANCE S.CHITWOOD

INC., AND TERRANCE S.CHITWOOD
FOR HEARING FOR TERRANCE
S CHITWOOD AND PUBLIC SAFETY &
INVESTIGATIONS, INC

Respondents

LS #0612041RSG

(Division of Enforcement Case Nos. 04 RSG 021, 05 RSG 026)

PARTIES

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

Terrance S. Chitwood
2409 Prairie Road
Madison, WI 53711

Attorney David Mandell
Mandell & Ginsburg
PO Box 2095
Madison, WI 53701-2095

Public Safety & Investigations, Inc.
2409 Prairie Road
Madison, WI 53711

Public Safety of Wisconsin, Inc.
3048 Waunona Way
Madison, WI 53713

Heather M. Lee
3048 Waunona Way
Madison, WI 53713

Jason S. Chitwood
808 Jana Lane
Madison, WI 53704

Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

A Class II disciplinary hearing in the above-captioned matter was held on October 10, 2007, before the Administrative Law Judge (ALJ) Colleen M. Baird. The Division of Enforcement appeared by Attorney Mark A. Herman. The Respondents did not appear individually or through legal counsel. The Notice of Hearing and Complaint were served on the Respondents on December 6, 2006. On April 23, 2007, an Amended Complaint was served on the Respondents. The Respondents Heather M. Lee, Jason S. Chitwood and Public Safety of Wisconsin, Inc. filed an Answer to the Complaint admitting the allegations in

paragraphs 1, 3, 4, 7, 8, 10, 12, 13, 14, 15, 19, 22, 23, and 24. The Respondents Terrance S. Chitwood and Public Safety & Investigations, Inc., did not file an Answer to the Complaint. None of the Respondents filed an Answer to the Amended Complaint.

Prior to the hearing in this matter, the Respondents' legal counsel, David Mandell, filed a motion requesting to Withdraw as Counsel for the Respondents Heather M. Lee, Jason S. Chitwood and Public Safety of Wisconsin, Inc. A motion hearing was held on April 13, 2007. The motion for withdrawal was granted as to the Respondents Heather M. Lee, Jason S. Chitwood and Public Safety of Wisconsin, Inc. The motion to withdraw was denied as to the Respondents Terrance Chitwood and Public Safety & Investigations, Inc.

At the Class II hearing, the Division of Enforcement moved for a judgment of default against the Respondents Terrance S. Chitwood and Public Safety Investigations as to the Complaint and the Amended Complaint. The Division also moved for a judgment of default as to Respondents Jason S. Chitwood, Heather M. Lee and Public Safety of Wisconsin as to the unanswered allegations of Amended Complaint. Based upon the entire record in this case, the Department adopts as its final decision in this matter the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Heather M. Lee, a/k/a Heather Lee Chitwood, whose date of birth is June 30, 1973, holds a permit as a private security person in the state of Wisconsin (#108-18602). Ms. Lee was first issued the permit as a private security person on September 11, 2001. The permit will expire on August 31, 2008. Ms. Lee's last address of record with the Department is 3048 Waunona Way, Madison, WI 53713.
2. Public Safety of Wisconsin, Inc. ("PSW") holds a license as a private detective agency in the state of Wisconsin (#62-16453). PSW was first issued a license on May 27, 2005. PSW's license expired on August 31, 2007. PSI's last address of record with the Department is 2409 Prairie Road, Madison, WI 53711. PSW is owned in whole or in part by Ms. Lee.
3. Jason S. Chitwood, whose date of birth is April 4, 1971, holds a permit as a private security person in the state of Wisconsin (#108-3897). Mr. Chitwood was first issued the permit on July 1, 1997. The permit will expire on August 31, 2008. Mr. Chitwood's last address of record with the Department is 808 Jana Lane, Madison, WI 53704. Jason Chitwood is the son of Terrance S. Chitwood, and the husband of Heather M. Lee, and has an ownership interest in PSW with his wife.
4. Terrance S. Chitwood operated PSI from November of 2002 until on or about May 25, 2005, and using various titles including, but not limited to, "President." Beginning on or after May 25, 2005, Mr. Chitwood acted as an advisor to his son Jason Chitwood, in the operation of PSW.
5. Heather M. Lee held various positions with PSI from November of 2002 until on or about May 25, 2005, including but not limited to, "Vice President of Operations," and "office manager." As such, her duties included scheduling employees processing payroll and billing. Beginning on or after May 25, 2005, Ms. Lee has used titles such as "General Manager" of PSW.
6. Jason S. Chitwood held various positions with PSI, including, "Chief," from November of 2002 until on or about May 25, 2005. Beginning on or after May 25, 2005, Mr. Chitwood has used titles such as "Chief" of PSW.

Defamation and Destruction of Evidence – 04 RSG 021

7. On or about September 29, 2004, JBM Patrol & Protection Corporation ("JBM") and James B. Mankowski filed a civil complaint against PSI, Terrance S. Chitwood, Jason S. Chitwood, and Heather M. Lee. JBM and Mr. Mankowski alleged three counts of defamation and three counts of intentional interference with contractual relations. The complaint alleged among other things that Jason Chitwood and Heather Lee, either individually or on behalf of PSI, developed an information

packet of defamatory materials and sent the information packet to Mr. Mankowski's current and potential customers, local law enforcement agencies in the state of Wisconsin, the Department, and Mr. Mankowski's employers, with ill intent.

8. JBM and Mr. Mankowski filed a motion claiming that Terrance S. Chitwood, Jason S. Chitwood, and Heather M. Lee destroyed relevant evidence, and requested sanctions against the Respondents for the spoliation of evidence.

9. On November 14, 2005, Judge Sarah B. O'Brien, Dane County Circuit Court Judge, granted the motion and as a sanction entered a default order against Terrance S. Chitwood, Jason S. Chitwood, and Heather M. Lee on the issue of liability as to the counts of defamation and intentional interference with contractual relations, reserving only the issue of damages for a future hearing.

10. Regarding the destruction of evidence, Judge O'Brien found that,

"Plaintiffs have established by *clear and convincing evidence*, albeit circumstantial, that defendants (Terry Chitwood, Jason Chitwood, Heather Lee and PSI) deliberately destroyed all data on the Heather Lee and officers' computers, and attempted to destroy at least some data on the laptop computer, with the intent to deprive plaintiffs of evidence that would support their claims in this lawsuit. Similarly all data was deleted from the officer computer... It is clear from the testimony and other evidence that Terrance and Jason Chitwood and Heather Lee were all involved in the original destruction of evidence and/or the attempted cover-up in this lawsuit."

Judge O'Brien further wrote in her conclusion that,

"The evidence in this case not only points to a wholesale destruction of evidence needed for litigation, but a concerted cover-up of the destruction by false testimony at the spoliation hearing. ... This is very compelling evidence regarding defendants' motives in destroying the computer data and lying about it. All witnesses have an obligation when called to testify to tell the truth. Indeed it is a crime to lie under oath. Thus the spoliation and subsequent attempt to cover it up is egregious conduct of the most serious sort. The most serious sanction is appropriate."

Firearms Handling Violations – 05 RSG 026

11. On April 14, 2005, William E. Murphy, a police officer with the City of Madison Police Department, stopped into Kayser Automotive in Madison, Wisconsin, prior to a traffic assignment and observed a vehicle parked outside the service entrance door approximately 20 yards from an open gate. The vehicle was equipped with a siren and looked very similar to a police car. A mechanic approached the officer and asked him to examine the contents of the trunk of the vehicle. Upon close examination, the officer saw what appeared to be an AR15 and two Glock pistols in the trunk of the vehicle.

12. Officer Murphy noted that the weapon that appeared to be an AR15 was situated in a holder that allowed for immediate retrieval if necessary and the two pistols appeared to be tied down with a cable. Upon closer examination, the officer determined that the guns were pellet guns, but there was no orange tip on the guns to indicate that they were pellet guns.

13. Officer Murphy was called back to the dealership later that morning by Ron Nobs, one of the mechanics. Mr. Nobs informed the officer that he had found an actual 30 round magazine with ammunition in one of the guns. Officer Murphy then seized and tagged the firearm; a Bushmaster .223 semi-automatic rifle with a 30-round magazine containing .223 ammunition that he had removed from the vehicle.

14. Officer Murphy's report indicated that the Bushmaster rifle was secured to a rack on the interior of the vehicle's roof which could be removed by pressing a button while manipulating part of the rack. Additionally, Officer Murphy noted that the Bushmaster rifle did not appear to be securely fastened to the rack.

15. During the course of his investigation, Officer Murphy had determined that the vehicle containing the firearms had been

dropped off at the dealership on April 13, 2005 by Terrance S. Chitwood and Jason S. Chitwood. According to witnesses at the dealership, neither Terrance S. Chitwood nor Jason S. Chitwood wore a uniform or any clothing bearing any patches or identifying badges at the time that they brought the vehicle in for service.

Unprofessional Conduct: Termination of Services

16. In 2006, PSW had been awarded a three year contract to provide security services to the Monona Terrace Convention Center in Madison, Wisconsin. The operations manager, Connie Thompson, reported that she had minor problems with PSW throughout the contract period, such as poor quality guards, no shows, slow communication and not meeting for quarterly reports.

17. On March 3, 2007, PSW stopped sending guards to the Monona Terrace Convention Center and ceased operation without giving any form of advance notice to its customer. The operations manager indicated that PSW's actions left them without guards to fill the rest of their security needs for the month of March.

18. PSW's actions in terminating its security operations negatively affected another customer, Don Miller Automotive Group in Madison, Wisconsin.

CONCLUSIONS OF LAW

1. The Department of Regulation and Licensing has jurisdiction in this matter pursuant to Wis. Stat. §§ 440.03 and 440.26.

2. The Department of Regulation and Licensing may take disciplinary action against a licensed private detective pursuant to Wis. Admin. Code § RL 35.01 or against a licensed private detective agency for violations of Wis. Admin. Code § RL 30 to 35, by any licensed private detectives or security persons employed by the agency, pursuant to Wis. Admin. Code § RL 35.02

3. The Respondents Jason S. Chitwood and Heather M. Lee, by the actions of the Respondents, in destroying evidence, distributing false, misleading or deceptive materials, and by lying about the destruction of such evidence, have each engaged in conduct reflecting adversely upon their respective professional qualifications as private security persons contrary to Wis. Admin. Code § RL 35.01.

4. The Respondent Jason S. Chitwood, by his actions, in transporting a loaded rifle while not on duty or not under circumstances where possession of a firearm was required, while not in uniform, and without a device to lock the firearm in position and prevent an unauthorized person from removing the firearm from the locking device, has engaged in one or more acts of conduct reflecting adversely upon his respective professional qualifications, contrary to Wis. Stat. § 440.26(6)(a)2., 4. Wis. Admin. Code §§ RL 34.01; 34.011 (3), (4); and 35.01(9).

5. Public Safety of Wisconsin, Inc., owned and operated in whole or in part by Heather M. Lee and Jason S. Chitwood, in ceasing business without giving any form of advance notice to several of its customers, has engaged in conduct reflecting adversely on the profession of a private detective agency or private security persons contrary to Wis. Admin. Code § RL 35.01.

ORDER

NOW, THEREFORE, IT IS ORDERED that the credentials of Public Safety of Wisconsin, Inc., Jason S. Chitwood and Heather M. Lee, shall be REVOKED.

IT IS FURTHER ORDERED that three fifths of the assessable costs of this proceeding shall be imposed upon the Respondents Public Safety of Wisconsin, Inc., Jason S. Chitwood and Heather M. Lee and they shall be jointly and severally liable for payment of the same.

IT IS FURTHER ORDERED THAT this case is remanded to Administrative Law Judge Colleen Baird to hold a hearing to

receive evidence and make findings concerning Mr. Terrance Chitwood and Public Safety & Investigations, Inc.

OPINION

Motion for Default

The Complaint and Amended Complaint allege three counts of unprofessional conduct. The first count concerns allegations of defamation of a competitor security firm and spoliation of the evidence of defamation by Respondents Terrance S. Chitwood, Jason S. Chitwood and his wife, Heather M. Lee, and Public Safety & Investigations, Inc. The Dane County Circuit Court decision in *JBM Patrol & Protection Corporation, et. al. v. Public Safety & Investigations Inc., et. al.*, (Case No. 04CV34026) judgment dated Nov. 14, 2005, found the allegations to be true to the legal standard of “clear and convincing evidence” in a separate civil proceeding for spoliation of evidence.

The second count of the Complaint and Amended Complaint concerns the conduct of Terrance S. Chitwood and Jason S. Chitwood, with respect to the care and use of firearms by private detectives and private security persons. The allegations were supported by the City of Madison Police reports, dated April 18, 2005, prepared by Officer William E. Murphy, which included photographs of the vehicle, the firearms stored therein, as well as a description of the manner in which the vehicle was delivered to the automotive dealership, including admissions by the Respondents as to their actions.

The third count which appears only in the Amended Complaint involves allegations against Jason S. Chitwood, Heather M. Lee and PSW for unprofessional conduct resulting from their termination of security services without proper notice to their clients, Monona Terrace Convention Center and Don Miller Automotive Group, in Madison, Wisconsin. These allegations were confirmed in a letter from one of the former clients, which indicated the Respondents’ actions left them “high and dry without guards” to fill their security needs and protect their property.

Applicable Law

Wis. Admin. Code § RL 35.01 (emphasis added)

“The department may... limit suspend or revoke a credential, or reprimand a credential holder, upon proof that the credential holder... *has engaged in conduct reflecting adversely on professional qualification*. Conduct reflecting adversely on professional qualification includes *but is not limited to*, any of the following:
...

(2) Violating or aiding and abetting the violation of, any law the circumstances of which substantially relate to the practice of a private detective or private security person. ...

(6) Using false, misleading or deceptive advertising. ...

(9) Violating any rule in chs. RL 30 to 35

(18) Providing false information to the department or its agent.”

Wis. Admin. Code § RL 34.01(1)

“No owner or employee of an agency may carry on, about or near their person any firearm unless all of the following apply:

(a) The circumstances or conditions of the owner’s or employee’s assignment as a private security person give rise to a substantial need for being armed. ...

(f) The owner or employee is in uniform.

(g) The owner or employee is on duty.”

No owner or employee of an agency may transport a loaded firearm in a vehicle, unless all of the following apply: ...

(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 department may take disciplinary action against a licensed private detective agency for violations of chs. RL 30 to 35 by any licensed private detectives or security persons employed by the agency.

Prior to the hearing, the Division of Enforcement submitted a Motion for Default Judgment against Respondents Terrance S. Chitwood and PSI, based upon their failure to file an answer or defense to the Complaint and the Amended Complaint.^[1] The Division of Enforcement also moved for default against Jason S. Chitwood, Heather M. Lee and PSW, as to paragraphs 27 through 29 of the Amended Complaint, for failure to file an answer to these allegations. Of the remaining allegations in the original Complaint, the majority were admitted by the Respondents Jason S. Chitwood, Heather M. Lee and PSW.^[2] As to those allegations in the Complaint and Amended Complaint, not otherwise admitted or deemed admitted by default, the Complaints Terrance S. Chitwood, Jason S. Chitwood, Heather M. Lee, PSW, and PSI failed to appear at the hearing to offer any evidence in support of their defense. The only evidence presented was by the Complainant, therefore, all charges in the Complaint and Amended Complaint were either deemed admitted or proven to the requisite degree of proof.

The various allegations against the Respondents involve conduct which is strikingly inconsistent with the duties of a profession that is required to guard and protect the property and security of others. Similarly, the conduct involving defamation of a competitor and the destruction of the defamatory evidence is anathema to the professionalism of a private security firm. The allegation that the Respondents did not properly secure firearms in the course of transporting a security vehicle shows a disregard for the safety of others. Finally, the termination of security services without proper notice displays a level of irresponsibility that is incompatible with professional licensure in the security industry.

Accordingly, the only question remains as to what should be the appropriate form of discipline in this matter. The Complainant has requested that all of the Respondents’ credentials be revoked. It is well established that the objective of professional discipline include the following: (1) to promote the rehabilitation of the licensee; (2) to protect the public; and (3) to deter other licenses from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 209 (1976). Punishment of the licensee is not an appropriate consideration. *State v. McIntyre*, 41 Wis. 2d 481, 485 (1969). The prosecution of this matter has been unduly protracted by the Respondents failure to communicate with the Department, failure to file appropriate answers, or to offer any evidence in their defense to the charges. The Affidavits of Mailing and Affidavit in Support of the Motion for Default confirm that the Notice of Hearing, Complaint and Amended Complaint were served and received by the Respondents.^[3] In addition, efforts were made to contact the Respondents, including attempts by the undersigned in regard to the various motions filed in this proceeding. Despite repeated notification, the Respondents chose not to participate or to provide any defense to the allegations of misconduct. Accordingly, there is nothing in the record to suggest that imposing any discipline short of revocation would have a rehabilitative effect on the Respondents.

COSTS

In addition, it is recommended that the costs of this proceeding be assessed against the Respondents and that they should be required to pay the amount jointly and severally. The assessment of costs against a disciplined professional is authorized by

sec. 440.22(2), Wis. Stats., which provides in relevant part as follows:

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 may, in addition to imposing discipline, assess all or part of the costs of the proceeding against the holder. Costs assessed under this subsection are payable to the Department.

The presence of the word “may” in the statute is a clear indication that the decision whether to assess the costs of the disciplinary proceeding against the Respondents is a discretionary act. The recommendation that the full costs of the proceeding be assessed is based primarily on fairness to 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, and licensing fees are calculated based upon costs attributable to the regulation of each profession. 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. The cost of this proceeding should not be borne by or passed along to the other members of the profession who abide by the rules of practice and follow the law.

EXPLANATION OF VARIANCE

On October 10, 2007, the Administrative Law Judge held a hearing in this matter. None of the Respondents was present or represented at that hearing. The prosecutor made a Motion for a Default Judgment and the case was subsequently treated as a default proceeding. On November 29, 2007, the Administrative Law Judge issued a Proposed Decision and Order. Notice was sent with the Proposed Decision and Order that objections were to be received by the Department by December 12, 2007. Terrance S. Chitwood filed his objections with the Department on December 5, 2007.

In his December letter Terrance Chitwood explained that he was absent from the hearing on October 10, 2007, because he believed that his attorney, David Mandel, was going to be present to represent his interests. Although Mr. Mandel was Terrance Chitwood’s attorney of record, Mr. Mandel did not appear at the hearing. Mr. Chitwood also challenged several findings of fact in the Order.

After reviewing and considering Terrance Chitwood’s objections, I have decided to treat his letter as a Petition for a Rehearing for himself and for his business Public Safety & Investigations, Inc. Since David Mandell did not appear at the hearing, as a matter of fundamental fairness and due process, I am granting the Petition for a Rehearing so that Terrance S. Chitwood and his company, Public Safety Investigations, Inc., will be afforded their rights to present evidence and cross examine witnesses at a Class II disciplinary hearing before the Administrative Law Judge concerning the complaints made against them.

Dated this 22nd day of February, 2008

Celia M. Jackson, Secretary
Department of Regulation and Licensing

[1] The Respondent Public Safety & Investigations, Inc., along with Heather M. Lee, Jason S. Chitwood and Public Safety of Wisconsin, Inc. (PSW) filed an answer to the Complaint with general denials to some of the allegations, specifically to paragraphs 2, 4, 6, 10, 12, and 14.

[2] Based on the answer filed by the Respondents Jason S. Chitwood, Heather M. Lee and PSW admitted the allegations in paragraphs 1, 3, 4, 7, 8, 10, 12, 13, 14, 15, 19, 22, 23 and 24 of the Complaint.

[3] During the pendency of this action, it became apparent that the Respondents’ legal counsel also had difficulty communicating with his client Terrance S. Chitwood.