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Before The
State Of Wisconsin
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

In the Matter of the Disciplinary Proceedings
Against **TAIRON D. BRELOVE**, Respondent

FINAL DECISION AND ORDER
Order No. **ORDER 0002156**

Division of Legal Services and Compliance Case No. 12 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 16th day of November, 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 **TAIRON D. BRELOVE**, Respondent

PROPOSED DECISION AND ORDER

DHA Case No. SPS-12-0060

ORDER 0002156

Division of Legal Services and Compliance¹ Case No. 12 RSG 010

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

Tairon D. Brelove
3224 North 24th Pl.
Milwaukee, WI 53216

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

Sarah E. 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 Legal Services and Compliance (Division), filed a formal Notice of Hearing and Complaint against Respondent Tairon D. Brelove (Respondent), alleging

that Respondent's license was subject to disciplinary action pursuant to Wis. Stat. § 440.26(6)(a)1. and 2. and Wis. Admin. Code § SPS 35.01. 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 September 7, 2012 and failed to appear at the prehearing conference.

At that prehearing conference, counsel for the Division moved for default, and on September 7, 2012, the Administrative Law Judge (ALJ) found Respondent to be in default and issued a Notice of Default. The Division filed a recommended Proposed Decision and Order, with attached exhibits, on September 24, 2012. Respondent failed to respond to either the ALJ's Notice of Default or the Division's recommended Proposed Decision and Order.

FINDINGS OF FACT

Facts Related to the Alleged Violation

Findings of fact 1-10 are taken from the Division's Complaint against Respondent filed in this matter, with the exception of finding of fact no. 7, which is taken from the Criminal Complaint filed against Respondent.

1. Respondent Tairon D. Brelove (DOB 02/16/1987) is licensed in the State of Wisconsin as a Private Security Person, having license number 108-32056, first issued on October 18, 2006 and current through August 31, 2012.

2. Respondent's most recent address on file with the Department is 3224 North 24th Pl., Milwaukee, WI 53216.

3. Respondent's private security person license expired on September 1, 2010.

4. On or about January 9, 2012, Respondent submitted an on-line renewal application for his private security person license to the Department.

¹ The Division of Legal Services and Compliance was formerly known as the Division of Enforcement.

5. A subsequent Criminal Information Bureau check by the Department revealed a conviction for Respondent within the two years preceding January 9, 2012.

6. Court records obtained from Respondent in response to a request by the Department revealed that on August 9, 2010, Respondent was charged with Misdemeanor Battery-Domestic Abuse and Disorderly Conduct-Domestic Abuse (Milwaukee County Case Number 2010CM004643).

7. According to the Criminal Complaint filed in Milwaukee County, Respondent attempted to throw a bottle of beer at the victim while inside a bar. The bottle missed and Respondent began arguing with the victim. Security came between Respondent and the victim, during which Respondent attempted to hit the victim. As the victim left the bar and was going toward her car, Respondent approached her and told her not to get into the car, grabbing her shirt. He then started to hit the victim and she tried to hit him back. Respondent pushed the victim down and dragged her over the curb, as a result of which she suffered pain and abrasions to her legs and arms. Several weeks later Respondent sent her a text message which stated, "Don't make me kill you."

8. On March 1, 2011, Respondent was convicted of Disorderly Conduct-Domestic Abuse, a misdemeanor.

9. On or about March 31, 2012, Respondent was sentenced, in part, to 18 months probation for the March 1, 2011 conviction.

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

11. On or about February 13, 2012, Respondent's private security person license was renewed.

Facts Related to Default

12. The Complaint and Notice of Hearing in this matter were served on Respondent on August 3, 2012, by both certified and regular mail, consistent with Wis. Admin. Code § SPS 2.08. The Notice of Hearing stated that Respondent was required to file an Answer to the Complaint within 20 days and informed Respondent: “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.”

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

14. Following expiration of the 20-day time period to file an Answer, the administrative law judge (ALJ) scheduled a telephone prehearing conference for September 7, 2012. Notice of this prehearing conference was sent to both parties, with instructions that Respondent provide the telephone number at which he could be reached for the conference to the ALJ no later than September 4, 2012. The Notice advised Respondent: “A respondent’s failure to appear at a scheduled conference or hearing may result in default judgment being entered against the respondent.”

15. Respondent failed to provide a telephone number at which he could be reached for the prehearing conference, and at the scheduled conference, the Division provided the ALJ with the last telephone number on file with the Department. The ALJ attempted to reach Respondent at the telephone number provided but it was not in service.

16. The Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3).

17. On September 7, 2012, the ALJ issued a Notice of Default which found Respondent to be in default. The Division filed a recommended Proposed Decision and Order, with attached exhibits, on September 24, 2012. Respondent failed to respond to either the ALJ's Notice of Default or the Division's recommended Proposed Decision and Order.

DISCUSSION AND CONCLUSIONS OF LAW

Violations of Wisconsin Statutes and Administrative Code

Because Respondent failed to provide an Answer to the Complaint filed against him and failed to appear at the September 7, 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) further provides: "(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 facts alleged in the Complaint establish that Respondent failed to report his conviction to the Department within 48 hours of the judgment of conviction. Such failure constitutes a violation of Wis. Stat. § 440.26(4m)(b) and Wis. Admin. Code § SPS 35.01(2).² 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 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

² Effective December 1, 2011, the Wisconsin Department of Safety and Professional Services' regulations pertaining to Private Security Persons at Chapters RL 30-35 were redesignated as Chapters SPS 30-35 under Wis. Stat. § 13.92(4)(b)1. References within this Proposed Decision and Order are to the current designations.

information which describes the nature of the crime or conviction and the judgment of conviction. . . .” Respondent’s violation of Wis. Stat. § 440.26(4m)(b) and Wis. Admin. Code § SPS 35.01(2) subjects him to discipline under Wis. Stat. § 440.26(4m)(b)4. (disciplinary action may be taken where licensee “[v]iolate[s] this section or any rule promulgated or order issued under this section.”).

In addition, Wis. Stat. § 440.26(6)(a)2. states that the Department may take disciplinary action when a licensee has “[e]ngaged in conduct reflecting adversely on his or her professional qualification.” Similarly, Wis. Admin. Code § SPS 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).

The Criminal Complaint filed against Respondent establishes that the circumstances of his conviction included particularly violent behavior against the victim. The Department has found convictions for engaging in violent conduct against others to be substantially related to the practice of a private security person for the purpose of imposing discipline. *See In the Matter of Disciplinary Proceedings Against Daniel J. Eichstaedt*, LS0001453RSG (March 30, 2012) (conviction for Battery reduced from a charge of Child Abuse-Intentionally Cause Harm); *In the Matter of Disciplinary Proceedings Against Jamil James Locker*, LS0001392RSG (February 27, 2012) (conviction for Battery reduced from a charge of Felony Child Abuse).

Based on the facts of this case and the Department's prior decisions, I conclude that the circumstances of Respondent's conviction substantially relate to the practice of a private security person and that, therefore, Respondent engaged in conduct reflecting adversely on his professional qualification pursuant to Wis. Stat. § 440.26(6)(a)2. and Wis. Admin. Code § SPS 35.01(2). Thus, he is also subject to discipline pursuant to these provisions.

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's license be suspended for a period of 20 days and that his license be limited to require successful completion of all the terms of the probation ordered by the Milwaukee County Circuit Court in Milwaukee County Case Number 2010CM004643. This recommended discipline is consistent with the purposes of discipline articulated in *Aldrich* and also with the discipline previously imposed by the Department for comparable conduct and violations. In *Eichstaeadt*, the Department ordered a 30-day suspension of a private security person license for a domestic battery conviction and also limited the license to require successful completion of probation. In *In the Matter of Disciplinary Proceedings Against Larry A. Russell*, LS0001469RSG (April 4, 2012), the Department ordered a 15-day suspension of a private security person license for a disorderly conduct conviction. In light of the particularly violent facts of this case and DHA's practice of complying with the prior decisions of the Department, the discipline recommended by the Division is warranted here.

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 (Aug. 14, 2008), 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; and
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. His violent conduct 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 the license of Respondent Tairon D. Brelove to practice as a private security person in the State of Wisconsin is SUSPENDED for a period of 20 days, effective 10 days after the date the final decision is signed by the Department, and that Respondent's license is LIMITED as follows:

1. Respondent shall successfully complete all the terms of the probation ordered by the Milwaukee County Circuit Court in Milwaukee County Case Number 2010CM004643.

2. Respondent shall submit proof of completion of the terms of the probation in the form of verification from the Milwaukee County Circuit Court to the Department Monitor at the address stated below.

3. This Limitation shall be removed from Respondent's license after he has satisfied the Department or its designee that he has successfully completed the ordered probation.

4. In the event Respondent fails to successfully complete the terms of the probation as ordered by Milwaukee County Circuit Court on March 1, 2011, Respondent's license may, in the discretion of the Department or its designee, be REVOKED, without further notice or hearing.

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 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

Dated at Madison, Wisconsin on October 25, 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