

## WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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Before The  
State Of Wisconsin  
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

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In the Matter of Disciplinary Proceedings Against  
Joe A. Gonzalez, Respondent

FINAL DECISION AND ORDER

Order No. 0004254

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**Division of Legal Services and Compliance Case No. 13 RSG 025**

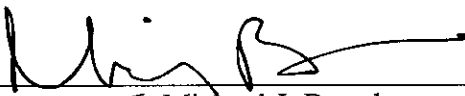
The State of Wisconsin, Department of Safety and Professional Services, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, make the following:

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 22<sup>nd</sup> day of September 2015.

  
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Michael J. Berndt  
Chief Legal Counsel  
Department of Safety and Professional Services



Before The  
State Of Wisconsin  
DIVISION OF HEARINGS AND APPEALS

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In the Matter of Disciplinary Proceedings Against  
Joe A. Gonzalez, Respondent

DHA Case No. SPS-15-0054  
DLSC Case No. 13 RSG 025

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PROPOSED DECISION AND ORDER

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

Joe A. Gonzalez  
P.O. Box 04261  
Milwaukee, WI 53204

Wisconsin Department of Safety and Professional Services  
P.O. Box 8366  
Madison, WI 53708-8366

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

Attorney Renee M. Parton  
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 and served a formal Notice of Hearing and Complaint against Respondent Joe A. Gonzalez (Respondent). The Complaint alleged that Respondent's permit was subject to disciplinary action pursuant to Wis. Stat. § 440.26(6) because Respondent: (1) violated Wis. Stat. § 440.26(4m)(b) and Wis. Admin. Code § SPS 35.01(2) by failing to notify the Department within 48 hours after entry of the judgment of conviction; (2) engaged in conduct reflecting adversely on his professional qualification pursuant to Wis. Admin. Code § SPS 35.01(2) by violating laws the circumstances of which substantially relate to the practice of a private security person; (3) engaged in conduct reflecting adversely on his professional qualification pursuant to Wis. Admin. Code § 35.01(20) by obtaining or attempting to obtain anything of value from a client without the client's consent;

and (4) engaged in conduct reflecting adversely on professional qualification pursuant to Wis. Admin. Code § SPS 35.01(23) by failing to cooperate in a timely manner with the Department's investigation. The Division served Respondent on June 12, 2015, 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(4), and failed to appear at the prehearing conference held before the Division of Hearings and Appeals on August 3, 2015.

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 and issued a Notice of Default and Order on August 3, 2015. Consistent with the notice, the Division filed a recommended proposed decision on August 28, 2015.

### FINDINGS OF FACT

Findings of Fact 1–10 are taken from the Division's Complaint against Respondent filed in this matter.

1. Respondent Joe A. Gonzalez is permitted in the State of Wisconsin as a private security person, permit number 36231-108. This permit was first granted to Respondent on June 27, 2008 and expired on September 1, 2014.

2. Pursuant to Wis. Stat. § 440.08(3), Respondent retains the right to automatically renew permit number 36231-108 through August 31, 2019.

3. Respondent's most recent address on file with the Department is P.O. Box 04261, Milwaukee, Wisconsin 53204.

4. On September 26, 2013, the Department received a complaint from Respondent's former employer, Securitas Security Services (Securitas), alleging Respondent had taken money and other items from a client of Securitas.

5. On September 30, 2013, the Department mailed a letter to Respondent asking him to respond to the complaint.

6. Respondent failed to respond to the September 30, 2013 letter from the Department.

7. On May 2, 2014, Respondent was convicted in Waukesha County Circuit Court (Case No. 14CM0401) of Theft of Movable Property <=\$2,500, a Class A Misdemeanor, and sentenced to four months in jail with Huber release conditions (stayed), twelve months of probation (imposed) and payment of \$1,506.40 in restitution.

8. The Criminal Complaint revealed that Respondent stole Milwaukee Bucks and Milwaukee Brewers promotional tickets from the Miller Coors office building in late 2012 and early 2013 while on duty there as a private security person for Securitas.

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

10. Respondent's conviction as set forth herein is substantially related to the practice as a private security person.

#### Facts Related to Default

11. The Complaint and Notice of Hearing in this matter were served on Respondent on June 12, 2015, 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."

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

13. Following expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for July 13, 2015. Notice of this prehearing conference was sent to both parties, with instructions that Respondent provide the ALJ with a telephone number at which he could be reached no later than July 8, 2015. The Notice instructed Respondent: "The Respondent's failure to appear at a scheduled conference or hearing may result in default judgment being entered against the Respondent."

14. Respondent failed to provide a telephone number at which he could be reached for the prehearing conference.

15. At the prehearing conference held on July 13, 2015, the Division provided a telephone number for Respondent at which the ALJ attempted to contact Respondent but the number was disconnected. The Division provided an alternative mailing address for Respondent. A new prehearing conference was scheduled for August 3, 2015.

16. The Division sent Respondent a copy of the Complaint and a revised Notice of Hearing on July 13, 2015. The ALJ sent a new Notice to Respondent, with instructions that Respondent provide the ALJ with a telephone number at which he could be reached no later than July 31, 2015, and again warning Respondent that failure to appear at the prehearing conference could result in default judgment against him.

17. Respondent failed to provide a telephone number at which he could be reached for the prehearing conference.

18. At the prehearing conference held on August 3, 2015, the ALJ was unable to contact Respondent. The Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c).

19. On August 3, 2015, the ALJ issued a Notice of Default and Order, requiring the Division to serve no later than August 31, 2015, a recommended proposed decision and order.

20. On August 12, 2015, the Notice of Default and Order sent to Respondent at his alternative address was returned as undeliverable by the U.S. Postal service with no forwarding address.

21. The Division timely filed its recommended proposed decision and order on August 28, 2015.

22. Respondent did not file a response to the Notice of Default or to the Division's recommended proposed decision and order.

### Default

As stated in the August 3, 2015 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 August 3, 2015. As a result, an order may be entered against him on the basis of the Complaint and other evidence. *See* Wis. Admin. Code § SPS 2.14; Wis. Admin. Code § HA 1.07(3)(b) and (c).

### Violations of Wis. Stat. § 440.26(4m)(b) and (6), and Wis. Admin. Code § SPS 35.01(2), (20), and (23)

The Division alleges that Respondent is subject to discipline pursuant to Wis. Stat. § 440.26(6) and Wis. Admin. Code § SPS 35.01, which 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.<sup>1</sup>

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.

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<sup>1</sup> Pursuant to these provisions in Chapter 111 of the Wisconsin Statutes, a prior conviction may not be considered in employment or licensing decisions unless the circumstances of the offense substantially relate to the circumstances of the particular job or licensed activity.

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 on May 2, 2014, Respondent was convicted of theft in Waukesha County Circuit Court Case Number 2014CM000401. The undisputed facts further establish that the circumstances surrounding this violation substantially relate to Respondent's practice as a private security person as he engaged in theft while on assignment as a private security person. Based on the facts of this case and that Respondent has made no argument to the contrary, I conclude that Respondent engaged in conduct reflecting adversely on his professional qualification pursuant to Wis. Admin. Code § SPS 35.01(2).

Additionally, conduct reflecting adversely on professional qualification includes obtaining anything of value from a client without the client's consent. Wis. Admin. Code § SPS 35.01(20). The undisputed facts establish that Respondent was employed as private security person by Securitas. In late 2012 and early 2013, Securitas assigned Respondent to provide security services at Miller Coors, a client of Securitas. While working at Miller Coors, Respondent stole promotional tickets. Respondent was subsequently convicted of theft. Based on the facts of this case, I conclude that Respondent engaged in conduct reflecting adversely on his professional qualification pursuant to Wis. Admin. Code § SPS 35.01(20).

Further, the undisputed facts 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 or permit 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).

Finally, conduct reflecting adversely on professional qualification also includes failing to cooperate in a timely manner with the Department's investigation. Wis. Admin. Code § SPS 35.01(23). There is a rebuttable presumption that a credential holder has not cooperated in a timely manner if he or she fails to respond to a request from the Department within 30 days. *Id.* The undisputed facts of this case establish that on September 30, 2013, the Department sent Respondent a request for information and, as of the Division filing of its August 28, 2015 submission, the Department has not received a response to that request. Based on these facts, I conclude that Respondent did not cooperate with a Department investigation in a timely manner and therefore engaged in conduct reflecting adversely on professional qualification pursuant to Wis. Admin. Code § SPS 35.01(23).

As a result of the above violations, Respondent is subject to discipline pursuant to Wis. Stat. § 440.26(6)(a)1., 2., 4. and Wis. Admin. Code § SPS 35.01.

### Appropriate Discipline

The three purposes of discipline are: (1) to promote the rehabilitation of the credential holder; (2) to protect the public from other instances of misconduct; and (3) to deter other credential holders 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 private security person permit be revoked. The recommended discipline is consistent with the purposes articulated in *Aldrich* and with case law.

"Protection of the public is the purpose of requiring a license." *State ex rel. Green v. Clark*, 235 Wis. 628, 631, 294 N.W. 25 (1940). When a license is granted to an individual, Wisconsin is assuring the public that the licensed individual is competent in his or her profession. *Stringez v. Dep't of Regulation & Licensing Dentistry Examining Bd.*, 103 Wis. 2d 281, 287, 307 N.W.2d 664 (1981). It follows that if the state cannot assure the public of the licensee's competence to practice the profession, then revocation is appropriate. *Gilbert v. State Medical Examining Bd.*, 119 Wis. 2d 168, 189-90, 349 N.W.2d 68 (1984).

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 application renewal fee and a late renewal penalty 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, 2019, just by paying these required fees.

The same reasons justifying discipline in cases in which the respondents are currently permitted apply to this case as Respondent may renew his permit at any time. *See In the Matter of the Disciplinary Proceedings Against Todd Edmonds*, LS-0002317 (Feb. 26, 2013), *citing In the Matter of Disciplinary Proceedings Against Paul S. George, Dean K. George, and George Auction Services*, LS-9804151-AUC (Nov. 18, 1999).

Private security persons are charged with protecting the public, keeping the peace, and preventing the occurrence of criminal actions. With this considerable authority comes an equal degree of responsibility. Contrary to this, Respondent, for his own benefit, exploited the very people and property he was entrusted to protect. This further demonstrates Respondent's continuous lack of respect for both the law and the public. Thus, Respondent has failed to fulfill the responsibilities of his profession, and as such, is not fit to be a permitted private security person.



In addition to ignoring the requirements of the law, Respondent has also ignored the Department's legitimate authority. Respondent did not disclose his conviction within the required time frame. Respondent has been nonresponsive throughout the Department's investigation and in this proceeding. When individuals demonstrate an inability to handle the amount of responsibility commensurate with holding professional permits, they should not continue to be entrusted with that permit. Therefore, revocation of Respondent's right to renew his permit is an appropriate response to his disrespect for the law, the public welfare, and the licensing authority governing his profession.

Promoting rehabilitation is one of the purposes of discipline; however, rehabilitation is unlikely here. Respondent has avoided every opportunity to comply with the reporting requirements of his permit, which exist to ensure the continuing competence of the credential holder. Because Respondent will not submit to the authority of the licensing agency, it is contrary to public safety for Respondent to continue to hold a permit. Revocation of Respondent's right to renew would set a strong precedent that the requirements of licensure are to be taken seriously and that cooperation with an investigation by the Department is required in all instances.

In view of the foregoing, revocation of Respondent's ability to renew his permit is warranted.

#### 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 any credential. The Division asserts that this request is consistent with Department practice when dealing with an expired permit.

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 credentials, and the fairness of imposing the costs of disciplining a few members of the profession on the vast majority of the credential holders 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 the event he seeks to apply for any credential with the Department in the future. Respondent, by nature of being in default, has not presented any mitigating evidence that would suggest the full imposition of costs is inappropriate. On the contrary, Respondent's violations evidence conduct of a serious nature. Respondent has been convicted of a violation that indicates lack of respect for the law and the public welfare, has not informed the Department of this conviction, has not cooperated with the

investigation and did not participate in these proceedings. The level of discipline sought by the Division is serious, 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 his profession who have not engaged in such conduct.

ORDER

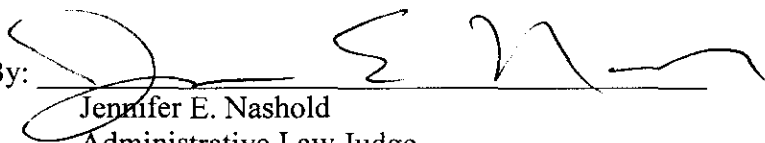
Accordingly, IT IS ORDERED that Respondent Joe A. Gonzalez's right to renew his private security person permit (#36231-108) pursuant to Wis. Stat. § 440.08(3)(a) is hereby REVOKED, effective on the date the final decision is signed by the Department.

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.

Dated at Madison, Wisconsin on August 31, 2015.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
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By: \_\_\_\_\_

  
Jennifer E. Nashold  
Administrative Law Judge