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**Before The
State Of Wisconsin
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES**

In the Matter of Disciplinary Proceedings Against
Peter L. Gargano, Respondent

FINAL DECISION AND ORDER

Order No. 0004335

Division of Legal Services and Compliance Case No. 14 RSG 005

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 10th day of November, 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
Peter L. Gargano, Respondent

DHA Case No. SPS-15-0075
DLSC Case No. 14 RSG 005

PROPOSED DECISION AND ORDER

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

Peter L. Gargano
801 N. Gammon Road
Madison, WI 53717

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 Peter L. Gargano (Respondent). The Complaint alleges that Respondent: (1) engaged in conduct reflecting adversely on his professional qualification pursuant to Wis. Admin. Code § SPS 35.01(2) by violating any law the circumstances of which substantially relate to the practice of a private security person; and (2) engaged in conduct reflecting adversely on his 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 August 18, 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 September 18, 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 September 18, 2015. Consistent with the notice, the Division filed a recommended proposed decision on October 5, 2015.

FINDINGS OF FACT

Facts Related to the Alleged Violations

Findings of Fact 1–7 are taken from the Division's Complaint against Respondent filed in this matter.

1. Respondent Peter L. Gargano is permitted in the State of Wisconsin as a private security person, having permit number 33001-108. This permit was first granted to Respondent on March 15, 2007 and expired on September 1, 2014.

2. Pursuant to Wis. Stat. § 440.08(3), Respondent retains the right to automatically renew permit number 33001-108 through August 31, 2019.

3. Respondent's most recent address on file with the Department is 801 N. Gammon Road, Madison, Wisconsin 53717.

4. On January 15, 2013, Respondent pled guilty to Substantial Battery – Intent to Cause Bodily Harm, a Felony, in violation of Wis. Stat. § 940.19(2) (Dane County Circuit Court Case Number 12CF1974), and entered a Deferred Prosecution/First Offender Program.

5. On March 20, 2014, Respondent satisfactorily completed his Deferred Prosecution/First Offender Program and the Dane County Circuit Court dismissed Case Number 12CF1974.

6. On February 3, 2015, the Department sent an email to Respondent, at the email address Respondent had provided, requesting additional information regarding his employment as a private security person.

7. Respondent did not respond to the Department's February 3, 2015 request for additional information.

Facts Related to Default

8. The Complaint and Notice of Hearing in this matter were served on Respondent on August 18, 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.”

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

10. Following expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for September 18, 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 September 14, 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.”

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

12. At the prehearing conference held on September 18, 2015, the ALJ waited until 10:15 a.m. for an appearance by Respondent. Respondent failed to appear by that time and the ALJ proceeded with the conference without the Respondent.

13. When Respondent failed to appear at the conference, the Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c).

14. On September 18, 2015, the ALJ issued a Notice of Default and Order, requiring the Division to file and serve no later than October 5, 2015, a recommended proposed decision and order.

15. The Division timely filed its recommended proposed decision and order on October 5, 2015.

16. 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 September 18, 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 September 18, 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(6)(a)(2 and 4) and Wis. Admin. Code § SPS 35.01(2) and (23)

Wis. Stat. § 440.26(6)(a)(2 and 4) and Wis. Admin. Code § SPS 35.01, state, 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:

...
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 January 15, 2013, Respondent pled guilty to Substantial Battery – Intent to Cause Bodily Harm, a Felony, in Dane County Circuit Court Case Number 12CF1974. 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 an act which, by definition, could create significant harm to an individual. Because practice as a security guard presupposes protection of person and property, the Respondent's conduct is antithetical to the practice of 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).

Further, 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 3, 2015, the Department sent an email to Respondent at the email address Respondent had provided, requesting additional information regarding his employment as a private security person. As of the Division's filing of its October 5, 2015, submission, the Department has not received a response to the email message. 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)(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 reasonably 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 engaged in conduct with the intent to cause bodily harm to an individual when his duty as a private security person is to protect the

public, including its individual members. This demonstrates Respondent's 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 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 cooperation 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 violated a law that indicates lack of respect for the law and the public welfare, 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 Peter L. Gargano's right to renew his private security person permit (#33001-108) 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 October 16, 2015.

STATE OF WISCONSIN
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By: _____

Jennifer E. Nashold
Administrative Law Judge