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Before The
State Of Wisconsin
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

In the Matter of Disciplinary Proceedings Against
Charles W. Hartfield, Respondent

FINAL DECISION AND ORDER

Order No. 0004255

Division of Legal Services and Compliance Case No. 14 RSG 009

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 22nd day of September, 2015.

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 Disciplinary Proceedings Against
Charles W. Hartfield, Respondent

DHA Case No. SPS-15-0060
DLSC Case No. 14 RSG 009

PROPOSED DECISION AND ORDER

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

Charles Hartfield
2502 W. Tamarack Street, Apt. 316
Milwaukee, WI 53206-1050

Charles Hartfield
3390 N. Dr. Martin Luther King Dr., Apt. 405
Milwaukee, WI 53212-1411

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 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 and served a formal Notice of Hearing and Complaint against Respondent Charles W. Hartfield (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 30, 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 telephone 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 at the prehearing 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 and order on August 24, 2015.

FINDINGS OF FACT

Facts Related to the Alleged Violations

Findings of Fact 1–11 are taken from the Division's Complaint against Respondent filed in this matter.

1. Respondent Charles W. Hartfield is permitted in the state of Wisconsin as a private security person, permit number 42434-108. This permit was first granted to Respondent on January 6, 2011 and expired on September 1, 2014.

2. Respondent's most recent address on file with the Department is 2502 W. Tamarack Street, Apt. 316, Milwaukee, Wisconsin 53206-1050.

3. On February 11, 2014, Respondent was employed as a private security person by Orion Security Corp. (Orion).

4. On February 11, 2014, Orion assigned Respondent to provide security services at Milwaukee County Behavioral Health-Psychiatric Crisis Services (PCS).

5. On February 11, 2014, Respondent stole \$50 of a patient's money while he was working at PCS as a security guard.

6. On February 13, 2014, Respondent was fired from Orion due to the theft.

7. On March 26, 2014, the Department received a complaint detailing the PCS incident. Division of Legal Services and Compliance Case No. 14 RSG 009 was subsequently opened for investigation.

8. On April 28, 2014, Respondent was found guilty of theft in Milwaukee County Circuit Court, Case No. 14FO190. Respondent was ordered to pay a fine of \$263.50.

9. Respondent did not report the finding to the Department.

10. On January 22, 2015, the Department sent Respondent a request for information regarding the complaint.

11. To date, no response has been received from Respondent.

Facts Related to Default

12. The Complaint and Notice of Hearing in this matter were served on Respondent on June 30, 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."

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

14. Following expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for August 3, 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 29, 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."

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

16. At the prehearing conference held on August 3, 2015, the Division provided a telephone number for Respondent at which the ALJ attempted to contact Respondent but was informed that Respondent's voicemail was full. The Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c).

17. On August 3, 2015, the ALJ issued a Notice of Default and Order, requiring the Division to serve no later than August 24, 2015, a recommended proposed decision and order.

18. Following the prehearing conference and issuance of the Notice of Default and Order on August 3, 2015, the Notice of Telephone Prehearing Conference issued on July 23, 2015, was returned by the U.S. Postal Service to the Division of Hearings and Appeals as undeliverable. The Division of Hearings and Appeals obtained a new address for Respondent and resent the Notice of Default and Order, along with the Notice of Telephone Prehearing Conference. Respondent was given until August 24, 2015, to contact the ALJ.

19. The Division timely filed its recommended proposed decision and order.

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

DISCUSSION AND CONCLUSIONS OF LAW

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), 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 111.335.¹

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.

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 April 28, 2014, Respondent was found guilty of theft in Milwaukee County Circuit Court Case Number 2014FO000190. 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 Orion. On February 11, 2014, Orion assigned Respondent to provide security services at PCS, a client of Orion. While working at PCS, Respondent stole \$50 dollars from a patient. Respondent was subsequently found guilty of theft and fired from Orion. Based on the

¹ 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.

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 January 22, 2015, the Department sent Respondent a request for information and, as of the Division’s filing of its August 24, 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 reflection 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).

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 equally high degree of responsibility. Contrary to this, Respondent, for his own pecuniary gain, exploited the very people 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 those permits. 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 light of the facts of this case and the factors set forth in *Aldrich*, 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

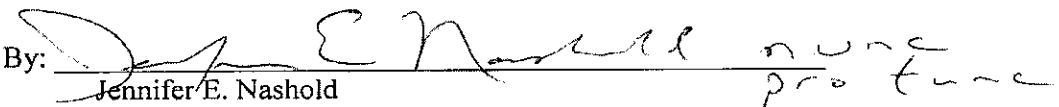
Accordingly, IT IS ORDERED that Respondent Charles W. Hartfield's right to renew his private security person permit (#42434-108) pursuant to Wis. Stat. § 440.08(3)(a) is hereby REVOKED, effective on the date the final decision is signed by the Department.

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 25, 2015.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By:


Jennifer E. Nashold
Administrative Law Judge