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Before The
State Of Wisconsin
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

In the Matter of Disciplinary Proceedings
Against Brandon T. Roach, Respondent

FINAL DECISION AND ORDER

Order No. 0005126

Division of Legal Services and Compliance Case No. 15 RSG 002

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 13th day of January, 2017.

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 Brandon T. Roach, Respondent

DHA Case No. SPS-16-0059
DLSC Case No. 15 RSG 002

PROPOSED DECISION AND ORDER

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

Brandon T. Roach
VIA EMAIL ONLY AT RESPONDENT'S REQUEST
BRANDONROACHFITNESS07@GMAIL.COM

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 Brandon T. Roach (Respondent). The Complaint alleged Respondent's credential was subject to disciplinary action pursuant to Wis. Stat. § 440.26(6)(a)1.-4. 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) 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 2013 ordinance violation within 48 hours after the entry of the judgment; and (3) engaged in conduct reflecting adversely

on his professional qualification pursuant to Wis. Admin. Code § SPS 35.01(17) by providing false information in the application for the renewal of his credential.

The Division served Respondent on September 26, 2016, 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 within 20 days from the date of service, as required by Wis. Admin. Code § SPS 2.09(4). Respondent failed to appear at the telephone prehearing conferences held before the Division of Hearings and Appeals on November 1 and 22, 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 November 22, 2016. Consistent with this notice, the Division submitted a recommended proposed decision and order on December 13, 2016.

FINDINGS OF FACT

Facts Related to the Alleged Violations

Findings of Fact 1–6 are taken from the Division's Complaint against Respondent filed in this matter.

1. Respondent Brandon T. Roach is permitted in the State of Wisconsin as a private security person, having permit number 46803-108, first issued on January 24, 2013, and expired on September 1, 2016.

2. Respondent's most recent address on file with the Department is 1517 South 12th Street, Sheboygan, Wisconsin 53081.¹

3. On September 25, 2013, Respondent failed to adhere to a Waukesha Police Officer's instructions to go back inside his house while officers were investigating a domestic disturbance incident at a neighbor's house.

4. On October 30, 2013, Respondent was found guilty of Obstructing an Officer, an ordinance violation, in the City of Waukesha Municipal Court (Case Number 13-8059). Respondent was ordered to pay a fine of \$366.

5. Respondent failed to report his violation to the Department within 48 hours after entry of the judgment finding he had committed the violation.

6. As part of Respondent's renewal of his private security person permit, on October 31, 2014, Respondent answered "no" to the question:

¹ During the course of this case, evidence was obtained which suggests Respondent is no longer at this address.

Since the date of your last license renewal (or original application if this is your first renewal), have you been convicted of a VIOLATION of ANY federal, state, or local law or municipal ordinance that is punishable by a fine or forfeiture in this or any state, OR are federal, state or municipal charges currently pending against you?

Facts Related to Default

7. The Complaint and Notice of Hearing in this matter were served on Respondent on September 26, 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 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 November 1, 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 October 26, 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 November 1, 2016 prehearing conference. The ALJ left a voicemail for Respondent using a telephone number provided by the Division. Respondent subsequently contacted the ALJ² and an additional telephone prehearing conference was scheduled for November 22, 2016.

11. Respondent failed to appear for the November 22, 2016 telephone prehearing conference.

12. Based on Respondent’s failure to file an Answer to the Complaint and failure to appear at the November 22, 2016 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).

13. On November 22, 2016, the ALJ issued a Notice of Default and Order, requiring the Division to file and serve no later than December 16, 2016, a recommended proposed decision and order.

14. The Division timely filed its recommended proposed decision and order by December 16, 2016.

²Respondent would not provide a current address but requested to receive everything by email at brandonroachfitness07@gmail.com.

15. 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 22, 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 telephone prehearing conference held on November 22, 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 Wis. Admin. Code §§ SPS 35.01(2), (17), and Wis. Stat. § 440.26(4m)(b)

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 111.335.³

2. Engaged in conduct reflecting adversely on his or her professional qualification.

3. Made a false statement in connection with any application for a license or permit under this section.

4. Violated this section or any rule promulgated or order issued under this section.

Wisconsin Admin. Code § SPS 35.01 further states that 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.”

³ 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.

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 October 30, 2013, Respondent was found guilty of Obstructing an Officer, an ordinance violation, in the City of Waukesha Municipal Court (Case Number 13-8059). The circumstances surrounding this violation substantially relate to Respondent's practice as a private security person as Respondent failed to comply with instructions he received from a police officer to go back inside his house while officers were investigating a domestic disturbance incident at a neighbor's house. The Department has previously found convictions for obstructing an officer substantially related to the practice of a private security person for the purpose of imposing discipline. *See In the Matter of Disciplinary Proceedings Against Brett T. LeClair*, ORDER0001530 (May 9, 2012); *In the Matter of Disciplinary Proceedings Against Ware A. Burnette*, ORDER0001961 (Aug. 7, 2012); *In the Matter of Disciplinary Proceedings Against Tramon S. Moore*, ORDER0003811 (Mar. 16, 2015). If Respondent cannot follow a police officer's instructions, then he has demonstrated an unwillingness to recognize the police's authority. This conduct is unacceptable of a private security person charged with protecting the public.

Further, the undisputed facts establish that Respondent failed to notify the Department within 48 hours of the entry of the judgment against him. 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 . . . 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 entry of the judgment 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 includes providing false information in the application for a credential. *See* Wis. Admin. Code § SPS 35.01(17). The undisputed facts show that as part of the October 31, 2014, renewal of his private security person permit, Respondent answered "no" to the following question:

Since the date of your last license renewal (or original application if this is your first renewal), have you been convicted of a violation of any federal, state, or local law or municipal ordinance that is punishable by a fine or forfeiture in this or any state, or are federal, state or municipal charges currently pending against you?

As previously stated, at the time of Respondent's renewal, Respondent had been found guilty of obstructing an officer.

Based on the facts of this case, and the fact 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 (17). As a result of the above violations, Respondent is subject to discipline pursuant to Wis. Stat. § 440.26(6)(a)1., 2., 3. and 4. and Wis. Admin. Code § SPS 35.01.

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, 2021, just by paying the required fees.

The same reasons justifying discipline in cases in which the respondents are currently credentialed 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 ignored the instructions given to him by a police officer who was conducting an investigation of a domestic disturbance. In addition to ignoring the requirements of the law, Respondent has also ignored the Department's legitimate authority. Respondent has demonstrated that he does not respect the Department's authority or rules of his profession. Respondent did not disclose his conviction within the required time frame. Further, when Respondent was given an opportunity to disclose his violation to the Department at renewal, Respondent chose to deceive the Department instead. Respondent's lack

of accountability was further demonstrated throughout the Department's investigation and in this proceeding, in which Respondent did not participate in any meaningful way. Accordingly, Respondent has failed to fulfill the responsibilities of his profession, and as such, is not fit to be a permitted private security person. 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

As a result of the Department revoking Respondent's right to renew his private security person permit, the Department is vested with discretion concerning whether to assess all or part of the costs of this proceeding against Respondent. *See* Wis. Stat. § 440.22(2). In exercising such discretion, the Department must look at aggravating and mitigating facts of the case; it may not assess costs against a licensee based solely on a "rigid rule or invocation of an omnipresent policy," such as preventing those costs from being passed on to others. *Noesen v. State Department of Regulation & Licensing, Pharmacy Examining Board*, 2008 WI App 52, ¶¶ 30-32, 311 Wis. 2d 237, 751 N.W.2d 385. The Department has also, in previous orders, considered many factors when determining if all or part of the costs should be assessed against a Respondent. *See In the Matter of Disciplinary Proceedings against Elizabeth Buenzli-Fritz* (LS0802183 CHI) (Aug. 14, 2008). It is within the Department's discretion as to which, if any, of these factors to consider, whether other factors should be considered, and how much weight to give any factors considered.

The following facts were deemed particularly relevant to the instant case. 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. Additionally, Respondent's conduct and violations are serious. Respondent committed a violation that indicates lack of respect for the law and the public welfare. Also, he attempted to conceal the violation on his renewal application, and did not properly inform the Department of this violation. Further, Respondent has not fully cooperated with the investigation and these proceedings. As a result, the Division sought a revocation of Respondent's right to renew his private security person permit and such revocation was imposed by the ALJ. A revocation of licensee equates to the general absence of mitigating factors in this case. Respondent, by nature of being in default, has 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 the argument for him. 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 favor of requiring Respondent to pay the costs of this proceeding which resulted in significant discipline, rather than spreading the costs among all permitted private security persons in Wisconsin.

As a result, all of the 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 Brandon T. Roach's right to renew his private security person permit (number 46803-108) is REVOKED, effective on the date the Final Decision and Order 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 December 20, 2016.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By: 

Jennifer E. Nashold
Administrative Law Judge