

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 **THOMAS T. WARD**, Respondent

FINAL DECISION AND ORDER

Order No. _____

ORDER 0002072

Division of Enforcement Case No. 11 RAL 001

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 20th day of September, 2012.

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



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

In the Matter of the Disciplinary Proceedings
Against **THOMAS T. WARD.**, Respondent

PROPOSED DECISION AND ORDER
DHA Case No. SPS-12-0045
ORDER 0002072

Division of Enforcement Case No. 11 RAL 001

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

Thomas T. Ward
714 McKinley St., Apt. 4
Janesville, WI 53548-3773

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

Attorney Sarah Norberg
Department of Safety and Professional Services
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

Michael J. Berndt
Chief Legal Counsel
Department of Safety and Professional Services
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

These proceedings were initiated when the Department of Safety and Professional Services (Department), Division of Enforcement (Division), filed a formal Notice of Hearing and Complaint against Respondent Thomas T. Ward (Respondent), alleging that Respondent's license was subject to disciplinary action pursuant to Wis. Stat. § 440.26(4m)(b) and Wis. Admin. Code § SPS (then RL) 35.01(2) and (17). Respondent failed to file an Answer to the Complaint, failed to provide a telephone number at which he could be reached for the telephonic prehearing conference held before the Division of Hearings and Appeals (DHA) on July 5, 2012

and failed to appear at the prehearing conference. As a result, the Division filed a Motion for Default Judgment and Supporting Memorandum, with attached exhibits, on July 12, 2012. Respondent failed to file a response.

FINDINGS OF FACT

Facts Related to the Alleged Violation

Findings of Fact 1-8 are taken from the Division's Complaint against Respondent filed in this matter.

1. Respondent (DOB 10/10/1967) is licensed in the State of Wisconsin as a Private Detective, having license number 63-10899, first issued on May 27, 2004 and current through August 31, 2012.

2. Respondent was licensed in the State of Wisconsin as a Private Security Person, license number 108-24912, first issued on November 7, 2003 and expired on September 1, 2010.

3. Respondent's most recent address on file with the Department is 507 South Washington Street, Janesville, WI 53548.

4. In November 2010, Respondent submitted an online renewal application for his private detective license to the Department and answered "NO" to the following 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 (If YES, provide information.)

5. A Criminal Information Bureau check revealed a disorderly conduct conviction for Respondent within the two years preceding November 2010.

6. Division of Enforcement case number 11 RAL 001 was subsequently opened for investigation.

7. In September 2009, Respondent was charged with Disorderly Conduct (Lafayette County Case Number 2009CM000120). Respondent was convicted of the charge on December 1, 2009 and ordered to pay a forfeiture/fine.

8. Respondent failed to notify the Department of the conviction within 48 hours after the judgment of conviction.

9. The Division's Exhibit #2, attached to its Motion for Default and Supporting Memorandum, is a copy of the criminal complaint in the disorderly conduct prosecution, for which Respondent was convicted. It states that while Respondent was in a private place, he

“engaged in violent conduct, under circumstances in which such conduct tended to cause a disturbance.”¹

Facts Related to Default

10. The Complaint and Notice of Hearing in this matter were served on Respondent on May 31, 2012, by both certified and regular mail, consistent with Wis. Admin. Code § SPS 2.08. The Notice of Hearing notified Respondent as follows: “If you do not provide a proper Answer within 20 days, you will be found to be in default and a default judgment may be entered against you on the basis of the complaint and other evidence. In addition, the Department may take disciplinary action against you and impose the costs of the investigation, prosecution and decision of this matter upon you without further notice or hearing.”

11. The Complaint and Notice of Hearing were returned to the Department with a new address label of 714 McKinley St., Apt. 4, Janesville WI 53548-3773. However the label also contained the notations, “”RETURN TO SENDER” and “FORWARD TIME EXP.”

12. Respondent failed to file an Answer as required by Wis. Admin. Code § SPS 2.09(4).

13. Following expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for July 5, 2012. Notice of this prehearing conference was sent to Respondent at the McKinley St. address, with instructions that Respondent provide the telephone number at which he could be reached for the conference to the ALJ no later than July 2, 2012. The Notice was returned to DHA as undeliverable.

14. Respondent failed to provide a telephone number and could not be reached for the prehearing conference.

15. Based on Respondent’s failure to file an Answer to the Complaint and failure to provide a telephone number and make himself available for the prehearing conference in this matter, the Division filed a Motion for Default Judgment and Supporting Memorandum, with attached exhibits, on July 12, 2012, pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c).

16. Respondent failed to file a response.

CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to Wis. Stat. § 440.26.

¹ Unfortunately, the police report, upon which the criminal complaint relies and which was originally attached to the criminal complaint, is not included in the Division’s exhibits, nor is the content included in either the Division’s Complaint or the criminal complaint. Therefore, the decision-maker does not have much information with regard to the “circumstances” of the conviction, an inquiry which is necessary for determining whether there is a violation under Wis. Admin. Code § SPS (then RL) 35.01(2). Nonetheless, as shown below, I conclude that the information provided is sufficient for concluding a violation under that provision occurred.

2. Wisconsin Stat. § 440.03(1) provides that the Department of Safety and Professional Services “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. SPS.

3. Respondent was duly served with the Notice of Hearing and Complaint pursuant to Wis. Admin. Code § SPS 2.08 and was also served with the Notice of Telephone Prehearing Conference.

4. When a Respondent fails to file an Answer as required by Wis. Admin. Code § SPS 2.09 or fails to appear at the hearing at the time fixed therefor, the Respondent is in default and findings may be made and an Order entered “on the basis of the complaint and other evidence.” Wis. Admin. Code § SPS 2.14.

5. Wisconsin Admin. Code § HA 1.07(3)(b) and (c) further provide: “(b) If a respondent fails to appear, the administrative law judge may . . . take the allegations in an appeal as true as may be appropriate . . .” and “(c) For a telephone or video hearing or prehearing the administrative law judge may find a failure to appear grounds for default if any of the following conditions exist for more than ten minutes after the scheduled time for hearing or prehearing conference: (1) The failure to provide a telephone number to the division after it had been requested; (2) the failure to answer the telephone or videoconference line.”

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

7. Respondent has also defaulted in this proceeding by failing to provide a telephone number at which he could be reached and by failing to appear at the scheduled prehearing conference after due notice, pursuant to Wis. Admin. Code § HA 1.07(3) and Wis. Admin. Code § SPS 2.14.

8. Pursuant to Wis. Admin. Code §§ SPS 2.09(3) and 2.14, and Wis. Admin. Code § HA 1.07(3)(b) and (c), Respondent has admitted to the allegations of the Complaint and other evidence by not filing an Answer and by failing to appear at the telephone prehearing conference and failing to provide a telephone number at which he could be reached.

9. Respondent engaged in conduct reflecting adversely on his professional qualification in violation of Wis. Stat. § 440.26(6)(a)(2) and Wis. Admin. Code § SPS (then RL) 35.01(17) by providing false information in the application for a credential.

10. Respondent engaged in conduct reflecting adversely on his professional qualification in violation of Wis. Stat. § 440.26(6)(a)(2) and Wis. Admin. Code § SPS (then RL) 35.01(2) by violating a law, the circumstances of which substantially relate to the practice of a private security person.

11. Respondent violated Wis. Stat. § 440.26(4m)(b) and Wis. Admin. Code § SPS (then RL) 35.01(2) by failing to report his conviction to the Department within 48 hours of the judgment of conviction.

12. As a result of the violations noted above, Respondent is subject to discipline pursuant to Wis. Stat. § 440.26(6)(a) and Wis. Admin. Code § SPS 35.01.

DISCUSSION

Violations of Wisconsin Statute and Administrative Code

Because Respondent failed to provide an Answer to the Complaint filed against him and failed to appear at the July 5, 2012 prehearing conference or provide a telephone number at which he could be reached, findings may be made and an Order entered “on the basis of the complaint and other evidence.” Wis. Admin. Code § SPS 2.14. Wisconsin Admin. Code § HA 1.07(3)(b) and (c) further provide: “(b) If a respondent fails to appear, the administrative law judge may . . . take the allegations in an appeal as true as may be appropriate.”

The Complaint and the Division’s Exhibit 2, described in Findings of Fact Nos. 1-9, above, establish that Respondent was untruthful in his renewal application to be a private detective in that he affirmed that he did not have a conviction within the past two years, when in fact he did. The facts further establish that the conviction was for disorderly conduct, which involved violent behavior, and that Respondent failed to report the conviction to the Department within 48 hours.

By failing to report his conviction to the Department within 48 hours of the judgment of conviction, Respondent violated Wis. Stat. § 440.26(4m)(b) and Wis. Admin. Code § SPS (then RL) 35.01(2). Wis. Stat. § 440.26(4m)(b) requires the holder of a license convicted of a felony or misdemeanor to “notify the department in writing of the date, place and nature of the conviction or finding within 48 hours after the entry of the judgment of conviction . . .” Likewise, Wis. Admin. Code § SPS (then RL) 35.01 requires a credential holder convicted of a felony, misdemeanor or ordinance violation to “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 addition, by providing false information in the application for a credential, Respondent engaged in conduct reflecting adversely on his professional qualification in violation of Wis. Stat. § 440.26(6)(a)(2) and Wis. Admin. Code § SPS (then RL) 35.01(17). Wis. Stat. § 440.26(6)(a)(2) states that “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 . . . 2. Engaged in conduct reflecting adversely on his or her professional qualification.” Similarly, Wis. Code § SPS (then RL) 35.01 states that “[t]he 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.” That provision delineates certain activity which “constitutes conduct reflecting adversely on professional qualification,” and includes: “[v]iolating, 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.” Wis. Admin. Code § SPS 35.01(2).

There is little information in the record regarding the “circumstances” of Respondent’s disorderly conduct conviction. However, the Division’s Exhibit 2 establishes that the circumstances included violent behavior, which I conclude constitutes circumstances which substantially relate to the practice of private detective or private security person. Similar circumstances have been found in prior Department decisions to constitute violations “the circumstances of which substantially relate to the practice of a private detective or private security person.” For example, in *In the Matter of Disciplinary Proceedings Against Ronald G. Bovee*, ORDER 0001900 (June 21, 2012), a violation of Wis. Admin. Code § SPS 35.01(2). was found where Mr. Bovee was convicted of second offense disorderly conduct. In *In the Matter of Disciplinary Proceedings Against Justin A. Schneider*, ORDER 0001503, a violation of Wis. Admin. Code § SPS 35.01(2). was found where Mr. Schneider was convicted of disorderly conduct, which had been reduced from a charge of Assault/Battery on Another. Based on the foregoing, I conclude Respondent violated Wis. Admin. Code § SPS 35.01(2).

Finally, by providing false information in the application for a credential, Respondent engaged in conduct reflecting adversely on his professional qualification in violation of Wis. Stat. § 440.26(6)(a)(2) and Wis. Admin. Code § SPS (then RL) 35.01(17). As stated, Wis. Stat. § 440.26(6)(a)(2) permits disciplinary action against license or permit holders who have “[e]ngaged in conduct reflecting adversely on his or her professional qualification,” which includes, under Wis. Admin. Code § SPS 35.01(17), “[p]roviding false information in the application for a credential.”²

As a result of the violations set forth above, Respondent is subject to discipline pursuant to Wis. Stat. § 440.26(6)(a) and Wis. Admin. Code § SPS 35.01.

Appropriate Discipline

The three purposes of discipline are: (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, 237 N.W.2d 689 (1976).

The Division recommends that Respondent be reprimanded for his conduct. This recommended discipline is consistent with three purposes of discipline articulated in *Aldrich* and also with the discipline imposed by the Department in the *Bovee* and *Schneider* cases, referenced above, in which reprimands were ordered for nearly identical conduct. In light of DHA’s practice of complying with the prior decisions of the Department and professional boards, a reprimand is imposed against Respondent in this matter.

² Although not charged in the Complaint, Respondent’s conduct also appears to be in violation of Wis. Stat. § 440.26(6)(a)3., which prohibits making “a false statement in connection with any application for a license or permit under this section.”

Costs

The Division requests that Respondent be ordered to pay the full costs of its investigation and of these proceedings. In *In the Matter of Disciplinary Proceedings against Elizabeth Buenzli-Fritz* (LS 0802183 CHI), the Chiropractic Examining Board stated:

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 respondent's cooperation with the disciplinary process;
5. Prior discipline, if any;
6. The fact that the Department of [Safety and Professional Services] 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 [Safety and Professional Services] 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 delineated in the *Buenzli-Fritz* decision, Respondent should be assessed the full amount of recoverable costs. The alleged conduct, involving both dishonesty and violence, is of a serious nature; Respondent did not participate in these proceedings; there is no argument that certain factual findings were investigated and litigated

unnecessarily; and, given the program revenue nature of the Department of Safety and Professional Services; fairness dictates imposing the costs of these disciplinary proceedings on Respondent, and not on fellow members of his profession who have not engaged in such conduct.

If the Department assesses costs against Respondent, the amounts of costs will be determined pursuant to Wis. Admin. Code § SPS 2.18.

ORDER

Accordingly, IT IS ORDERED that Respondent Thomas Ward is hereby REPRIMANDED, pursuant to § 440.26(6)(a) and Wis. Admin. Code § SPS 35.01.

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

**Department Monitor
Department of Safety and Professional Services
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 Thomas T. Ward.

Dated at Madison, Wisconsin on August 24, 2012.

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: _____

Jennifer E. Nashold
Administrative Law Judge