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Before The
State Of Wisconsin
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES
(REGISTERED SECURITY GUARDS)

In the Matter of the Disciplinary Proceedings
Against **TODD EDMONDS**, Respondent

FINAL DECISION AND ORDER
Order No. **0002317**

Division of Legal Services and Compliance Case No. 12 RSG 012

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 26th day of February, 2013.

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

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 **TODD EDMONDS**, Respondent

PROPOSED DECISION AND ORDER
DHA Case No. SPS-12-0071

Division of Legal Services and Compliance Case No. 12 RSG 012

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

Todd Edmonds
947 North 24th Street
Milwaukee, WI 53208

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

Sarah E. 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
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PROCEDURAL SUMMARY

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 Todd Edmonds (Respondent), alleging that Respondent's license was subject to disciplinary action pursuant to Wis. Stat. §§ 440.26(6)(a)1, 2 and 4 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 November 28, 2012, and failed to appear at the prehearing conference.

At the prehearing conference, counsel for the Division moved for default, and on November 30, 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 December 19, 2012.

FINDINGS OF FACT

Facts Related to the Alleged Violation

Findings of fact 1-9 are taken from the Division's Complaint against Respondent filed in this matter.

1. Respondent Todd Edmonds (D.O.B. November 15, 1964) was licensed in the State of Wisconsin as a Private Security Person, having license number 108-27297, first issued on November 9, 2004, and expired on September 1, 2012.

2. The most recent address for Respondent on file with the Department is 947 North 24th Street, Milwaukee, WI 53208.

3. On February 24, 2012, the Department received notification from Respondent's attorney that Respondent had been convicted of disorderly conduct.

4. On February 28, 2012, the Department received a Report of Conviction form from Respondent.

5. Division Case Number 12 RSG 012 was subsequently opened for investigation.

6. Court records obtained from Respondent and during the course of the Department's investigation revealed that on October 30, 2011, Respondent was charged with misdemeanor Disorderly Conduct with a read-in offense of Carrying Concealed Weapon (Milwaukee County Case Number 2011CM006717).

7. On February 17, 2012, Respondent was convicted of misdemeanor Disorderly Conduct pursuant to Wis. Stat. § 947.01.

8. The criminal complaint and police report revealed that the charges stemmed from an incident on October 28, 2011 in which Respondent was arrested for waving a loaded handgun over his head. When Respondent was searched during the arrest, a knife was also found in his jacket pocket.

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

Facts Related to Default

10. The Complaint and Notice of Hearing in this matter were served on Respondent on October 19, 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."

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

12. Following expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for November 28, 2012. Notice of this prehearing conference was sent to both parties on November 13, 2012, with instructions that Respondent provide the telephone number at which he could be reached for the conference to the ALJ no later than November 23, 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 respondent."**

13. Respondent failed to provide a telephone number at which he could be reached for the prehearing conference. At the scheduled conference, the Division provided the ALJ with two telephone numbers at which Respondent might be reached. The ALJ attempted to reach Respondent at the telephone numbers provided. One number was no longer in service. The second number was in service but the recording for voicemail did not indicate whether it was Respondent's number. The ALJ left a voicemail for Respondent at the second number but did not receive a phone call back from him.

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

15. On November 30, 2012, the ALJ issued a Notice of Default which found Respondent to be in default. The Notice of Default was sent to the parties by regular mail and by email. On that same date, Respondent sent an email to the ALJ's legal secretary, in which he alleged civil rights violations by State of Wisconsin employees and stated that he was homeless in Oregon.

16. The ALJ responded to Respondent by email on November 30, 2012, forwarding Respondent's email to the Division's attorney, and stating that Respondent should send any correspondence provided to the DHA to the Division's attorney as well. The ALJ's email further stated, "[I]f you wish to provide a telephone number and make yourself available for a rescheduled telephone prehearing conference, I would be willing to set another conference and vacate the finding of default. If you wish to appear by phone for a rescheduled prehearing conference, you need to provide me with a telephone number at which you may be reached, and provide some dates and times that you would be available at that number (since you state you are homeless). **You need to provide this information to me no later than December 7, 2012. Otherwise, the default proceedings will continue.**"

17. On December 1, 2012 (a Saturday), Respondent again emailed the ALJ without copying the Division's attorney, but did not provide a telephone number, did not state that he was unable to appear by telephone and did not state whether he wished to appear for a

rescheduled prehearing conference. Instead, he provided further detail of his grievances against certain state and county employees.

18. The ALJ again responded to Respondent by email on December 3, 2012, forwarding Respondent's email to the Division's attorney. The ALJ's email informed Respondent that the ALJ could not decide the case based on emails and that if Respondent wished to have his case heard, he needed to comply with the ALJ's prior email and that if he did not provide a telephone number by December 7, 2012, the ALJ would assume that he did not want to proceed with this matter, the default would remain, and the ALJ would determine the issue of discipline based on the submissions from the Division's attorney. Respondent did not communicate again with the ALJ.

19. The Division filed a recommended Proposed Decision and Order, with attached exhibits, on December 19, 2012.

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 November 28, 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). 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 information which describes the nature of the crime or conviction and the judgment of conviction" Respondent's violations of Wis. Stat. § 440.26(4m)(b) and Wis. Admin. Code § 35.01(2) subject him to discipline under Wis. Stat. § 440.26(6)(a)4., which states that disciplinary action may be taken where a 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 and the underlying police report establish that the circumstances of his misdemeanor Disorderly Conduct conviction included an incident in which Respondent endangered public safety by waving a loaded gun over his head in public and having a concealed knife in his jacket pocket. The Department has found convictions for disorderly conduct and carrying a concealed weapon 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 Kevin M. Berg*, ORDER0001529 (May 9, 2012); *In the Matter of Disciplinary Proceedings Against Ware A. Burnette*, ORDER0001961 (August 7, 2012); and *In the Matter of Disciplinary Proceedings Against Antwan T. Langford*, ORDER0002051 (September 19, 2012).

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 Respondent therefore engaged in conduct reflecting adversely on his professional qualification in violation of Wis. Admin. Code § SPS 35.01(2). Thus, he is subject to discipline pursuant to Wis. Stat. § 440.26(6)(a)2. and 4.¹ and Wis. Admin. Code § 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 right to renew his license be revoked. Even though Respondent’s license is currently expired, it is appropriate and necessary to impose discipline. Wisconsin Stat. § 440.08(3)(a) allows the holder of a credential to restore the credential even after expiration by simply paying the applicable renewal fee plus a late renewal fee of \$25. Under subparagraph (b), the Department is empowered with the ability to promulgate rules requiring credential holders who have failed to renew the credential for five years to complete additional requirements to restore their licenses. *See* Wis. Stat. § 440.08(3)(b). Read together, these provisions have been interpreted by the Department to mean that credential holders retain a right to automatically renew their credentials within five years of expiration by simply paying the required fees. Thus, Respondent has an automatic right to renew his license until August 31, 2017 by just paying the applicable renewal fees.

The same reasons justifying discipline in cases in which the respondents are currently licensed apply to this case as Respondent may renew his license at any time. *See, e.g., In the Matter of Disciplinary Proceedings Against Paul S. George, Dean K. George, and George Auction Services*, LS-9804151-AUC (Nov. 18, 1999).

¹ The Division also alleged that Respondent was subject to discipline pursuant to Wis. Stat. § 440.26(6)(a)1., which authorizes the Department to discipline a licensee who has “[b]een 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.” Because the Department cited this statute as grounds for discipline but did not allege the conduct described in the statute as grounds for a violation, I do not address this particular subsection in this decision.

Respondent's actions and disregard for the law exemplify the need for discipline in this case. The requested 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 *In the Matter of Disciplinary Proceedings Against Kevin J. McCabe*, LS0410061RSG (June 22, 2005), the Department ordered the revocation of a right to renew a private security permit for a disorderly conduct conviction that occurred while the permit was active. See also *In the Matter of Disciplinary Proceedings Against Herman P. Weber*, LS0608093RSG (Nov. 21, 2007) (revocation of a right to renew a private security permit for engaging in conduct reflecting adversely on the professional qualification). In light of the facts of this case and consistent with prior final 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 prior to the Department's consideration of any future application by Respondent for any credential. The Division asserts that this request is consistent with Department practice when dealing with an expired license.

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 in the event he seeks to apply for an active credential with the Department. His 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, 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 amount of costs will be determined pursuant to Wis. Admin. Code § SPS 2.18.

ORDER

Accordingly, IT IS ORDERED that Respondent Todd Edmonds' right to renew his private security person license (license no. 108-27297) is REVOKED.

IT IS FURTHER ORDERED that should Respondent ever apply for a credential with the Department in the future, Respondent shall pay all recoverable costs in this matter in an amount to be established, pursuant to Wis. Admin. Code § SPS 2.18, prior to the Department's consideration of any such application.

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

Dated at Madison, Wisconsin on the 31st day of January, 2013.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By: 

Jennifer E. Nashold
Administrative Law Judge