

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



Wisconsin Department of Safety and Professional Services Access to the Public Records of the Reports of Decisions

This Reports of Decisions document was retrieved from the Wisconsin Department of Safety and Professional Services website. These records are open to public view under Wisconsin's Open Records law, sections 19.31-19.39 Wisconsin Statutes.

Please read this agreement prior to viewing the Decision:

- The Reports of Decisions is designed to contain copies of all orders issued by credentialing authorities within the Department of Safety and Professional Services from November, 1998 to the present. In addition, many but not all orders for the time period between 1977 and November, 1998 are posted. Not all orders issued by a credentialing authority constitute a formal disciplinary action.
- Reports of Decisions contains information as it exists at a specific point in time in the Department of Safety and Professional Services data base. Because this data base changes constantly, the Department is not responsible for subsequent entries that update, correct or delete data. The Department is not responsible for notifying prior requesters of updates, modifications, corrections or deletions. All users have the responsibility to determine whether information obtained from this site is still accurate, current and complete.
- There may be discrepancies between the online copies and the original document. Original documents should be consulted as the definitive representation of the order's content. Copies of original orders may be obtained by mailing requests to the Department of Safety and Professional Services, PO Box 8935, Madison, WI 53708-8935. The Department charges copying fees. *All requests must cite the case number, the date of the order, and respondent's name* as it appears on the order.
- Reported decisions may have an appeal pending, and discipline may be stayed during the appeal. Information about the current status of a credential issued by the Department of Safety and Professional Services is shown on the Department's Web Site under "License Lookup."

The status of an appeal may be found on court access websites at:

<http://ccap.courts.state.wi.us/InternetCourtAccess> and <http://www.courts.state.wi.us/wscca>

- Records not open to public inspection by statute are not contained on this website.

By viewing this document, you have read the above and agree to the use of the Reports of Decisions subject to the above terms, and that you understand the limitations of this on-line database.

Correcting information on the DSPS website: An individual who believes that information on the website is inaccurate may contact DSPS@wisconsin.gov



Before The
State Of Wisconsin
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

In the Matter of the Disciplinary Proceedings
Against **GREGORY SMITH**, Respondent

FINAL DECISION AND ORDER

Order No. **0003246**

Division of Legal Services and Compliance Case No. 13 RSG 008

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 2nd day of June, 2014.

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 **GREGORY SMITH**, Respondent

DHA Case No. SPS-14-0013
DLSC Case No. 13 RSG 008

PROPOSED DECISION AND ORDER

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

Gregory Smith
2417 North 55th Street
Milwaukee, WI 53210

Michael J. Berndt
Chief Legal Counsel
Department of Safety and Professional Services
P.O. Box 8368
Madison, WI 53708-8368

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

Attorney Sarah E. Norberg
Department of Safety and Professional Services
Division of Legal Services and Compliance
P.O. Box 7190
Madison, WI 53707-7190

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 Gregory Smith. The Complaint alleged 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 because he: (1) engaged in conduct reflecting adversely on his professional qualification pursuant to 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; (2) engaged in conduct reflecting adversely on his professional

qualification pursuant to Wis. Admin. Code § SPS 35.01(23) by failing to cooperate in a timely manner with the Department's investigation; and (3) violated Wis. Stat. § 440.26(4m)(b) and Wis. Admin. Code § 35.01(2) by failing to report his convictions to the Department within 48 hours after the judgment of conviction. The Division served Respondent on February 26, 2014 by sending a copy of the Notice of Hearing and Complaint to his address on file with the Department. Respondent failed to file an Answer to the Complaint, as required by Wis. Admin. Code § SPS 2.09 and failed to appear at the prehearing conference held before the Division of Hearings and Appeals on April 1, 2014.

At the prehearing conference, the Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c). In light of Respondent's failure to file an Answer to the Complaint and failure to appear for the conference, the undersigned administrative law judge (ALJ) found Respondent to be in default. On April 1, 2014, the ALJ issued a Notice of Default against Respondent and ordered that the Division file a recommended proposed decision by April 9, 2014. The Division timely filed its recommended proposed decision. Respondent did not file a response to either the Notice of Default or to the Division's subsequent submission.

FINDINGS OF FACT

Facts Related to the Alleged Violations

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

1. Respondent Gregory Smith is permitted in the State of Wisconsin as a Private Security Person, permit number 42350-108. This permit was first granted to Respondent on December 9, 2010 and is current through August 31, 2014.

2. The most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) for Respondent is 2417 N. 55th Street, Milwaukee, WI 53210.

3. On or about December 27, 2012, Respondent was convicted of Misdemeanor Criminal Damage to Property and Misdemeanor Battery in Milwaukee County Circuit Court Case No. 2012CM005492.

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

5. On or about January 4, 2013, the Department received a Report of Conviction form from Respondent.

6. Division of Legal Services and Compliance Case Number 13 RSG 008 was subsequently opened for investigation.

7. On February 15, 2013, the Department mailed Respondent a letter requesting information regarding this matter.

8. On March 22, 2013, the Department mailed Respondent a second letter requesting information regarding this matter.

9. Respondent failed to respond to the Department's requests.

Facts Related to Default

10. The Complaint and Notice of Hearing in this matter were served on Respondent on February 26, 2014 by both certified and regular mail consistent with Wis. Admin. Code § SPS 2.08. The Notice of Hearing advised 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 § SPS 2.09(4).

12. Following expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for April 1, 2014. Notice of this prehearing conference was sent to both parties, with instructions that Respondent provide to the ALJ the telephone number at which he could be reached for the conference no later than March 27, 2014. The Notice instructed Respondent: "A respondent's failure to appear at a scheduled conference or hearing may result in default judgment being entered against the respondent."

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

14. At the prehearing conference, the Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c).

15. On April 1, 2014, the ALJ issued a Notice of Default and Order, requiring the Division to serve no later than April 9, 2014 a recommended proposed decision.

16. The Division timely filed its recommended proposed decision.

17. Respondent did not file a response to either the Notice of Default or to the Division's subsequent submission.

DISCUSSION AND CONCLUSIONS OF LAW

As stated in the April 1, 2014 Notice of Default and Order, Respondent is in default for failing to file an Answer to the Complaint and failing to appear at the prehearing conference held on April 1, 2014. Wisconsin Admin. Code § SPS 2.14 provides: "If the respondent fails to answer as required by s. SPS 2.09 or fails to appear at the hearing at the time fixed therefor, the respondent is in default and the disciplinary authority may make findings and enter an order on

the basis of the complaint and other evidence.” Wisconsin Admin. Code § HA 1.07(3) states, in relevant part:

(3) FAILURE TO APPEAR.

...

(b) If a respondent fails to appear, the administrative law judge may . . . take the allegations in an appeal as true as may be appropriate . . .

(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 . . . (4) the failure to be ready to proceed with the hearing or prehearing conference as scheduled.

An Answer to a Complaint must be filed within 20 days of service of the Complaint. Wis. Admin. Code § SPS 2.09(4). Service of the Complaint may be made by mailing a copy of the Complaint to the respondent at the respondent’s last known address. Wis. Stat. § 440.11(2); Wis. Admin. Code § SPS 2.08(1). “Service by mail is complete upon mailing.” Wis. Admin. Code § SPS 2.08(1). On February 26, 2014, the Division served Respondent with the Complaint by mailing a copy of the Notice of Hearing and Complaint by both regular and certified mail to his most recent address on file with the Department. Pursuant to Wis. Admin. Code §§ SPS 2.08(1) and 2.09(4), Respondent was required to file an Answer within 20 days but failed to do so.

Because Respondent is in default for his failure to file an Answer and to appear at the prehearing conference, an order may be entered against him on the basis of the Complaint and other evidence. *See* Wis. Admin. Code § 2.14; Wis. Admin. Code § HA 1.07(3)(b) and (c).

Violation of Wis. Admin. Code § SPS 35.01(2), Wis. Stat. § 440.26(4m)(b) and Wis. Admin. Code § SPS 35.01(23)

Wisconsin Stat. § 440.26(6) states, in relevant part:

(a) Subject to the rules adopted under s. 440.03(1), 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 done any of the following:

1. Been 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.

2. Engaged in conduct reflecting adversely on his or her professional qualification.

...

4. Violated this section or any rule promulgated or order issued under this section.

Wisconsin Admin. Code § SPS 35.01 states, in relevant part:

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 or any owner of an agency has engaged in conduct reflecting adversely on professional qualification.

Conduct reflecting adversely on professional qualification includes violating any law the circumstances of which substantially relate to the practice of a private security person. Wis. Admin. Code § SPS 35.01(2). The undisputed facts establish that Respondent was convicted of misdemeanor Battery and misdemeanor Criminal Damage to Property on December 27, 2012. 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*, ORDER0001453 (March 30, 2012) (finding a conviction for battery substantially related); *In the Matter of Disciplinary Proceedings Against Driften S. Kitzman*, ORDER0001406 (March 2, 2012) (finding a conviction for battery substantially related); *In the Matter of Disciplinary Proceedings Against Jamil James Locker*, ORDER0001392 (February 27, 2012) (finding a conviction for misdemeanor battery substantially related). The Department has also found convictions for criminal damage to property substantially related to the practice of a private security person for the purpose of imposing limitations on new permits. See *In the Matter of Application for Private Security Permit for Keane J. Johnson*, ORDER0001950 (July 27, 2012) (finding a conviction for criminal damage to property substantially related); *In the Matter of Application for Private Security Permit for Benjamin Raszeja*, ORDER0002107 (October 29, 2012) (finding a conviction of misdemeanor criminal damage to property substantially related).

Based on the facts of this case and the Department's prior decisions, I conclude that the circumstances of Respondent's violations substantially relate to the practice of a private security person. I also conclude, therefore, that 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.

The undisputed facts of this case also establish that Respondent failed to notify the Department within 48 hours of the judgment of conviction. Wisconsin Statute section 440.26(4m)(b) requires the holder of a license who is found to have committed a violation to "notify the department in writing of the date, place and nature of the . . . finding within 48 hours after the entry of . . . the judgment finding that the person committed the violation." Respondent's failure to notify the Department within 48 hours of the judgment of conviction constitutes a violation of Wis. Stat. § 440.26(4m)(b).

On February 15, 2013 and March 22, 2013, the Department sent Respondent requests for information via mail. Respondent did not respond to the Department's requests. Pursuant to Wis. Admin. Code § SPS 35.01(23), conduct reflecting adversely on professional qualification includes "failing to cooperate in a timely manner with the department's investigation of a complaint filed against the credential holder." 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(23) by failing to cooperate in a timely manner with the Department's investigation of a complaint.

As a result of the above violations, Respondent is subject to discipline pursuant to Wis. Stat. § 440.26(6)(a)1–2 and 4 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's license to practice as a private security person be suspended for 45 days beginning 15 days after the date the Final Decision and Order is signed by the Department. 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 *Eichstaedt*, the Department ordered a 30-day suspension of a private security person license for a battery conviction, failure to report the conviction, and failure to cooperate with the Department's investigation. *Id.* at 3. The Department also ordered a 30-day suspension of a private security person license for a battery conviction where the licensee failed to report the conviction. *Kitzman*, p. 3.

As for Respondent's Criminal Damage to Property conviction, the Department has emphasized that convictions for behavior which shows a lack of respect for ownership rights also warrant serious discipline. See *In the Matter of Disciplinary Proceedings Against Joe M. Teumer, Jr.*, ORDER0002103 at 9–11 (October 25, 2012) (permit revoked for, among other things, a theft conviction). In *In the Matter of Disciplinary Proceedings Against Jeremy E. Rendmeister*, the Department ordered a 60-day suspension for a conviction of Criminal Trespass to Dwelling – Party to a Crime. See ORDER0001502 at 2 (April 24, 2012).

In light of the facts of this case and the Division of Hearings and Appeals' practice of complying with the prior decisions of the Department, the discipline recommended by the Division is warranted here.

Costs

The Department has the authority to assess costs pursuant to Wis. Stat. § 440.22. The Division requests that Respondent be ordered to pay the full costs of its investigation and of these proceedings. The factors to be considered in assessing full costs are: (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 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. See *In*

the Matter of Disciplinary Proceedings Against Elizabeth Buenzli-Fritz, LS0802183CHI (Aug. 14, 2008).

Based on the factors delineated in the *Buenzli-Fritz* decision and the facts of this case, Respondent should be assessed the full amount of recoverable costs in this case. Respondent's violations evidence conduct of a serious nature, Respondent did not participate in these proceedings, the level of discipline sought by the Division is consistent with Department precedent, and, given the program revenue nature of the Department of Safety and Professional Services, fairness dictates imposing costs of these disciplinary proceedings on Respondent rather than on fellow members of his profession who have not engaged in such conduct.

ORDER

Accordingly, IT IS ORDERED that the license of Respondent Gregory Smith to practice as a private security person in the state of Wisconsin is SUSPENDED for a period of 45 days, beginning 15 days after the date the Final Decision and Order is signed by the Department.

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 7190
Madison, WI 53707-7190**

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

Dated at Madison, Wisconsin on May 6, 2014.

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