

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
Kody F. Jack and Delta Ops Private Police
Agency, LLC, Respondents

FINAL DECISION AND ORDER

Order No. 0004565

**Division of Legal Services and Compliance
Case Nos. 13 RSG 022, 14 RSG 010, and 14 RAL 007**

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 23rd day of February, 2016.

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
Kody F. Jack and Delta Ops Private Police Agency
LLC, Respondents

DHA Case No. SPS-15-0088
DLSC Case Nos. 13 RSG 022
14 RSG 010
14 RAL 007

PROPOSED DECISION AND ORDER

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

Kody F. Jack
Delta Ops Private Police Agency LLC
4240 N. 61st Street
Milwaukee, WI 53216

Department of Safety and Professional Services
P.O. Box 8368
Madison, WI 53708-8368

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 Respondents Kody F. Jack and Delta Ops Private Police Agency LLC (Respondents). The Complaint alleged that Respondents' credentials were subject to disciplinary action pursuant to Wis. Stat. § 440.26(6) because Respondents: (1) engaged in conduct reflecting adversely on their professional qualifications pursuant to Wis. Admin. Code § SPS 35.01(13) by assigning a person to perform private security personnel duties who has not been issued a permit prior to performing those services; (2)

violated Wis. Admin. Code § SPS 34.015(1) by failing to apply to the Department for a permit to authorize its employee to carry a firearm prior to being assigned to do so by the agency; (3) engaged in conduct reflecting adversely on their professional qualification pursuant to Wis. Admin. Code § SPS 35.01(15) by issuing a check on a business account which contained insufficient funds; (4) engaged in conduct reflecting adversely on their professional qualification pursuant to Wis. Admin. Code § SPS 35.01(23) by failing to cooperate in a timely manner with the Department's investigation of a complaint filed against the credential holder; and (5) violated Wis. Admin. Code § SPS 32.05(2) by failing to notify the Department in writing within five days of any changes in the information which the agency has provided the Department.

The Division served Respondents on October 22, 2015, by sending a copy of the Notice of Hearing and Complaint to their addresses on file with the Department. Respondents 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 November 24, 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 Respondents' failure to file an Answer to the Complaint and failure to appear for the prehearing conference, the undersigned Administrative Law Judge (ALJ) found Respondents to be in default and issued a Notice of Default and Order on November 24, 2015. Consistent with this notice, the Division filed a recommended proposed decision on January 8, 2016.

FINDINGS OF FACT

Facts Related to the Alleged Violations

Findings of Fact 1–14 are taken from the Division's Complaint against Respondents filed in this matter.

1. Respondent Kody F. Jack is permitted in the State of Wisconsin as a private security person, having permit number 41465-108, first issued on August 3, 2010, and current through August 31, 2016.

2. Respondent Delta Ops Private Police Agency LLC was licensed in the State of Wisconsin as a private detective agency, having license number 16778-62, first issued on August 2, 2010, and expired September 1, 2015.

3. Respondents' most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 4240 N. 61st Street, Milwaukee, Wisconsin 53216.

4. Respondent Jack was at all times relevant to these proceedings the sole owner of Delta Ops Private Police Agency LLC.

5. On August 18, 2013, K.Z. performed work for Respondents while wearing a full uniform and carrying a firearm.

6. K.Z.'s private security permit was not renewed until August 20, 2013.
7. Respondents did not obtain a firearms permit for K.Z. until August 26, 2013.
8. On February 25, 2014, Respondents purchased a car with check number 1938 from Respondents' business account.
9. On March 13, 2014, check number 1938 was returned to A.N. for frozen or blocked account.
10. Respondents assigned eight employees to perform private security duties on January 20, 2014 through April 1, 2014 at a grocery store.
11. Two of these employees, E.C. and M.W., had private security permits that were expired.
12. Two of these employees, C.M. and W.Y., could not be identified in the Department's records as either credentialed persons or employees of Respondent Delta Ops Private Police Agency LLC.
13. Respondents failed to notify the Department of changes in employment of private security personnel.
14. The Department mailed Respondents requests for information to their addresses on file on April 29, 2014, July 8, 2014, August 12, 2014, September 16, 2014, September 17, 2014, and February 23, 2015. Respondents failed to respond to the Department's requests.

Facts Related to Default

15. The Complaint and Notice of Hearing in this matter were served on Respondents on October 22, 2015, by both certified and regular mail consistent with Wis. Admin. Code § SPS 2.08. The Notice of Hearing advised Respondents: "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."
16. Respondents failed to file an Answer as required by Wis. Admin. Code § SPS 2.09(4).
17. Following expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for November 24, 2015. Notice of this prehearing conference was sent to both parties, with instructions that Respondents provide the ALJ with a telephone number at which they could be reached no later than November 18, 2015. The Notice instructed Respondents: "The Respondent's failure to appear at a scheduled conference or hearing may result in default judgment being entered against the Respondent."

18. Respondents failed to provide a telephone number at which they could be reached for the prehearing conference.

19. At the prehearing conference held on November 24, 2015, the Division provided three telephone numbers it had on file for Respondents. The ALJ attempted to reach Respondents at all three telephone numbers; however, two of the numbers were temporarily out of service and the third number was not answered. The ALJ left a voicemail requesting Respondents contact the ALJ in the next fifteen minutes. However, Respondents never contacted the ALJ. The Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c).

20. On November 24, 2015, the ALJ issued a Notice of Default and Order, requiring the Division to serve no later than January 8, 2016, a recommended proposed decision and order.

21. The Division timely filed its recommended proposed decision and order on January 8, 2016.

22. 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 November 24, 2015 Notice of Default and Order, Respondents are in default for failing to file an Answer to the Complaint and failing to appear at the prehearing conference held on November 24, 2015. As a result, an order may be entered against them 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. Admin. Code §§ SPS 35.01(13), (15), (23), 34.015(1), and 32.05(2)

The Division alleges that Respondents are 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:

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.

Respondents are also subject to discipline pursuant to Wis. Admin. Code § SPS 35.01 which 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 assigning any person to perform private security personnel duties who has not been issued a license or permit prior to performing the services or who has not properly notified the Department of an employment transfer pursuant to Wis. Admin. Code §SPS 32.05. Wis. Admin. Code § SPS 35.01(13). The undisputed facts establish that Respondents assigned eight employees to perform private security duties on January 20, 2014 through April 1, 2014 at a grocery store. Of these eight employees, two had expired permits, two others could not be identified in the Department's records as either credentialed persons or employees of Respondents' private detective agency. Thus, Respondents violated Wis. Admin. Code § SPS 35.01(13). In addition, Wis. Admin. Code § SPS 32.05(2) states that "a licensed private detective agency shall notify in writing within 5 days of any change in the information which the agency has provided the department pursuant to s. 440.26(5), Stats." Respondents' employees were not in the Department's records as employees. Respondents' failure to notify the Department within five days of any change in agency employment, including hiring new employees, constitutes a violation of Wis. Admin. Code § SPS 32.05(2).

Further, the undisputed facts establish that on August 18, 2013, Respondents employed a person with an expired permit to perform private security personnel duties. The employee wore a full uniform and carried a firearm. Respondents did not obtain a firearms permit for the above-referenced employee until August 26, 2013. Wisconsin Admin. Code § SPS 34.015(1) requires an agency to apply to the Department for a permit to authorize any of its employees to carry a firearm when assigned to do so by the agency. Respondents' failure to apply to the Department to authorize its employee to carry a firearm when assigned to do so by the agency constitutes a violation of Wis. Admin. Code § SPS 34.015(1).

Additionally, conduct reflecting adversely on professional qualification includes issuing a check on business or trust accounts which contain insufficient funds. Wis. Admin. Code § SPS 35.01(15). The undisputed facts establish that Respondents purchased a car with check number 1938 on February 25, 2014. Check number 1938 was issued from Respondents' business account. On March 13, 2014, check number 1938 was returned to the car dealership as unacceptable because the account was frozen or blocked. As a result, Respondents engaged in conduct reflecting adversely on their professional qualifications pursuant to Wis. Admin. Code § SPS 35.01(15).

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 April 29, 2014, July 8, 2014,

September 16, 2014, September 17, 2014, and February 23, 2015, the Department sent Respondents requests for information and, to date, the Department has not received a response to those requests. Based on these facts, I conclude that Respondents 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, Respondents are 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 Kody F. Jack's private security person permit and Respondent Delta Ops Private Police Agency LLC's right to renew its private detective agency license be revoked. This 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 Delta Ops Private Police Agency LLC's license 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 Delta Ops Private Police Agency LLC has an automatic right to renew its license until August 31, 2020, just by paying these required fees.

The same reasons justifying discipline in cases in which the respondents are currently credentialed apply to this case as Respondent Delta Ops Private Police Agency LLC may renew its license 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 and private detective agencies 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, Respondents have operated outside the law and regulations established for their professions. This conduct demonstrates Respondents' continuous lack of respect for both the law and the public. Accordingly, Respondents have failed to fulfill the responsibilities of their profession, and as such, are not fit to be a permitted private security person and a licensed private detective agency.

In addition to ignoring the requirements of the law, Respondents have also ignored the Department's legitimate authority. Respondents did not properly apply for firearm permits or notify the Department of any change in agency employment, including hiring new employees, as required by law. Furthermore, Respondents have been nonresponsive throughout the Department's investigation and in this proceeding. When individuals and entities demonstrate an inability to handle the amount of responsibility accompanying holding professional credentials, they should not continue to be entrusted with those credentials. Therefore, revocation of Respondent Kody F. Jack's permit and Respondent Delta Ops Private Police Agency LLC's right to renew its license is an appropriate response to this disrespect for the law, the public welfare, and the licensing authority governing their profession.

Promoting rehabilitation is one of the purposes of discipline; however, rehabilitation is unlikely here. Respondents have avoided every opportunity to comply with the reporting requirements of their profession, which exist to ensure the continuing competence of the credential holders. Because Respondents will not submit to the authority of the licensing agency, it is contrary to public safety for Respondents to continue to hold credentials. Revocation of Respondent Kody F. Jack's permit and Respondent Delta Ops Private Police Agency LLC'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 Kody F. Jack's permit and Respondent Delta Ops Private Police Agency LLC's ability to renew its license is warranted.

Costs

As a result of Respondent Kody F. Jack's permit and Respondent Delta Ops Private Police Agency LLC's ability to renew its license being revoked by the Department, the Department is vested with discretion concerning whether to assess all or part of the costs of this proceeding against Respondents. Wis. Stat. § 440.22(2). With respect to imposition of costs, factors to consider include: (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 prosecutor; (4) the cooperation of the respondent; (5) any prior discipline; and (6) the fact that the Department is a program revenue agency, funded by other licensees. See *In the Matter of Disciplinary Proceedings Against Elizabeth Buenzli-Fritz*, LS 0802183 CHI (Aug. 14, 2008).

Particularly relevant are the following facts. First, the Division proved every count it alleged. This is not a case where the Division wasted resources or incurred additional costs by alleging multiple counts and then failing to prove those counts. Second, Respondents' conduct that led to the discipline at hand resulted from employing unlicensed personnel, arming personnel without the requisite permit and their persistent unprofessional conduct. Such behavior is serious. Third, as a result of Respondents' serious conduct, the Division sought revocation of Respondent Kody F. Jack's permit to practice private security in Wisconsin and Respondent Delta Ops Private Police Agency LLC's right to renew its license to provide private security in Wisconsin. The requested discipline was imposed here, is significant and recognizes the general absence of mitigating factors in this case. Fourth, Respondents did not cooperate with the Department's investigation or with these proceedings. Finally, the Department is a program revenue agency whose operating costs are funded by the revenue received from credential holders. As such, fairness weighs heavily in requiring Respondents to pay the costs of this proceeding which resulted in significant discipline, rather than spreading the costs among all credentialed private security persons and private detective agencies in Wisconsin.

Based on the foregoing, I conclude that the full costs of this proceeding shall be assessed against Respondents in an amount to be determined under to Wis. Admin. Code § SPS 2.18.

ORDER

Accordingly, IT IS ORDERED that Respondent Kody F. Jack's private security permit (no. 41465-108) is hereby REVOKED, and the right to renew the private detective agency license of Delta Ops Private Police Agency LLC (no. 16778-62), pursuant to Wis. Stat. § 440.08(3)(a), is also REVOKED, effective on the date the final decision is signed by the Department.

IT IS FURTHER ORDERED that should Respondents ever apply for a credential with the Department in the future, Respondents 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 January 21, 2016.

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