

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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Before The
State Of Wisconsin
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

In the Matter of the Disciplinary Proceedings
Against **DEVONTES D. HARRIS**, Respondent

FINAL DECISION AND ORDER
Order No. _____

ORDER 0000955

Division of Enforcement Case No. 08 RSG 025

The State of Wisconsin, Department of Safety and Professional Services 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 Safety and Professional Services.

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

Dated at Madison, Wisconsin on the 15th day of July, 2011.

A handwritten signature in black ink, appearing to read "Michael Berndt", written over a horizontal line.

Michael Berndt, General Counsel on behalf of
the Department of Safety and Professional Services



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of the Disciplinary Proceedings
Against **DEVONTES D. HARRIS**, Respondent

PROPOSED DECISION AND ORDER
DHA Case No. DRL-11-0006

Division of Enforcement Case No. 08 RSG 025

The parties to this proceeding for purposes of Wis. Stat §§ 227.47(1) and 227.53 are:

Devontes D. Harris
8035 West Medford Avenue
Milwaukee, WI 53218-3502

Wisconsin Department of Regulation and Licensing
(Registered Security Guards)
P. O. Box 8935
Madison, WI 53708-8935

Department of Regulation and Licensing, Division of Enforcement, by

Attorney Peter McCombs
Department of Regulation
Division of Enforcement
P. O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

These proceedings were initiated when the Department of Regulation and Licensing, Division of Enforcement (the "Division") filed a formal Complaint against the Respondent, Devontes Harris. The Division filed said Complaint with the Division of Hearings and Appeals on or about January 20, 2011. On or about February 9, 2009, the Division sent a copy of the Complaint and a Notice of Hearing via both certified and first class mail to Respondent Harris at the address it believed to be his current address; 6054 North Sherman Boulevard, Milwaukee, WI 53209. (See February 15, 2009 Affidavit of Theodore D. Nehring).¹ The Notice of Hearing

¹ It appears that the Division first attempted to send Respondent Harris these documents at the last address on record for him at the Department of Regulation and Licensing; 6719 North 51st Street, Milwaukee, WI, 53223. (See

stated that Respondent was required to file a written Answer to the Complaint within 20 days, failing which "[he would] be found to be in default and a default judgment [could] be entered against [him] on the basis of the Complaint and other evidence and the Department [of Regulation and Licensing could] take disciplinary action against [him] and impose the costs of the investigation, prosecution and decision of this matter upon [him] without further notice or hearing."

No Answer has been filed to date.

On February 2, 2011, the undersigned Administrative Law Judge (ALJ) of the Division of Hearings and Appeals issued a Notice of Telephone Prehearing Conference that set a telephone conference with Respondent Harris and Attorney Peter McCombs of the Division for February 15, 2011. This Notice instructed Respondent Harris to contact the undersigned ALJ to provide the telephone number for which he could be reached for the February 15, 2011, telephone conference, and was sent to the last address on file for Respondent Harris with the Department of Regulation and Licensing; 6719 North 51st Street, Milwaukee, WI, 53223. It was also sent to Respondent Harris at 6054 North Sherman Boulevard, Milwaukee, WI 53209 (February 9, 2011).

Respondent Harris did not contact the undersigned ALJ with a telephone number that he could be reached at for the February 15, 2011, telephone conference. Nevertheless, Attorney McCombs provided a working telephone number for Respondent at the February 15, 2011, telephone conference, and the conference was conducted with Respondent's participation. Because Respondent Harris indicated that he was seeking to retain counsel, the conference was continued until March 3, 2011.

Despite requesting the above continuance, Respondent Harris did not make himself available for the March 3, 2011, telephone conference. As such, the conference was conducted without his participation. Because Respondent had initially been involved in the proceedings against him, and had expressed the intent to provide a defense to the allegations against him, a scheduling order was drafted setting this matter for hearing, (May 23, 2011), and ordering Respondent to file an Answer to the Division's Complaint by March 17, 2011. This Scheduling Order was sent to Respondent Harris at the address the Division believed to be his current address, 6054 North Sherman Boulevard, Milwaukee, WI 53209.

As stated above, Respondent Harris has failed to file an Answer.

As such, on or about March 23, 2011, the Division, by Attorney McCombs, filed a Motion for Default, requesting the undersigned ALJ to make findings and enter an order that the Respondent was in default, and the allegations of the Complaint were deemed admitted.

Complaint). On February 8, 2011, Attorney McCombs contacted the Division of Hearings and Appeals to alert it that the Division had a new address, (6054 North Sherman Boulevard, Milwaukee, WI 53209), and telephone number for Respondent.

The undersigned ALJ granted Attorney McComb's default motion and issued a Notice of Default instructing Respondent Harris that he was in default, and that findings would be made and an Order entered on the basis of the Complaint and other evidence (April 12, 2011). The Notice of Default further ordered Attorney McCombs to provide the undersigned ALJ with the Division's written recommendations for discipline and the assessment of costs in this matter by April 19, 2011. It was mailed to Respondent Harris at the last address on file for him, 6054 North Sherman Boulevard, Milwaukee, WI 53209. Attorney McCombs provided the undersigned ALJ with the Division's written recommendations as to discipline and costs on or about April 15, 2011.

Respondent Harris has failed to respond to either the Notice of Default issued against him, or the written recommendations provided by Attorney McCombs on April 15, 2011.

FINDINGS OF FACT

On the evidence presented, the undersigned ALJ makes the following findings of fact:

1. Devontes D. Harris (date of birth: February 25, 1981) is duly licensed as a Private Security Person in the state of Wisconsin (Permit #108-17381) by the Wisconsin Department of Regulation and Licensing ("Department"). The last address that Respondent reported to the Department was 6719 North 51st Street, Milwaukee, WI 53223.
2. Respondent's Private Security Person Permit was first issued on April 19, 2001. As of April 23, 2009, Mr. Harris' license was suspended pursuant to a hold placed by the Department of Workforce Development. This suspension was recently removed when the Department of Workforce Development lifted its hold on March 1, 2011. Mr. Harris' license is presently expired.
3. On January 6, 2006, Respondent's Private Security Person Permit was disciplined by the Department. A copy of the January 6, 2006, Final Decision and Order (the "2006 FDO") is attached to the Complaint as Exhibit A. Exhibit A is incorporated into this document by reference.
4. The 2006 FDO was the result of a contested case hearing, which was requested by Respondent Harris upon the Department's denial of his license renewal in October of 2004. Judge Baird found, among other things, that Respondent Harris had failed to report an April 24, 2003 misdemeanor conviction, (carrying a concealed weapon), and a December 27, 2002 municipal ordinance violation, (carrying a concealed weapon), when he attempted to renew his application in October, 2004. (Respondent reported that he had never been convicted of a misdemeanor and had no criminal charges currently pending against him he applied for renewal of his security permit (online) on or about October 27, 2004).

5. Paragraph 6 of the 2006 FDO states:

“Mr. Harris’ permit may be subject to immediate suspension should he be arrested or convicted of a crime substantially related to the practice of a private security person or for substantial violation of the terms of this order. Mr. Harris is put on notice of the requirements of Wis. Admin. Code RL 35.01(2) that a credential holder who has been convicted of a felony, misdemeanor or ordinance violation, as defined in s. 440.26(4m), Wis. Stat., shall send to the Department within 48 hours after the judgment of conviction, a copy of the complaint or other information which described the nature of the crime or conviction. The Department will determine whether disciplinary action must or should be taken against Mr. Harris.

(Emphasis added).

6. In her analysis, Judge Baird wrote that, “...there can be little doubt that timely disclosure [of Mr. Harris’ convictions] was not made. “ In supporting her decision to impose a reprimand and limit his license, Judge Baird wrote that, “...Mr. Harris should be given the benefit of the doubt to prove that the circumstances surrounding his prior convictions were isolated incidents, not likely to reoccur. Mr. Harris is a young person who is capable of learning from his mistakes, changing his behavior and abiding by the requirements of the law.”

7. On July 1, 2009, Respondent was convicted of one count of misdemeanor Possession of THC in Milwaukee County Circuit Court. A true and correct copy of the Criminal Complaint and Judgment of Conviction is attached to the Complaint as Exhibit B. Exhibit B is incorporated into this document by reference.

8. Respondent did not inform the Department of his July 1, 2009, misdemeanor conviction within 48 hours after the entry of the Judgment of Conviction.

9. By not informing the Department of his July 1, 2009, misdemeanor conviction within 48 hours after the entry of the Judgment of Conviction, Respondent violated the terms of the 2006 FDO.

10. As set out in the Procedural History above, a Complaint and Notice of Hearing were sent to Respondent Harris at the address it believed to be his current address on or about February 9, 2011.

11. At a continued prehearing telephone conference held without Respondent Harris’ participation on March 2, 2011, the undersigned administrative law judge ordered Respondent to file an Answer to the Division’s Complaint no later than March 17, 2011.

12. Respondent Harris failed to do so, and the Division made a motion for default (March 23, 2011) which was granted by the undersigned ALJ (April 12, 2011).

13. On or about April 12, 2012, the undersigned ALJ sent a Notice of Default to Respondent Harris at his last known address.

14. Respondent Harris has not responded to this Notice, or otherwise to the Complaint against him.

CONCLUSIONS OF LAW

1. The Wisconsin Department of Regulation and Licensing has jurisdiction over this matter pursuant to Wis. Stat. §§ 440.26(6)(a).

2. Wis. Stat. § 440.03(1) provides that the department [of Regulation and Licensing] may promulgate rules defining uniform procedures to be used by the department... and all examining boards and affiliated credentialing boards attached to the department or an examining board, for... conducting [disciplinary] hearings. These rules are codified in Wis. Admin. Code ch. RL.

3. Wisconsin Administrative Code § RL 2.08(1) provides, in relevant part, that “[t]he complaint, notice of hearing, all orders and other papers required to be served on a respondent may be served by mailing a copy of the paper to the respondent at the last known address of the respondent” and that “[s]ervice by mail is complete upon mailing.” Because the Complaint and Notice of Hearing, Notice of Telephone Prehearing Conference, and Notice of Default were mailed to Respondent Harris at his last known address (6054 North Sherman Boulevard, Milwaukee, WI 53209), he was duly served with these papers pursuant to Wis. Admin. Code § RL 2.08.

4. As the licensee, it was Respondent Harris’ responsibility to keep his address on record with the Department of Regulation and Licensing current. Wis. Stat. § 440.11(1).

5. Respondent Harris has defaulted in this proceeding pursuant Wis. Admin. Code § RL 2.14 by failing to file and serve an Answer to the Complaint as required by Wis. Admin. Code § RL 2.09.

6. Allegations in a complaint are deemed admitted when not denied in an answer. Wis. Admin. Code § RL 2.09. Respondent Harris has admitted to the allegations of the Complaint by default by not filing an Answer.

7. Pursuant to Wis. Stat. § 440.26(4m)(b), *Reporting requirement*, “A person who holds a license or permit issued under this section and who is convicted of a felony or misdemeanor... shall notify the department [of Regulation and Licensing] in writing of the date,

place and nature of the conviction or finding within 48 hours after the entry of the judgment of conviction or the judgment finding that the person committed the violation. Notice may be made by mail and may be proven by showing proof of the date of mailing the notice.”

8. Pursuant to Wis. Stat. § 440.26(6)(a), “Subject to the rules adopted under s. 440.03 (1), the department may reprimand the holder of a license or permit issued under this section or revoke, suspend or limit the license or permit of any person who has done any of the following:

1. Been convicted of a misdemeanor or found to have violated any state or local law that is punishable by a forfeiture, subject to ss. 111.321, 111.322 and 111.335.
2. Engaged in conduct reflecting adversely on his or her professional qualification...
4. Violated this section or any rule promulgated or order issued under this section....”

9. Pursuant to Wis. Admin. Code § RL 35.01, **Unprofessional conduct**, “The department [of Regulation and Licensing] may deny an application for renewal, limit, suspend or revoke a credential, or reprimand a credential holder upon proof that the credential holder or any owner of an agency 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 or abetting the violation of, any law the circumstances of which substantially relate to the practice of a private detective or private security person. A credential holder who has been convicted of a felony, misdemeanor or ordinance violation, as defined in s. 440.26 (4m), Stats., shall send to the department within 48 hours after the judgment of conviction or the judgment finding that the person committed the violation, a copy of the complaint or other information which describes the nature of the crime or conviction and the judgment of conviction in order that the department may determine whether disciplinary action must or should be taken against credential holder.”

(Emphasis added).

10. Pursuant to Wis. Admin. Code § RL 35.01(9), **unprofessional conduct** is further defined to include, “Violating any rule in chs. RL 30 to 35.”

11. By not informing the Department of his July 1, 2009 misdemeanor conviction within 48 hours after the entry of the Judgment of Conviction, Respondent violated Wis. Stat. § 440.2(6)(4m)(b) and Wis. Admin. Code § RL 35.01(2), and is subject to discipline pursuant to Wis. Stat. §§ 440.26(6)(a)(1), 440.26(6)(a)(2) and 440.26(6)(a)(4).

Violations of Wisconsin Statute and Administrative Code

By failing to provide an Answer to the Complaint filed against him, Respondent Harris has admitted that all allegations contained within the Complaint are true. Wis. Admin. Code § 2.09. As such, it is undisputed that Respondent Harris: (1) was convicted of one count of misdemeanor Possession of THC in Milwaukee County Circuit Court and (2) did not inform the Department of his July 1, 2009, misdemeanor conviction within 48 hours after the entry of the Judgment of Conviction.

Such conduct clearly violates: (1) the terms of Respondent Harris' 2006 FDO; (2) Wis. Stat. § 440.26(4m)(b), requiring licensed private security persons to report misdemeanor convictions within 48 hours of the entry of the judgment of conviction; and (3) Wis. Admin. Code § RL 35.01(2)), restating the same.² As such, Respondent Harris is subject to discipline pursuant to Wis. Stat. §§ 440.26(6)(a)(1), 440.26(a)(2) and 440.26(a)(4). The only question that remains is what kind of discipline is appropriate.

Appropriate Discipline

As discipline for his above violations, the Division recommends revocation of the private Security Person license, and the right to renew the Private Security license of Devontes D. Harris. (Division's April 15, 2011, Written Recommendations for Discipline and Costs, p. 2).

In support of this request, the Division argues that:

The Department is tasked with the responsibility of protecting the citizens of Wisconsin by ensuring the safe and competent practice of licensed professionals. Mr. Harris' conduct (i.e., his repeated criminal activity and his disregard for the Department's authority) demonstrates that he is neither safe nor competent to practice as a private security person.

Despite the fact that his license was limited due to his failure to report prior convictions, and despite the fact that he was placed on notice for the requirement that he report convictions to the Department within 48 hours, he again failed to comply with the law regulating his profession and the Order limiting his license. This disregard for the law presents an obvious danger to the public, and is especially concerning since the license at issue pertains to the protections of persons and their property.

² Though RL 35.01(2) further defines unprofessional conduct to include the violation of any law "the circumstances of which substantially relate to the practice of a private detective or private security person," the Division makes no argument that Respondent Harris' conviction for possession of THC was substantially related to his practice as a private security person.

(Id.).

The ALJ is convinced that the Division's recommendation of revocation is appropriate.

Indeed, the purpose of discipline is to: (1) to promote the rehabilitation of the licensee; (2) to protect the public from other instances of misconduct; and (3) to deter other licensees from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206 (1976). Respondent Harris' conduct in failing to report his misdemeanor conviction for Possession of THC, after having been disciplined for (1) failing to report misdemeanor convictions and ordinance violations and (2) put on notice that Wis. Admin. Code RL 35.01(2) requires a credential holder convicted of a misdemeanor to send to the Department a copy of the complaint or other information which described the nature of the crime or conviction within 48 hours after the judgment of conviction, shows that he is not rehabilitated, and that he has little regard for the Department or its rules. His inability to participate in these proceedings only strengthens these concerns. Moreover, Respondent Harris' disregard of the rules that govern his practice, when coupled with his underlying violation of law and his important duties as a private security person, demonstrates an obvious propensity to put the public at risk. Finally, Respondent Harris' refusal to follow Department orders cannot be tolerated if others licensees are expected to follow Department orders and the rules that regulate the practice of private security. The relief requested by the Division is thus not only appropriate, but necessary to protect the public, and deter other licensees from engaging in similar conduct.

Costs

The Division requests that Respondent Harris be ordered to pay the full costs of its investigation and of these proceedings. (Division's Written Recommendations for Discipline and Costs, p. 3).

In *In the Matter of Disciplinary Proceedings against Elizabeth Buenzli-Fritz* (LS 0802183 CHI), the Chiropractic Examining Board found that:

The ALJ's recommendation and the ... Board's decision as to whether the full costs of the proceeding should be assessed against the credential holder..., is based on the consideration of several factors, including:

- 1) The number of counts charged, contested, and proven;
- 2) The nature and seriousness of the misconduct;
- 3) The level of discipline sought by the parties
- 4) The respondents cooperation with the disciplinary process;
- 5) Prior discipline, if any;
- 6) The fact that the Department of Regulation and Licensing is a "program revenue" agency, whose operating costs are funded by the revenue received from licenses, and the fairness of imposing the costs of

disciplining a few members of the profession on the vast majority of the licensees who have not engaged in misconduct;

7) Any other relevant circumstances.

The respondent, by nature of her being in default has not presented any evidence regarding any of the above factors that would mitigate the imposition of the full costs of this proceeding. To the contrary, her conduct is of a serious nature. The factual allegations were deemed admitted and proven and there is no argument to apportion any counts that were unproven (being none), or that certain factual findings were investigated and litigated that were unnecessary. Given the fact that the Department of Regulation and Licensing is a "program revenue," agency, whose operating costs are funded by the revenue received for licensees, fairness here dictates imposing the costs of disciplining the respondent upon the respondent and not fellow members of the chiropractic profession who have not engaged in such conduct."

For many of the same reasons as cited in the *Buenzli-Fritz* decision, Respondent Harris should be assessed the full amount of recoverable costs. His alleged conduct (failing to follow Board orders and report a conviction for possession of THC) is of a serious nature, there is no argument that certain factual findings were investigated and litigated unnecessarily, and given the program revenue nature of the Department of Regulation and Licensing, fairness again dictates imposing the costs of disciplining Respondent Harris on Respondent Harris, and not fellow members of the Private Security Person profession who have not engaged in such conduct. If the Board assesses costs against the respondent, these amount of costs will be determined pursuant Wis. Admin. Code § RL 2.18.

ORDER

For the reasons set forth above, IT IS ORDERED that the license of the Respondent Devontes Harris to practice as a private security person in the State of Wisconsin, and his right to renew that license, be and is hereby **REVOKED**.

Pursuant to Wis. Stat. 441.07(2), the board in its discretion may reinstate a revoked license no earlier than one year following revocation, upon receipt of an application for reinstatement.

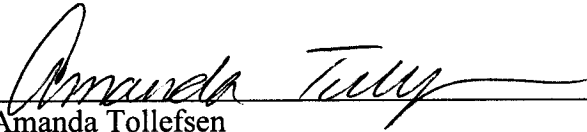
IT IS FURTHER ORDERED that Respondent Harris shall pay all recoverable costs in this matter in an amount to be established pursuant to Wis. Admin. Code § RL 2.18. After the amount is established payment shall be made by certified check or money order payable to the Wisconsin Department of Regulation and Licensing and sent to:

**Department Monitor
Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935
Telephone: (608) 267-3817
Fax: (608) 266-2264**

IT IS FURTHER ORDERED that the above-captioned matter be and hereby is closed as to Respondent Devontes Harris.

Dated at Madison, Wisconsin on May 17, 2011.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705
Telephone: (608) 266-7709
FAX: (608) 264-9885

By: 
Amanda Tollefsen
Administrative Law Judge

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