

## WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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Before The  
State Of Wisconsin  
**DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES**

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In the Matter of the **Denial of The Renewal  
Application for a License to Practice as a  
Private Security Person**

**Terrence Greenwald, Applicant**

FINAL DECISION AND ORDER  
Order No. \_\_\_\_\_

**ORDER 0001594**

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Division of Enforcement Case No. 11 RSG 037

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, 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 Safety and Professional Services.

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 24<sup>th</sup> day of May, 2012.

A handwritten signature in black ink, appearing to read "Michael J. Berndt".

Michael J. Berndt  
Chief Legal Counsel  
Department of Safety and Professional Services



**Before The  
State Of Wisconsin  
DIVISION OF HEARINGS AND APPEALS**

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In the Matter of the DENIAL OF THE RENEWAL  
APPLICATION FOR A LICENSE TO  
PRACTICE AS A PRIVATE SECURITY  
PERSON

PROPOSED DECISION AND ORDER  
GRANTING MOTION FOR SUMMARY  
JUDGMENT AGAINST RESPONDENT  
DHA Case No. SPS-11-0112

**TERRENCE GREENWALD**, Respondent

**ORDER 0001594**

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**Division of Enforcement Case No. 11 RSG 037**

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

Terrance Greenwald, by

Attorney Jeremy J. Geisel  
Walden, Schuster & Vaklyes, S.C.,  
707 W. Moreland Blvd., Suite 9  
Waukesha, WI 53188

Department of Safety and Professional Services, Division of Enforcement, by

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Michael J. Berndt  
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**PROCEDURAL HISTORY**

The above-captioned matter is before this tribunal on a motion for summary judgment filed by the Department of Safety and Professional Services (Department), Division of

Enforcement (Division), and a response filed by Applicant Terrance Greenwald requesting that the Division's motion be denied and a hearing be held, or in the alternative, that summary judgment be granted in favor of Mr. Greenwald.

### **FINDINGS OF FACT**

#### **Undisputed Material Facts.**

1. On February 4, 2010, Mr. Greenwald was convicted of four misdemeanor counts of fourth degree sexual assault and two misdemeanor counts of exposing genitals to a child (Waukesha County Circuit Court Case No. 2009CF493).<sup>1</sup>

2. On August 30, 2010, Mr. Greenwald applied on-line for renewal of his private security person permit with the Department's Division of Credentialing. On September 14, 2010, Jan Bobholz, the Department's former Credentialing Supervisor – Business, wrote a letter to Mr. Greenwald requesting more information on his convictions because he responded "Yes" to the question, "Have you been convicted within the past two years of a felony, a misdemeanor or a violation of any state or local law (other than traffic) that is punishable by a forfeiture, or, are charges pending?"

3. On October 3, 2011, Mr. Greenwald, through his attorney, submitted the additional information requested, a certified copy of the Criminal Complaint and Judgment of Conviction for the reported convictions and a Report of Conviction (Form #2704) with attachment. Mr. Greenwald explained in the Division's Report of Conviction form that the convictions were the result of a plea bargain in response to a complaint which alleged 16 felony counts of sexual assault by Mr. Greenwald of his step-children.

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<sup>1</sup> The Division states that the convictions were for three counts of fourth degree sexual assault and one count of exposing genitals to a minor. However, the exhibits attached to the affidavit the Division submits clearly establish that there were convictions for *four* counts of fourth degree sexual assault and *two* counts of exposing genitals to a minor. That said, the outcome of this decision is not affected by whether there was one count less or more of each crime.

4. On October 12, 2011, the Department denied Mr. Greenwald's application for renewal of the private security person permit. The denial was based on the fact that Mr. Greenwald had been convicted of misdemeanor crimes, the circumstances of which substantially relate to the profession of private security person.

5. On November 23, 2011, Mr. Greenwald, through his attorney, requested a hearing on the denial of renewal from the Department. As a result, on December 12, 2011, the Division prepared a notice of hearing and requested the assignment of an Administrative Law Judge from the Division of Hearings and Appeals. At a prehearing held on January 18, 2012, a hearing was set for March 13, 2012. However, on February 14, 2012, the Administrative Law Judge received a motion for summary judgment from the Division, whereupon the hearing was cancelled and a briefing order set.

## **DISCUSSION**

### **Standards Governing Summary Judgment.**

Summary judgment procedure entails a three-step methodology. The first step requires an examination of the pleadings to determine whether a claim for relief has been stated and a material issue of fact presented. *Voss v. City of Middleton*, 162 Wis. 2d 737, 747, 470 N.W.2d 625 (1991). If a claim for relief has been stated and a material issue presented, the inquiry then shifts to the moving party's affidavits or other proof to determine whether the moving party has made a *prima facie* case for summary judgment under Wis. Stat. § 802.08. *Id.* at 747-48. If the moving party has made a *prima facie* case for summary judgment, the court must examine the affidavits and other proof of the opposing party to determine whether there exist disputed

material facts or undisputed material facts from which reasonable alternative inferences may be drawn sufficient to entitle the opposing party to a trial. *Id.* at 748.

Summary judgment must be entered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Id.*

The mere allegation of a factual dispute will not defeat a properly supported motion for summary judgment. *Lecus v. American Mut. Ins. Co.*, 81 Wis. 2d 183, 189, 260 N.W.2d 241, 243 (1977). To avoid summary judgment, the non-moving party must set forth specific facts showing that there is a genuine issue of material fact for trial. Wis. Stat. § 802.08(3). “[W]hen the facts are not in dispute and the legal issues are capable of resolution, summary judgment is mandatory.” *Smith v. State Farm Fire and Cas. Co.*, 127 Wis. 2d 298, 301, 380 N.W.2d 372 (Ct. App. 1985).

**Violation of Wis. Admin. Code § SPS 35.01.**

The denial of an application for renewal of a security person is governed by SPS § 35.01,<sup>2</sup> which states:

**35.01 Unprofessional conduct.** The department may deny an application for renewal, 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 or abetting the violation of, any law the circumstances of which substantially relate to the practice of a private detective or private security person.

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<sup>2</sup>The Division also cites Wis. Stat. § 31.05(1). However, that provision governs the initial application for a permit whereas Wis. Stat. § 35.01 governs renewals. Here, both parties agree that Mr. Greenwald sought *renewal* of his private security person permit.

*See also* (Wis. Stat. § 111.335 (1)(c) (“[I]t is not employment discrimination because of conviction record to refuse to employ or license . . . any individual who: 1. Has been convicted of any felony, misdemeanor or other offense the circumstances of which substantially relate to the circumstances of the particular job or licensed activity.”)

In the instant case, the undisputed material facts are that (1) Mr. Greenwald was convicted of four counts of fourth degree sexual assault for sexually assaulting his two step-children, and two counts of exposing genitals to a child; (2) he had a permit as a private security person; (3) his permit expired and he therefore applied for renewal of said permit; and (4) the Department denied his renewal application based on his convictions being substantially related to the permit.

Mr. Greenwald does not dispute these facts but asserts that he should be provided the opportunity to establish the following additional facts at a hearing: (1) he was employed as a Waukesha County Sheriff for 23 years; (2) while employed at the Sheriff Department, he was only reprimanded once, and that the reprimand was for not fully completing an incident report; (3) he never engaged in any inappropriate conduct while employed at the Sheriff Department and never engaged in the alleged conduct leading to his misdemeanor convictions or ordinance violation; (4) at all times while serving at the Sheriff Department he acted honorably and in the interest of serving justice and protecting the public from harm; (5) he has in the past worked as a private security officer; (6) he was never reprimanded for any inappropriate behavior while serving in that capacity, much less for the alleged conduct leading to his misdemeanor convictions and ordinance violation; (7) he was employed as a private security person for Roundy’s where he was in charge of guarding a storage warehouse where children were not allowed on the premises; (8) the circumstances surrounding his obstruction charge do not substantially relate to the profession of a private security person; and (9) his probation officer

approves of him seeking employment as a private security person with reasonable restrictions and believes that it would not violate the terms of his probation.

Items 1 – 6 relate to Mr. Greenwald's alleged positive performance while formerly employed at the Waukesha County Sheriff Department and, later, as a private security guard. However, whether or not Mr. Greenwald has a positive work history is irrelevant to the legal issue in this case, which is whether the circumstances of Mr. Greenwald's convictions substantially relate to the profession of private security person. Likewise immaterial are Items 7 and 9. Even if Mr. Greenwald were formerly employed at Roundy's, that does not mean he would be re-employed or remain employed there, nor would it show that the Department's denial of the permit renewal was improper. With respect to the opinion of Mr. Greenwald's probation agent, even assuming that she were to testify that she supports Mr. Greenwald being employed as a private security person, that would not assist Mr. Greenwald in establishing that it was unreasonable for the Department to deny renewal of his permit. While the Department and probation agent have some overlapping concerns with respect to public safety, they are also charged with different functions under state law and have different objectives.

Finally, with regard to Item 8, the circumstances of the resisting and obstructing forfeiture, that information is also immaterial because the Division does not argue in its summary judgment pleadings that the resisting and obstructing forfeiture substantially relates to the profession of private security person. Rather, the Division only argues that the circumstances of the sexual assault and exposing genitals to a child convictions substantially relate to the profession of private security person.<sup>3</sup> Moreover, the Notice denying renewal of Mr.

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<sup>3</sup> This is demonstrated by the Division's framing of the issue as follows: "Whether the Department appropriately determined that the circumstances of Terrence Greenwald's criminal conviction for [Fourth] Degree Sexual Assault and Exposing Genitals to a Child substantially relate to the private security person profession." (Division of Enforcement's Motion for Summary Judgment and Brief in Support of Motion, p. 1).