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Before the
State Of Wisconsin
Department of Safety and Professional Services

In the Matter of Disciplinary Proceedings Against
Leslie H. George, Respondent

FINAL DECISION AND ORDER

Order No. 0004728

Division of Legal Services and Compliance Case No. 14 RSG 037


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 May, 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
Leslie H. George, Respondent

DHA Case No. SPS-16-0019
DLSC Case No. 14 RSG 037

PROPOSED DECISION AND ORDER

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

Leslie H. George
4278 N. 25th Street
Milwaukee, WI 53209

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 a formal Notice of Hearing and Complaint against Respondent Leslie H. George (Respondent). The Complaint alleged that Respondent's credential was subject to disciplinary action pursuant to Wis. Stat. § 440.26(6) and Wis. Admin. Code § SPS 35.01 because Respondent: (1) engaged in conduct reflecting adversely on his professional qualification pursuant to Wis. Admin. Code § SPS 35.01(2) by violating a law the circumstances of which substantially relate to the practice of a private security person; (2) engaged in conduct reflecting adversely on his professional qualification pursuant to Wis. Admin. Code § SPS 35.01(8) by violating a state law related to the care, handling or use of firearms or other dangerous weapons; and (3) violated Wis. Stat. § 440.26(4m)(b) and Wis. Admin. Code § SPS 35.01(2) by failing to notify the Department in writing of his 2011 conviction within 48 hours after the entry of the judgment of conviction.

The Division served Respondent on February 11, 2016, by sending a copy of the Notice of Hearing and Complaint to the 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 March 15, 2016.

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 prehearing conference, the undersigned Administrative Law Judge (ALJ) found Respondent to be in default and issued a Notice of Default and Order on March 15, 2016. Consistent with this notice, the Division filed a recommended proposed decision and order on March 29, 2016.

FINDINGS OF FACT

Facts Related to the Alleged Violations

Findings of Fact 1–5 are taken from the Division's Complaint against Respondent filed in this matter.

1. Respondent Leslie H. George is permitted by the State of Wisconsin to practice private security, having license number 42086-108, first issued on October 26, 2010, and current through August 31, 2016.

2. Respondent's most recent address on file with the Department is 4278 North 25th Street, Milwaukee, Wisconsin 53209.

3. On August 1, 2011, Respondent was convicted of Carrying a Concealed Weapon, a misdemeanor, in Milwaukee County Circuit Court (Case No. 2011CM003101). On August 1, 2011, the court sentenced Respondent to four months at the House of Correction, though this sentence was stayed, and placed Respondent on probation for one year.

4. Respondent failed to report his conviction to the Department within 48 hours.

5. On October 15, 2014, Respondent reported his conviction to the Department when he renewed his private security person permit.

6. According to the Criminal Complaint in Case No. 2011CM003101, attached to the Division's recommended proposed decision and order, Respondent ran away from police officers, who followed the Respondent to his front yard and apprehended him. Respondent was carrying a Hi Point .380 handgun with six live rounds in the magazine in his pocket.

Facts Related to Default

7. The Complaint and Notice of Hearing in this matter were served on Respondent on February 11, 2016, 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 Of Safety and Professional Services 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.”

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

9. Following expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for March 15, 2016. Notice of this prehearing conference was sent to both parties, with instructions that Respondent provide to the ALJ a telephone number at which he could be reached no later than March 10, 2016. 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.”

10. Respondent failed to provide a telephone number and could not be reached for the prehearing conference.

11. Based on the Respondent’s failure to Answer the Complaint and failure to appear at the prehearing conference in this matter, the Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c).

12. On March 15, 2016, the ALJ issued a Notice of Default and Order, requiring the Division to file and serve no later than March 29, 2016, a recommended proposed decision and order.

13. The Division timely filed its recommended proposed decision and order on March 29, 2016.

14. 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 March 15, 2016, 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 March 15, 2016. 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 Wisconsin Statute and Administrative Code

The Division alleges that Respondent is subject to discipline pursuant to Wis. Stat. § 440.26(6) and Wis. Admin. Code § SPS 35.01. Wisconsin Stat. § 440.26(6) 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. *See Wis. Admin. Code § SPS 35.01(2)*. The undisputed facts establish that on August 1, 2011, Respondent was convicted of Carrying a Concealed Weapon, a misdemeanor, in Milwaukee County Circuit Court (Case No. 2011CM003101). The circumstances surrounding this violation substantially relate to Respondent's practice as a private security person as Respondent violated a law relating to the care, handling, or use of a firearm. *See Wis. Admin. Code § SPS 35.01(8)*. Handling a firearm can be a duty assigned to private security persons. Respondent's inability to care for and handle a firearm in a legally responsible fashion is of great concern to potential employers and the Wisconsin citizens who Respondent is charged with protecting. The Criminal Complaint alleges that Respondent ran away from police officers, who followed the Respondent to his front yard and apprehended him. Respondent was carrying a Hi Point .380 handgun with six live rounds in the magazine in his pocket.

Additionally, the Department has previously found convictions for Carrying a Concealed Weapon substantially related to the practice of a private security person for the purpose of imposing discipline. *See In the Matter Of Disciplinary Proceedings Against Antwan T. Langford*, ORDER 0002051 (Sept. 19, 2012); *In the Matter of the Application for A Permit To Practice As A Private Security Person Devontes D. Harris*, ORDER LS0508191 (Jan. 23, 2006). Based on the facts of this case, previous orders, 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) and (8).

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

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.

entry of ... 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).

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 be reprimanded and that his permit be limited to: (1) prohibit Respondent from carrying or using a firearm in conjunction with employment as a private security person; (2) restrict Respondent from holding a firearms permit issued by the Department or working as a private security person at any site which requires use or possession of a firearm; (3) require Respondent to provide a copy of this Order to his supervisor; and (4) require Respondent to arrange for submission of quarterly reports as detailed in the Order below. 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).

Private security persons are charged with protecting the public, keeping the peace, and preventing the occurrence of criminal actions. Additionally, private security persons are permitted to carry firearms in the course of their duties. With this considerable authority comes an equal degree of responsibility. Contrary to this, Respondent has violated a law regarding handling and care of a firearm. Respondent’s conduct demonstrates either a lack of respect for the law or ignorance of the law regarding handling a firearm. Firearm regulations are paramount to protecting the public. Accordingly, Respondent has failed to fulfill the responsibilities of his profession, and as such, discipline is necessary.

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. Furthermore, Respondent has been nonresponsive throughout this proceeding. Therefore, a reprimand of Respondent and a limitation of his private security person permit is an appropriate response to this disrespect for the law, the public welfare, and the licensing authority governing his profession.

A reprimand is the Department's mechanism to publicly warn a credential holder of his or her wrongdoing. This discipline is less serious than what could have been sought under Wis. Stat. § 440.26(6), allowing Respondent to continue to practice as a private security person in Wisconsin while publicly warning him and the public of the violation.

Furthermore, it is appropriate and necessary to limit Respondent's private security person permit to restrict his use of a firearm while working as a private security person. Respondent should be prohibited from using or carrying a firearm in conjunction with his employment as a private security person. Given the underlying conviction, this limitation is warranted to ensure the protection of the public while allowing Respondent to maintain his permit and work as a private security person. The limitations imposed are necessary for the Department to monitor Respondent and to inform his employer of the contents of the Order set forth below. Monitoring limitations will allow the Department to assess Respondent's competency to practice private security in Wisconsin. Two years is an appropriate length of time for the above limitations, after which Respondent may seek to have the limitations removed. The effect of the limitations on Respondent's private security permit will rehabilitate Respondent, protect the public, and deter future misconduct, thereby fulfilling the purposes of discipline.

In light of the facts of this case and the factors set forth in *Aldrich*, a reprimand of Respondent and the proposed limitations of his private security person permit are warranted.

Costs

As a result of Respondent being reprimanded and his permit being limited by the Department, the Department is vested with discretion concerning whether to assess all or part of the costs of this proceeding against Respondent. Wis. Stat. § 440.22(2).

The Division 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 this investigation and of these proceedings. Factors which may be considered in assessing costs 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 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 licenses, and the fairness of imposing the costs of disciplining a few members of the profession on the vast majority of the licensees who have not engaged in misconduct; and (7) any other relevant circumstances. See *In the Matter of Disciplinary Proceedings Against Elizabeth Buenzli-Fritz, D.C.*, LS0802183CHI (Aug. 14, 2008). It is not mandatory that each or any of these factors be considered, and it is within the Board's discretion to determine what weight, if any, to give any factors considered.

The Division requests that full costs be imposed on Respondent. This request is warranted. Particularly relevant to this issue 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, Respondent's conduct that led to the discipline at hand resulted from violating a law regarding handling a firearm. Such behavior is serious and dangerous. Third, as a result of Respondent's conduct, the Division sought to reprimand Respondent and impose limitations on his license.

The level of discipline is significant; it indicates a need to publicly warn Respondent and limit and monitor his conduct. Fourth, Respondent did not cooperate with the hearing proceedings. Fifth, 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 Respondent to pay the costs of this proceeding which resulted in significant discipline, rather than spreading the costs among all credentialed private security persons in Wisconsin. Finally, Respondent made no argument concerning whether costs should be assessed against him. When Respondent fails to argue a position, the Division is not obliged to make an argument for him.

In view of the foregoing, the full costs of this proceeding shall be assessed against Respondent in an amount to be determined pursuant to Wis. Admin. Code § SPS 2.18.

ORDER

Accordingly, IT IS ORDERED that Respondent Leslie H. George is hereby REPRIMANDED, effective on the date the final decision and order is signed by the Department.

IT IS FURTHER ORDERED that Leslie H. George's private security person permit (no. 42086-108) shall be LIMITED as follows, also effective on the date the final decision and order is signed by the Department:

1. Respondent shall not carry a firearm in conjunction with employment as a private security person.
2. Respondent shall be restricted from holding a firearms permit issued by the Department or working as a private security person at any site which requires use or possession of a firearm.
3. Respondent shall provide a copy of the Board's final decision and order in this matter to his supervisor(s) at all private detective agencies where he is employed as a private security person, if any.
4. Beginning 90 days after the date of this Order, Respondent shall arrange for his supervisor(s) at all private detective agencies where he is employed as a private security person, if any, to provide work reports to the Department Monitor on a quarterly basis. Each report shall be submitted by the first day of the first full month of each quarter. In each report, Respondent's supervisor(s) shall:
 - a. Describe Respondent's employment activities for the previous three months; and
 - b. Verify that Respondent is in compliance with the laws governing the practice of a private security person and the terms of this Order.
5. Beginning 90 days after the date of this Order, Respondent shall submit reports to the Department Monitor on a quarterly basis. Each report shall be submitted by the first day of the first full month of each quarter and shall include the following information:

- a. The name, address and telephone number of Respondent, and name, address and telephone number of Respondent's supervisor(s) at all private detective agencies where he is employed as a private security person; and
 - b. A signed statement from Respondent certifying that he is in compliance with all terms and conditions of this Order.
6. Respondent shall report to the Department any change of employment status, residence, address or telephone number within five business days of the date of a change. Respondent shall in addition report any arrest or conviction within 48 hours of the arrest or entry of conviction.
 7. After two years of practice in compliance with all terms and conditions of this Order, Respondent may petition the Department for the modification or termination of the above limitations. The Department may grant or deny the petition, in its discretion, or may modify this Order as it sees fit. A denial of such a petition for modification or termination shall not be deemed a denial of license under Wis. Stat. §§ 227.01(3), or 227.42, or Wis. Admin. Code Ch. SPS 1, and shall not be subject to any right to further hearing or appeal.

IT IS FURTHER ORDERED that in the event Respondent fails to comply with the terms of this Order, as set forth above, Respondent's permit (no. 42086-108), or Respondent's right to renew his permit, may, in the discretion of the Department, or its designee, be SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of this Order.

IT IS FURTHER ORDERED that Respondent shall pay all recoverable costs in this matter in an amount to be established, pursuant to Wis. Admin. Code § SPS 2.18.

Dated at Madison, Wisconsin on April 29, 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