

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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Before The
State Of Wisconsin
HEARING AND SPEECH EXAMINING BOARD

In the Matter of the Disciplinary Proceedings
Against **SCOTT C. CHASE**, Respondent

FINAL DECISION AND ORDER
Order No. 000 3317

Division of Legal Services and Compliance Case No. 13 HAD 001

The State of Wisconsin, Hearing and Speech Examining Board, 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, Hearing and Speech Examining Board.

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 14th day of July, 20 14.


Member

Hearing and Speech Examining Board



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

0003317

In the Matter of the Disciplinary Proceedings
Against **SCOTT C. CHASE**, Respondent

PROPOSED DECISION AND ORDER
DHA Case No. SPS-13-0047

Division of Legal Services and Compliance Case No. 13 HAD 001

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

Scott C. Chase
17908 Old Yorkville Road
Union Grove, WI 53182

Wisconsin Hearing and Speech Examining Board
P.O. Box 8935
Madison, WI 53708-8935

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

Attorney Micabil Diaz-Martinez
Department of Safety and Professional Services
Division of Legal Services and Compliance
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 Complaint against Respondent, Scott C. Chase, alleging that Respondent engaged in unprofessional conduct and was therefore subject to disciplinary action pursuant to Wis. Stats. § 459.10(1)(k) and Wis. Admin. Code § HAS 5.02(2)(a) and (g). The Division served Respondent on September 30, 2013 by sending a copy of the Notice of Hearing and Complaint to his last known address. Respondent failed to file an Answer to the Complaint, as required by Wis. Admin. Code § SPS 2.09, and failed to appear at the telephone prehearing conference held before the Division of Hearings and Appeals on November 19, 2013.

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 at the prehearing conference, the undersigned Administrative Law Judge (ALJ) found Respondent to be in default. On November 19, 2013, the ALJ issued a Notice of Default against Respondent. Consistent with the Notice of Default issued by the ALJ, the Division filed a recommended proposed decision on November 21, 2013. 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 1-12 are taken from the Division's Complaint against Respondent filed in this matter.

1. Respondent Scott C. Chase (DOB April 16, 1960) was licensed in the State of Wisconsin as a hearing instrument specialist, license number 815-60. This license was first granted to Respondent on March 6, 1969 and expired on January 31, 2013. Respondent retains the right to renew that license upon payment of a fee until January 31, 2018, pursuant to Wis. Stat. § 440.08(3).

2. Respondent's most recent address on file with the Department is 17908 Old Yorkville Road, Union Grove, Wisconsin 53182.

PRIOR DISCIPLINE

3. On July 13, 2009, in case number LS0812042HAD, the Wisconsin Hearing and Speech Examining Board (Board) issued an Order in which it concluded that Respondent violated Wis. Admin. Code §§ HAS 5.02(2)(a), HAS 5.02(2)(d), HAS 5.02(2)(e), and HAS 7.04. The Board reprimanded Respondent and required him to pay two-thirds of the costs. Respondent's discipline was based on his interactions relating to the sale of a hearing aid on February 11, 2003, and his failure to cooperate with the Board in connection with that sale. In addition, Respondent, at the time of the sale, did not possess a valid license: Respondent had failed to properly renew his license and continued to practice as an unlicensed hearing instrument specialist from February 7, 2003 to March 24, 2003.

4. The details underlying the violation of the rule requiring cooperation with the Board were as follows:

- a. On April 10, 2008, an investigator for the Division sent a letter to Respondent requesting information about one of his patients. Respondent called the investigator on April 25, 2008 and said he would reply promptly. No written response was received.
- b. On May 12, 2008, a second letter with the same request was sent to Respondent. Respondent called and left a message for the investigator stating that he would reply by June 30, 2008. No written response was received.

- c. On July 14, 2008, when Respondent was at the Department serving as an examiner for the Board, Respondent told the investigator “that we had lost some family members and that we were unable to find the file,” but that he would reply by July 2 or 9,¹ 2008. No written response was received.
- d. On August 6, 2008, a third letter was sent to Respondent by certified mail. Respondent did not provide a written response to the investigative request. Respondent was unable to locate the records for the patient.

EVENTS OF 2012

5. At all times relevant to the events currently under investigation, Respondent owned CHAS Hearing Health Care in Union Grove, Wisconsin, where he worked as a hearing instrument specialist.

6. On June 21, 2012, Respondent entered into a sales contract with a person identified by his initials as GZ. The sales contract was for the purchase of two hearing aids. The purchase price for the two hearing aids was in the amount of \$3,074.00. The signed sales contract provided in writing for “a thirty day (30) full refund option.”²

7. On June 22, 2012, an order was placed for the two hearing aids. GZ wrote a check to Respondent, as a deposit, in the amount of \$1,550.00

8. On July 24, 2012, GZ received the two hearing aids from Respondent. GZ wrote a check to Respondent for the remaining owed balance, in the amount of \$1,524.

9. On August 2, 2012, GZ’s hearing aids were sent to the manufacturer to be repaired at the request of GZ. On September 6, 2012, the hearing aids came back from the manufacturer and were returned to GZ.

10. On September 11, 2012, GZ asked Respondent for a refund. On September 12, 2013, Respondent informed GZ that he did not have the money for a refund.

11. On October 5, 2012, GZ filed a small claims action against Respondent in Milwaukee County Small Claims Court. On November 26, 2012, GZ was granted a default judgment against Respondent in the amount of \$3,279.75.

12. On January 8, 2013, the Division received a complaint against Respondent from GZ. The complaint was dated January 3, 2013. The Division made the following attempts to obtain information from Respondent:

¹ The Complaint contains a typographical error, which makes it impossible to discern whether Respondent said he would reply by July 2 or July 9.

² The Complaint states that “[t]he signed sales contract did not provide an explanation as to the refund policy.” Because this is the legal issue to be determined in this case and is not an accurate statement of fact, it cannot be accepted or found as a fact in this case.

- a. On February 13, 2013, the Division sent a letter to Respondent requesting a statement responding to the allegations and copies of his treatment records. No written response was received.
- b. On March 11, 2013, the Division sent a second letter with the same request to Respondent by certified mail. The letter asked that Respondent reply to the request by March 25, 2013. No written response was received.
- c. On May 24, 2013, an investigator for the Division called Respondent by telephone and inquired as to why Respondent had not responded. Respondent stated that he was very sorry for the delay and would get a response to the investigator in a week or two. No written response was received.
- d. On June 14, 2013, the Division subpoenaed Respondent to the Department for an investigative interview. The investigative interview was scheduled for July 3, 2013. The subpoena indicated that it was issued on behalf of the Hearing and Speech Examining Board, that it was issued pursuant to Wis. Stat. § 440.03(4), and that failure to comply with the subpoena could result “in legal sanctions.” The subpoena indicated that Respondent was required to appear and to produce “at the same date and time all business records, receipts, warranties and dates of payment regarding the hearing aids sold to GZ.”
- e. On July 3, 2013, Respondent called the Division. Respondent requested a postponement of the investigatory interview. The Division postponed the investigatory interview to July 8, 2013.
- f. On July 8, 2013, Respondent arrived ninety-five minutes late to the postponed investigatory interview. Respondent informed representatives of the Division that he could not participate in the investigatory interview. Respondent gave a manila envelope to representatives of the Division and departed from the premises.
- g. On July 9, 2013, Respondent called representatives of the Division. Respondent stated that he would be providing additional documentation supporting his answer to the complaint. No response was received.

Facts Related to Default

13. The Complaint and Notice of Hearing in this matter was served on Respondent on September 30, 2013, 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 Board 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.”

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

15. Following expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for November 4, 2013. The October 21, 2013 Notice of Telephone Prehearing Conference was sent to both parties, with instructions that Respondent provide a telephone number at which he could be reached for the conference to the ALJ no later than October 30, 2013.

16. On November 5, 2013, due to the unavailability of the ALJ, the Division of Hearing and Appeals rescheduled the telephone prehearing conference to November 19, 2013. The November 5, 2013 Notice of Rescheduled Telephone Prehearing Conference was sent to both parties, with instructions that Respondent provide a telephone number at which he could be reached for the conference to the ALJ no later than November 14, 2013. As with the October 21, 2013 Notice, this Notice informed Respondent: "A respondent's failure to appear at a scheduled conference or hearing may result in default judgment being entered against the respondent."

17. Respondent failed to provide a telephone number and could not be reached for 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).

18. On November 19, 2013, the ALJ issued a Notice of Default and Order, which stated that Respondent was in default and which ordered the Division to serve no later than November 27, 2013 a recommended proposed decision. The Division timely filed its recommended proposed decision and order. Respondent did not file a response to either the Notice of Default or to the Division's subsequent submission.

DISCUSSION AND CONCLUSIONS OF LAW

Default

As stated in the November 19, 2013 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 November 19, 2013. 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 video conference 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. *See* 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. *See* 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 September 30, 2013, 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. Wis. Admin. Code § 2.14; Wis. Admin. Code § HA 1.07(3)(b) and (c).

Violation of § 459.10(1)(k) and Wis. Admin. Code § HAS 5.02(2)(g) and (a)

Following an investigation and disciplinary hearing, the Board may "reprimand the licensee or permit holder or revoke, suspend, limit or deny the trainee permit or license, or any combination thereof" of a hearing instrument specialist who has engaged in "unprofessional conduct." Wis. Stat. § 459.10(1)(k). "Unprofessional conduct" means "the violation of any standard of professional behavior which through experience, state statute or administrative rule has become established in the practice of fitting and dealing in hearing aids." *Id.*

Unprofessional conduct includes "failing to cooperate in a timely manner with the board's investigation of complaints filed against the applicant or licensee" after a request by the Board. Wis. Admin. Code § HAS 5.02(2)(a). As set forth in Finding of Fact 12 above, Respondent repeatedly failed to cooperate in a timely manner with the Board's requests from February through July of 2013 and thus engaged in unprofessional conduct as delineated in Wis. Admin. Code § HAS 5.02(2)(a).

According to Wis. Admin. Code § HAS 5.02(2)(g), unprofessional conduct also includes the following:

(g) Failing to clearly state the full terms of sale on a receipt, as required in s. 459.03, Stats., and failing to comply with those terms. The full terms of sale shall include all of the following:

1. The amount and method of payment.
2. The date and place of delivery.
3. The terms of any guarantee.
4. The nature and duration of the trial period and extension, if any.
5. The refund policy and amount, if any.
6. The product return and exchange policy, if any.
7. The product repair policy, if any.

The Division asserts that Respondent engaged in unprofessional conduct in violation of Wis. Admin. Code § HAS 5.02(2)(g) by failing to “clearly state the full terms of the sale and provide an explanation as to the refund policy.” (Division’s Complaint, ¶13, Division’s recommended Proposed Decision and Order, p. 7) The facts provided in the Complaint do not support this conclusion.³ The signed sales contract provided in writing for “a thirty day (30) full refund option.” The Division has not shown how that information fails to comply with the requirement in Wis. Admin. Code § HAS 5.02(2)(g)5. that the receipt contain “the refund policy and amount, if any.” Moreover, the Complaint does not contain any additional terms of the sale or refund policy which were not included in the contract, nor has the Division provided any argument or authority indicating that any additional terms are required other than those which were provided in the sales contract at issue here. Thus, this allegation is not supported by the facts.

Although not alleged here, the facts contained in the Complaint come close to supporting a violation of the requirement in Wis. Admin. Code § HAS 5.02(2)(g) that the licensee “comply” with the full terms of sale as contained in the receipt. However, although this is a closer issue, there are insufficient facts to support a finding of this violation as well. The contract provided for a 30-day refund policy. The facts do not establish by a preponderance of the evidence that GZ requested a refund within 30 days. The contract was executed June 21, 2012. The hearing aids arrived on July 24, 2012 and the full amount for the hearing aids was paid that same date. The hearing aids were sent to the manufacturer to be repaired on August 2, 2012 and were returned to GZ on September 11, 2012. The Complaint does not state whether the hearing aids were repaired or not, although GZ was evidently not happy with them as he requested a refund on September 11, 2012 and, when the refund was declined, filed a small claims action in which he prevailed due to Respondent’s default. These facts do not establish that Respondent requested a refund within the 30-day period provided by the contract. Therefore, even if the Division had alleged that Respondent failed to comply with the terms of the contract or it was otherwise permissible to consider such an allegation, the allegation was not proven here.

Although the Division did not establish a violation of Wis. Admin. Code § HAS 5.02(2)(g), it did establish a violation of Wis. Admin. Code § HAS 5.02(2)(a). As a result of the unprofessional conduct described above, Respondent is subject to discipline pursuant to Wis. Stat. § 459.10(1)(k).

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 right to renew his license upon payment of a fee be revoked. The Division also requests that Respondent be ordered not to engage in the

³ As stated in footnote 2, the Complaint alleged that “[t]he signed sales contract did not provide an explanation as to the refund policy.” However, that allegation is not only a conclusion of law but is also contradicted by the sentence which directly precedes it in the Complaint, which states, “The signed sales contract provided in writing for “a thirty day (30) full refund option.”

practice of a hearing instrument specialist while he is revoked. I construe the Division's second request to mean that Respondent be ordered not to practice while his right to renew his license is revoked or while he is unlicensed.

In light of the facts of this case and the prior discipline by the Board in 2009, the Division's recommendation is appropriate.⁴ Respondent has engaged in a pattern of disregarding the authority of the Board and the Board's legitimate requests for information from Respondent. That Respondent is in need of rehabilitation is amply demonstrated by the fact that he apparently learned nothing from the prior disciplinary action in 2009 and by his apparent disinterest in the current disciplinary proceedings. In addition, the public needs protection from Respondent's repeated acts of unprofessional conduct and his refusal to follow the requirements of his profession and of the Board.

Costs

The Board 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 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 prosecutor; (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.

ORDER

Accordingly, IT IS ORDERED that Respondent Scott C. Chase's right to renew his license upon payment of a fee is REVOKED, effective the date of the final decision and order in this case.

IT IS FURTHER ORDERED that Respondent shall not engage in the practice of a hearing instrument specialist in any capacity while he is unlicensed or while his right to renew is revoked.

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:

⁴ I do note, however, that the request that Respondent be ordered not to practice without a license, though ordered here, is somewhat redundant in that it is already a requirement by law that he be licensed to practice.

**Department Monitor
Department of Safety and Professional Services
Division of Legal Services and Compliance
P.O. Box 8935
Madison, WI 53708-8935**

IT IS FURTHER ORDERED that the above-captioned is closed as to Respondent Scott C. Chase.

Dated at Madison, Wisconsin on this 9th day of December, 2013.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By: 

Jennifer E. Nashold
Administrative Law Judge