

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/wscga>

- 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 Disciplinary Proceedings Against
Roy Howell, Respondent

FINAL DECISION AND ORDER

Order No. 0004270

Division of Legal Services and Compliance Case No. 13 RSG 016

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 October, 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
Roy Howell, Respondent

DHA Case No. SPS-15-0059
DLSC Case No. 13 RSG 016

PROPOSED DECISION AND ORDER

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

Roy Howell
6407 W. Silver Spring Drive
Milwaukee, WI 53218

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 Pamela M. Stach
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 Roy Howell (Respondent). The Complaint alleged that Respondent's permit was subject to disciplinary action pursuant to Wis. Stat. § 440.26(6)(a)(1., 2., and 4.) 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 a 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 prehearing conference held before the Division of Hearings and Appeals on August 4, 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 4, 2015. Consistent with the notice, the Division filed a recommended proposed decision by September 2, 2015.

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 Roy Howell is permitted in the State of Wisconsin as a private security person, having permit number 45780-108. This permit was first granted to Respondent on August 3, 2012 and expired on September 1, 2014.

2. Pursuant to Wis. Stat. § 440.08(3), Respondent retains the right to automatically renew permit number 45780-108 through August 31, 2019.

3. Respondent's most recent address on file with the Department is 6407 W. Silver Spring Drive, Milwaukee, Wisconsin 53218.

4. On August 13, 2012, Respondent, while on duty as a private security person, stole money from a lockbox in a locked medical room at Outreach Community Health Center, 711 W. Capitol Dr., Milwaukee, Wisconsin.

5. On June 11, 2013, Respondent was convicted in Milwaukee County Circuit Court (Case No. 12CF4072) of Theft of Movable Property <=\$2,500, a Class A Misdemeanor, and Disorderly Conduct, a Class B Misdemeanor. Respondent was sentenced to five days in a house of correction and payment of \$481.00 in restitution.

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

7. On October 16, 2013, the Department opened an investigation against Respondent based on the June 11, 2013 conviction.

8. On February 13 and 18, 2015, a Department investigator contacted Respondent at the most recent telephone number on file with the Department and left voicemail messages to contact the investigator regarding the conviction.

9. Respondent did not reply to the Department's February 13 and 18, 2015 contacts.

Facts Related to Default

10. 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."

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 August 4, 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."

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

14. At the prehearing conference held on August 4, 2015, the Division provided a telephone number for Respondent at which the ALJ attempted to contact him. The ALJ left a voicemail for Respondent indicating that he should contact the ALJ at the telephone number provided by 10:15 a.m. on August 4, 2015, failing which the ALJ would proceed with the conference without Respondent.

15. Respondent failed to contact the ALJ by 10:15 a.m. The Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c).

16. On August 4, 2015, the ALJ issued a Notice of Default and Order, requiring the Division to file and serve no later than September 3, 2015, a recommended proposed decision and order.

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

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

DISCUSSION AND CONCLUSIONS OF LAW

Default

As stated in the August 4, 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 4, 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)(a)(1., 2., and 4.) 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)(a)(1,2, and 4) and Wis. Admin. Code § SPS 35.01. Wisconsin Stat. § 440.26(6)(a) 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.

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 June 11, 2013, Respondent was convicted of theft in Milwaukee County Circuit Court Case Number 12CF4072. 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

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.

made no argument to the contrary, I conclude that Respondent engaged in conduct reflecting adversely on his professional qualification, in violation of Wis. Stat. § 440.26(6)(a)1., 2., and 4., and 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, while on duty as a private security person, stole money from a lockbox located in a locked medical room at Outreach Community Health Center in Milwaukee, Wisconsin. 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. As a result, Respondent is in violation of Wis. Stat. § 440.26(6)(a)2. and 4., and 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 (6)(a)4., 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 February 13 and 18, 2015, a Department investigator contacted Respondent at the most recent telephone number on file with the Department and left voicemail messages for Respondent to contact the investigator regarding the conviction. As of the Division filing of its September 2, 2015 Submission, the Department has not received a response to the voicemail messages. 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, in violation of Wis. Stat. § 440.26(6)(a)2. and 4., and 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, and 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 pecuniary gain, 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 and other 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.

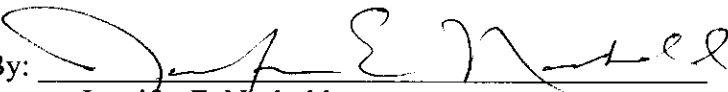
ORDER

Accordingly, IT IS ORDERED that Respondent Roy Howell's right to renew his private security person permit (#45780-108) 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 September 9, 2015.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705
Tel. (608) 266-7709
Fax (608) 264-9885

By: 
Jennifer E. Nashold
Administrative Law Judge