

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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Before The
State Of Wisconsin
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

In the Matter of the Disciplinary Proceedings
Against **ANDREA M. MURPHY-BROOKS**,
Respondent

FINAL DECISION AND ORDER

Order No. **0003609**

Division of Legal Services and Compliance Case No. 13 RSG 015

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 29th day of December, 2014.

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 **ANDREA M. MURPHY-BROOKS**,
Respondent

DHA Case No. SPS-14-0062
DLSC Case No. 12 RSG 015

0003809

NOTICE OF FILING PROPOSED DECISION AND ORDER

TO: Andrea M. Murphy-Brooks
416 S. Lucust St., Unit G
Janesville, WI 53548

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

PLEASE TAKE NOTICE that a Proposed Decision in the above-captioned matter has been filed with the Department of Safety and Professional Services by Administrative Law Judge Jennifer Nashold. A copy of the Proposed Decision is attached hereto.

If you have objections to the Proposed Decision, you may file your objections in writing, briefly stating the reasons, authorities, and supporting arguments for each objection. If your objections or argument relate to evidence in the record, please cite the specific exhibit and page number in the record.

Your objections and argument must be received at:

**Department of Safety and Professional Services
Division of Policy Development
1400 East Washington Avenue, Room 116
P.O. Box 8366
Madison, Wisconsin 53708-8366**

on or before **November 14, 2014**. You must also provide a copy of your objections and argument to all other parties by the same date.

You may also file a written response to any objections to the Proposed Decision. Your response must be received at the Department of Safety and Professional Services no later than seven (7) days after receipt of the objections. You must also provide a copy of your response to all other parties by the same date.

The attached Proposed Decision is the Administrative Law Judge's recommendation in this case. The Order included in the Proposed Decision is not binding upon you. After reviewing the Proposed Decision, the Department of Safety and Professional Services will issue a binding Final Decision and Order.

Dated at Madison, Wisconsin on October 27, 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



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of the Disciplinary Proceedings
Against **ANDREA M. MURPHY-BROOKS**,
Respondent

PROPOSED DECISION AND ORDER
DHA Case No. SPS-14-0062

Division of Legal Services and Compliance Case No. 13 RSG 015

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

Andrea M. Murphy-Brooks
416 S. Lucust St., Unit G
Janesville, WI 53548

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

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

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

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 Andrea M. Murphy-Brooks. 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 Respondent: (1) engaged in conduct reflecting adversely on her 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, and (2) violated Wis. Stat. § 440.26(4m)(b) and Wis.

Admin. Code § SPS 35.01(2) by failing to report her conviction to the Department within 48 hours after entry of the judgment of conviction. The Division served Respondent on August 12, 2014 by sending a copy of the Notice of Hearing and Complaint to her 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 September 15, 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 September 15, 2014, the ALJ issued a Notice of Default against Respondent and ordered that the Division file a recommended proposed decision by September 30, 2014. The Division timely filed its recommended proposed decision, with attachments. 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 Violation

Findings of Fact 1-5 are taken from the Division's Complaint against Respondent and the police report related to Respondent's civil forfeiture for disorderly conduct.

1. Respondent Andrea M. Murphy-Brooks is permitted in the State of Wisconsin as a Private Security Person, permit number 43853-108. This permit was first granted to Respondent on August 25, 2011, and expired on August 31, 2014.

2. Respondent's most recent address on file with the Department is 416 S. Lucust St., Unit G, Janesville, WI 53548.

3. On February 23, 2012, Respondent was convicted of Disorderly Conduct, a civil forfeiture offense, in Dane County Circuit Court Case Number 2012FO000378.

4. Respondent notified the Department of her conviction on May 17, 2013.

5. According to the police report related to the disorderly conduct offense, Respondent threatened to cut herself with a knife during a domestic disturbance and also refused to leave the apartment of the individual with whom she was arguing and with whom she was living at the time.

Facts Related to Default

6. The Complaint and Notice of Hearing in this matter were served on Respondent on August 12, 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.”

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

8. Following expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for September 15, 2014. Notice of this prehearing conference was sent to both parties, with instructions that Respondent provide the telephone number at which she could be reached for the ALJ no later than September 10, 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.”

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

10. 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).

11. On September 15, 2014, the ALJ issued a Notice of Default and Order, requiring the Division to serve no later than September 30, 2014 a recommended proposed decision.

12. The Division timely filed its recommended proposed decision, with documents related to the disorderly conduct offense attached. 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 September 15, 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 September 15, 2014. As a result, an order may be entered against her on the basis of the Complaint and other evidence. *See* Wis. Admin. Code § 2.14; Wis. Admin. Code § HA 1.07(3).

Violation of Wis. Stat. § 440.26(4m)(b) and (6) and Wis. Admin. Code § SPS 35.01(2)

The undisputed facts of this case establish that Respondent failed to notify the Department within 48 hours of the judgment of conviction. Wisconsin Stat. § 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.” Wisconsin Admin. Code § SPS 35.01(2) also requires credential holders to report a conviction within 48 hours of entry of the judgment of conviction. 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) and Wis. Admin. Code § SPS 35.01(2).

Moreover, Wis. 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 likewise 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 on February 23, 2012, Respondent was convicted of Disorderly Conduct, a civil forfeiture offense, in Dane County Circuit Court Case Number 2012FO000378. The Department has found convictions for Disorderly Conduct substantially related to the practice of a private security person for the purpose of imposing discipline. *See In the Matter of Disciplinary Proceedings Against Todd Edmonds*, ORDER0002317 (Feb. 26, 2013); *In the Matter of Disciplinary Proceedings Against Mick W. Rotta*, ORDER0002021 (Sept. 7, 2012); *In the Matter of Disciplinary Proceedings Against Ware A. Burnette*, ORDER0001961 (Aug. 7, 2012); *In the Matter of Disciplinary Proceedings Against Kevin M. Berg*, ORDER0001529 (May 9, 2012).

With the exception of *Edmonds*, in which Mr. Edmonds waved a loaded gun around and had a knife concealed in his clothing, the facts surrounding the disorderly conduct convictions in these cases are not explained, perhaps because all of these cases involved defaults or stipulations. Moreover, of these cases, only one, *Rotta*, involved a civil forfeiture rather than a misdemeanor conviction for disorderly conduct. The instant case involves a civil forfeiture rather than a criminal conviction and also involves Respondent threatening herself with a knife rather than others. However, Respondent has refused to participate in these proceedings and has failed to make any argument that for purposes of § SPS 35.01, a civil forfeiture is somehow distinguishable from a criminal conviction or that the circumstances of her offense are not substantially related to the practice of a private security person.

Accordingly, and 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 and that Respondent therefore engaged in conduct reflecting adversely

on her professional qualification pursuant to Wis. Stat. § 440.26(6)(a)2. and Wis. Admin. Code § SPS 35.01.

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 requests that Respondent's right to renew her private security person permit be revoked. Even though Respondent's permit 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 Wis. Stat. § 440.08(3)(b), the Department may promulgate rules requiring credential holders who have failed to renew the credential for five years to complete additional requirements to restore the credential. The Department interprets these provisions 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 her permit until August 31, 2019 by merely paying the applicable renewal fees.

The purposes of discipline as articulated in *Aldrich* apply to this case because Respondent may renew her permit at any time. See, e.g., *In the Matter of Disciplinary Proceedings Against Todd Edmonds*, ORDER0002317 (Feb. 26, 2013). Respondent's actions and disregard for the law exemplify the need for discipline in this case. The recommended discipline is consistent with the purposes articulated in *Aldrich* and also with the discipline previously imposed by the Department for comparable conduct and violations. In *Edmonds*, the Department ordered a revocation of a private security person's right to renew his permit based upon a Disorderly Conduct conviction and failure to timely report the conviction. *Id.* The *Edmonds* decision was also in line with discipline in other prior cases. See *In the Matter of Disciplinary Proceedings Against Kevin J. McCabe*, LS0410061RSG (June 22, 2005) (revoking the 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, 2006) (revoking the right to renew a private security permit for, among other things, engaging in conduct reflecting adversely on professional qualification).

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 prior to the Department's consideration of any future application by Respondent for a credential. The Division asserts that this request is consistent with Department practice when dealing with an expired license.

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 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 should she seek to apply for an active credential with the Department. 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, fairness dictates imposing costs of these disciplinary proceedings on Respondent rather than on fellow members of her profession who have not engaged in such conduct.

ORDER

Accordingly, IT IS ORDERED that Respondent Andrea M. Murphy-Brooks' right to renew her private security person permit (permit no. 43853-108) is hereby 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 terms of this Order are effective the date the Final Decision and Order is signed by the Department.

IT IS FURTHER ORDERED that the above-captioned matter be and hereby is closed as to Respondent Andrea M. Murphy-Brooks.

Dated at Madison, Wisconsin on the 27th day of October, 2014.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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Madison, Wisconsin 53705
Telephone: (608) 266-7709
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By: _____

Jennifer E. Nashold

Administrative Law Judge