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Before The
State Of Wisconsin
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

In the Matter of the Disciplinary Proceedings
Against **JOE M. TEUMER JR.**, Respondent

FINAL DECISION AND ORDER

Order No.

ORDER 0002105

Division of Legal Services and Compliance Case No. 11 RSG 010

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 25th day of October, 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 **JOE M. TEUMER, JR.**, Respondent

PROPOSED DECISION AND ORDER
DHA Case No. SPS-12-0041

Division of Legal Services and Compliance¹ Case No. 11 RSG 010

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

Joe M. Teumer, Jr.
9900 294th Avenue
Trevor, WI 53179

Department of Safety and Professional Services, Division of Legal Services and Compliance, by

Attorney Sarah Norberg
Department of Safety and Professional Services
Division of Legal Services and Compliance
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 Joe Teumer (Respondent), alleging that Respondent's license was

¹ The Division of Legal Services and Compliance was formerly known as the Division of Enforcement. Because the Division was called the Division of Enforcement at the time of the actions described, it is referred to as such in the procedural history of this decision.

subject to disciplinary action pursuant to Wis. Stat. §§ 440.26(4m)(b) and 440.26(6)(a), and Wis. Admin. Code §§ SPS (then RL)² 35.01(2), 35.01(8), and 35.01(17).

Respondent failed to file an Answer to the Complaint and failed to make himself available for a telephone prehearing conference on June 11, 2012. As a result, the Division filed a Motion for Default Judgment and Supporting Memorandum, with attached exhibits, on June 22, 2012. The administrative law judge (ALJ) issued a briefing order on June 25, 2012 requiring Respondent to file a response to the Division's motion by July 23, 2012. Respondent failed to file a response.

FINDINGS OF FACT

Facts Related to the Alleged Violation

Findings of fact 1-6 are taken from the Division's Complaint filed in this matter.

1. Respondent Joe M. Teumer, Jr. (dob 02/21/1991) is licensed in the State of Wisconsin as a Private Security Person, having license number 108-40890, first issued on June 23, 2010, and current through August 31, 2012.

2. On or about June 15, 2010, Respondent signed a private security permit application that was received by the Department on or about June 22, 2010. Respondent answered "NO" to the following question on the application:

a. Have you EVER been convicted of a MISDEMEANOR, DRIVING WHILE INTOXICATED (DWI), or a VIOLATION of any state or local law (other than traffic) that is punishable by a forfeiture or ordinance violation in this or any other state, OR are criminal or DWI charges currently pending against you in this or any other state? If YES, complete and attach the Convictions and Pending Charges (Form #2252).

² For ease of reference, this decision will use the current "SPS" designation rather than the former "RL," although at the time of the alleged violations, the administrative code used the designation "RL."

3. On March 1, 2011, the Department was notified by Respondent and his employer that Respondent had been convicted of theft and obstruction. The Department subsequently opened this case for investigation.

4. Court records obtained during the course of the Department's investigation revealed that on or about June 11, 2010, Respondent was charged with three counts of Theft-Movable Property <=\$2500 and one count of Resisting or Obstructing an Officer for acts committed on February 24, 2010 and March 5, 2010.

5. On or about January 7, 2011, Respondent pleaded guilty to and was convicted of two counts of Theft-Movable Property <=\$2500 and one count of Resisting or Obstructing an Officer. A third charge for Theft-Movable Property <=\$2500 was dismissed but read in.

6. Respondent failed to notify the Department of the convictions within 48 hours after the entry of the judgment of conviction.

7. The Division's Exhibit 2, the Criminal Complaint, establishes that the obstruction conviction was based on Respondent's lying to law enforcement.

Facts Related to Default

8. The Complaint and Notice of Hearing in this matter were served on Respondent on May 9, 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."

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

10. Following expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for June 11, 2012. The Notice instructed Respondent to provide the ALJ with a telephone number at which he could be reached for the conference no later than June 6, 2012. The Notice further informed Respondent: **“A respondent’s failure to appear at a scheduled conference or hearing may result in default judgment being entered against the respondent.”**

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

12. Based on Respondent’s failure to file an Answer to the Complaint and failure to 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 June 22, 2012, pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c).

13. On June 25, 2012, the ALJ issued a Briefing Order which established a deadline of July 23, 2012 for Respondent to file a response to the Division’s motion for default.

14. Respondent failed to file a response as required by the Briefing Order.

CONCLUSIONS OF LAW

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

2. Wisconsin Stat. § 440.03(1) provides that the Department “may promulgate rules defining uniform procedures to be used by the department . . . 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. If a respondent fails to appear, the administrative law judge may “take the allegations in an appeal as true as may be appropriate” and “[f]or 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 . . . (4) the failure to be ready to proceed with the hearing or prehearing conference as scheduled.” Wis. Admin. Code § HA 1.07(3)(b) and (c).

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), Respondent has admitted to the allegations of the Complaint and other evidence by not filing an Answer and by failing to be ready to proceed with the status conference as scheduled and failing to provide a telephone number at which he could be reached for the conference.

9. Respondent violated Wis. Stat. § 440.26(4m)(b) and Wis. Admin. Code § SPS 35.01(2) by failing to report his 2011 convictions to the Department within 48 hours of the judgment of conviction.

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 35.01(2), by violating a law, the circumstances of which substantially relate to the practice of a private security person.

11. 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 35.01(17), by providing false information in the application for a credential.

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 Statutes and Administrative Code

Because Respondent failed to provide an Answer to the Complaint filed against him and refused to make himself available for the June 11, 2012 status conference, findings may be made and an order entered “on the basis of the complaint and other evidence,” Wis. Admin. Code § SPS 2.14, and the ALJ may “take the allegations in an appeal as true as may be appropriate.” Wis. Admin. Code § HA 1.07(3).

Finding of fact 5 establishes that on or about January 7, 2011, Respondent pleaded guilty to and was convicted of two counts of Theft-Movable Property ≤\$2500 and one count of Resisting or Obstructing an Officer and that a third charge for Theft-Movable Property ≤\$2500

was dismissed but read in. Finding of fact 6 establishes that Respondent failed to report his convictions from 2011 within 48 hours of the judgment of conviction.

Wisconsin 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 35.01(2) 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. . . .” Respondent’s failure to report his convictions within 48 hours of the judgment of conviction constitutes a violation of Wis. Stat. § 440.26(4m)(b) and Wis. Admin. Code § SPS 35.01(2).

Respondent’s convictions also constitute a violation of Wis. Stat. § 440.26(6)(a)(2) and Wis. Admin. Code § SPS 35.01(2). Wisconsin Stat. § 440.26(6)(a)2 provides, in relevant part 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.” Wisconsin Admin. Code § SPS 35.01 also 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).

“Private Security Person” is defined to mean “any private police, guard or any person who stands watch for security purposes.” Wis. Stat. § 440.26(1m)(h). That is, the practice of a private security person includes standing watch to prevent theft. Therefore, Respondent’s convictions for misdemeanor theft are substantially related to the practice of a private security person. *See, e.g., In the Matter of the Application for Renewal of Private Detective License #7082 and Application For Original Private Detective Agency License (Randall Detective Agency) for Marian R. Randall*, LS9309171RAL (Jan. 3, 1994) (concluding that “Applicant, by having been convicted of retail theft violated a law the circumstances of which substantially relate to the practice of a private detective”). Respondent’s conviction for obstructing an officer, which involved dishonesty to law enforcement, also substantially relates to practice as a private security person. *See In the Matter of the Disciplinary Proceedings Against Sean Jones*, LS0309181RSG, at 2 (Jun. 30, 2004). 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 35.01(2), by violating a law, the circumstances of which substantially relate to the practice of a private security person.³

³ As noted in the Division’s motion for default, the conduct also constitutes a violation of Wis. Stat. § 440.26(6)(a)(1), which allows the Department to take disciplinary action where a private security person has “[b]een convicted of a misdemeanor..., subject to ss. 111.321, 111.322 and 111.335.” Wisconsin Stat. § 111.335(1)(c) provides that “it is not employment discrimination because of conviction record to refuse to . . . license . . . or to bar or terminate from . . . licensing, 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.” However, the Division did not rely on Wis. Stat. § 440.26(6)(a)(1) in its Complaint, but instead relied on Wis. Admin. Code § SPS 35.01(2), which is one of the delineated means of engaging in conduct adversely reflecting on a professional qualification under Wis. Stat. § 440.26(6)(a)(2).

Moreover, findings of fact 2 and 4 establish that Respondent falsely stated in his application for a private security person license that no criminal charges were pending against him even though he had charges for theft and obstructing an officer pending against him at the time he signed the application. As set forth above, Wis. Stat. § 440.26(6)(a)(2) and Wis. Admin. Code § SPS 35.01(2) authorize disciplinary action against a licensee who has “engaged in conduct reflecting adversely on professional qualification.” Pursuant to Wis. Admin. Code § SPS 35.01(17), activity which “constitutes conduct reflecting adversely on professional qualification” includes “[p]roviding false information in the application for a credential.” In providing false information on his application for a private security license, 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 35.01(17).⁴

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.

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 requests that Respondent’s private security person license be revoked; that he be precluded from seeking to reinstate that license or applying for a new private security person or private detective license with the State of Wisconsin for at least two years; and that he

⁴ As noted in the Division’s motion for default, the conduct also constitutes a violation of Wis. Stat. § 440.26(6)(a)(3), which allows the Department to take disciplinary action where a private security person has “[m]ade a false statement in connection with any application for a license or permit under this section.” However, the Division did not rely on Wis. Stat. § 440.26(6)(a)(3) in its Complaint, but instead relied on Wis. Admin. Code § SPS 35.01(17), which is one of the delineated means of engaging in conduct adversely reflecting on a professional qualification under Wis. Stat. § 440.26(6)(a)(2).

be required to submit a new application and meet all requirements for licensure then existing at the time of any future application.

The recommended discipline is warranted under the standards of *Aldrich*, the facts of this case, and the Department's prior decisions. Respondent lied on his application for a private security permit regarding the charges pending before him, thereby depriving the Department of the ability to consider those charges when determining whether to issue him a private security person license. Respondent then failed to report his convictions within 48 hours after the entry of the judgment of conviction. Respondent's convictions – for theft and obstructing an officer – are serious and substantially related to the practice of a private security person.

Revocation is also consistent with Department precedent. *See, e.g., In the Matter of the Disciplinary Proceedings Against Brendan M. Eichsteadt and Metropolitan Protective Services*, LS0906083RSG (Jun. 8, 2009) (revoking private security person license where private security person convicted of theft by false representation); *In the Matter of the Disciplinary Proceedings Against Mitchell Alan Lippel*, LS0903065RSG (Mar. 6, 2009) (accepting voluntary surrender of right to renew private security permit where private security person was convicted of theft-movable property <=\$2500); *In the Matter of the Disciplinary Proceedings Against Sean Jones*, LS0309181RSG, at 2 (Jun. 30, 2004) (denying renewal application where private security person had two convictions for obstructing an officer); *In the Matter of the Application for Renewal of Private Detective License #7082 and Application For Original Private Detective Agency License (Randall Detective Agency) for Marian R. Randall*, LS9309171RAL (Jan. 3, 1994) (denying application for renewal of private detective license where private detective convicted of retail theft).

Respondent's convictions for theft and obstructing an officer reflect a character trait of dishonesty. See *In the Matter of the Disciplinary Proceedings Against Sean Jones*, LS0309181RSG, at 3 (Jun. 30, 2004) ("Mr. Jones' behavior [in obstructing an officer] ... reflects a character trait of dishonesty. If permitted to continue to practice as a private security person, Mr. Jones would be presented with ample opportunities to engage in similar misconduct. The risk of recidivism is too great to ask the public to bear."); *In the Matter of the Application for Renewal of Private Detective License #7082 and Application For Original Private Detective Agency License (Randall Detective Agency) for Marian R. Randall*, LS9309171RAL, at 6 (Jan. 3, 1994) ("In reference to character traits, Randall's conduct as evidenced by her conviction for theft reflects that she is dishonest, untrustworthy and lacks respect for the ownership of other individuals. Such traits are totally inconsistent with those traits essential to successful practice as a private detective.") Revocation is required to protect the public from Respondent's dishonesty.

Allowing Respondent to keep his license in this case would send a message to other potential applicants that it is to their benefit to lie about convictions on their applications for a private security person license because even if the lie is discovered, they will be allowed to keep their licenses. To ensure deterrence, Respondent's license should be revoked and he should be required to reapply should he desire to practice as a private security person in the future. By requiring reapplication, the Department will have the opportunity to consider his convictions and any rehabilitation that may have occurred in the meantime when determining whether it is appropriate to issue him a private security person or private detective license.

In light of the facts of this case, the standards set forth in *Aldrich*, and the Division of Hearings and Appeals' practice of complying with prior decisions of the Department, the discipline recommended by the Division is appropriate.

Costs

The Division requests that Respondent be ordered to pay the full costs of its investigation and of these proceedings. Standards for the imposition of costs were articulated in *In the Matter of Disciplinary Proceedings against Elizabeth Buenzli-Fritz* (LS 0802183 CHI), in which 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 Division has proven that Respondent was convicted of crimes the circumstances of which substantially relate to the practice of a private security person, that he provided false information in the application for a credential, and that he failed to report his convictions to the Department within 48 hours after entry of the judgment of conviction. Respondent's misconduct – convictions for theft and obstructing an officer – is serious. Indeed, prevention of theft is a main job responsibility of a private security person. Respondent obtained a license by lying on his application. Respondent has not cooperated with the disciplinary process and has failed to answer the Complaint or appear in this matter. It would be unfair to impose the costs of discipline in this matter on those licensees who have not engaged in misconduct. Therefore, it is appropriate for Respondent to pay the full costs of the investigation and of these proceedings. If the Department assesses costs against Respondent, the amount of costs will be determined pursuant to Wis. Admin. Code § SPS 2.18.

ORDER

Accordingly, IT IS ORDERED:

1. Respondent's license as a private security person is hereby REVOKED, pursuant to § 440.26(6) and Wis. Admin. Code § SPS 35.01, effective the date the final decision is signed by the Department.
2. Respondent shall not seek to reinstate his license or apply for a new private security person or private detective license with the State of Wisconsin for at least two years.
3. Respondent is required to submit a new application and meet all requirements for licensure then existing at the time of any future application.

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 Legal Services and Compliance
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 Joe Teumer.

Dated at Madison, Wisconsin on October 5, 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