

## 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](mailto:DSPS@wisconsin.gov)



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

In the Matter of Disciplinary Proceedings Against  
Donlaya R. McCullum, Respondent

FINAL DECISION AND ORDER

Order No. **0005769**

**Division of Legal Services and Compliance Case No. 17 RSG 004**

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 11<sup>th</sup> day of June, 2018.

A handwritten signature in cursive script, reading "Aloysius Rohmeyer".

Aloysius Rohmeyer  
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  
Donlaya R. McCullum, Respondent

DHA Case No. SPS-18-0016  
DLSC Case No. 17 RSG 004

---

**PROPOSED DECISION AND ORDER**

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

Donlaya R. McCullum  
529 N. 5<sup>th</sup> Street  
Clarendon, AR 72029

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 Respondent Donlaya R. McCullum (Respondent). The Complaint alleged Respondent's permit was subject to disciplinary action pursuant to Wis. Stat. § 440.26(6)(a)1., 2. and 4. and Wis. Admin. Code § SPS 35.01 because Respondent: (1) engaged in conduct reflecting adversely on 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) violated Wis. Stat. § 440.26(4m)(b) and Wis. Admin. Code § SPS 35.01(2) by failing to notify the Department in writing of her 2017 misdemeanor conviction within 48 hours after the entry of the judgment of conviction.

The Division served Respondent on March 7, 2018, by sending a copy of the Notice of Hearing and Complaint to her address on file with the Department by both certified and regular mail, consistent with Wis. Admin. Code § SPS 2.08. 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 for the telephone prehearing conference held before the Division of Hearings and Appeals (DHA) on April 20, 2018. 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 telephone prehearing conference, the undersigned Administrative Law Judge (ALJ) found Respondent to be in default and issued a Notice of Default and Order on April 20, 2018. Consistent with the Notice, the Division filed a recommended proposed decision and order on May 17, 2018.

### 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 Donlaya R. McCullum is permitted in the State of Wisconsin to practice as a private security person, having permit number 45151-108, first issued on April 26, 2012, and current through August 31, 2018.

2. Respondent's most recent address on file Department is 5253 North 34<sup>th</sup> Street, Milwaukee, Wisconsin 53209.<sup>1</sup>

3. The Streamwood Illinois Police Department Incident/Offense Report alleged that on January 9, 2017, while Respondent was using the self-checkout at Walmart, Respondent had a UPC code in her hand and placed it below the item while scanning, which showed a different item type and price.

4. On February 27, 2017, Respondent was convicted of Retail Theft/Disp Merch/<\$300, a misdemeanor, in violation of 720 ILCS 5.0/16-25-A-1, in State of Illinois, Cook County Circuit Court, Case No. 17300007001.

5. Respondent was sentenced to six months supervision and ordered to pay \$434 in fines and costs.

6. On April 4, 2017, Respondent reported her conviction to the Department.

#### Facts Related to Default

7. The Complaint and Notice of Hearing in this matter were served on Respondent on March 7, 2018, 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

---

<sup>1</sup> During the course of this case, information was received indicating that Respondent is no longer at this address.

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 April 20, 2018, at 10:30 a.m. Notice of this prehearing conference was sent to all parties on March 27, 2018, with instructions that Respondent provide to the ALJ a telephone number at which she could be reached no later than April 16, 2018. 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 at which she could be reached for the prehearing conference.

11. On April 3, 2018, DHA received notification from the U.S. Postal Service that Respondent’s address had been changed. The March 27, 2018 Notice was forwarded by the U.S. Postal Service to Respondent’s new address.

12. At the prehearing conference held on April 20, 2018, the Division provided a telephone number for Respondent, whereupon the ALJ left a voicemail for Respondent indicating that Respondent should contact the ALJ at the telephone number provided by 11:00 a.m., failing which the ALJ would proceed with the conference without Respondent.

13. Respondent failed to contact the ALJ at the telephone number provided.

14. Based on Respondent’s failure to file an Answer to the Complaint and failure to appear at the April 20, 2018 telephone 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).

15. On April 20, 2018, the ALJ issued a Notice of Default and Order, requiring the Division to file and serve no later than May 18, 2018, a recommended proposed decision and order.

16. On or about April 24, 2018, DHA was notified by the Wisconsin Department of Administration that Respondent’s address had again changed, to the address in the caption of this decision. DHA forwarded the Notice of Default and Order to the new address.

17. The Division timely filed its recommended proposed decision and order on May 17, 2018.

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 April 20, 2018 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 April 20, 2018. As a result, an order may be entered against Respondent 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) 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.<sup>2</sup>

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.

Respondent is also subject to discipline pursuant Wis. Admin. Code § SPS 35.01, which 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.”

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 February 27, 2017, Respondent was convicted of Retail Theft/Disp Merch/<\$300, a misdemeanor, in the State of Illinois, Cook County Circuit Court, Case No. 17300007001. The circumstances surrounding this conviction substantially relate to Respondent’s practice as a private security person as Respondent stole merchandise from a retail store by, while using the self-checkout, having a UPC code in her hand and placing it below the item while scanning, which showed a different item type and price. The Department has previously found convictions for retail theft

---

<sup>2</sup> 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.

substantially related to the practice of a private security person for the purpose of imposing discipline. See *In the Matter of Disciplinary Proceedings against Nathan Boyle*, Order No. 0004489 (Jan. 22, 2016), and *In the Matter of Disciplinary Proceedings against Tianna Denton*, Order No. 0002601 (Sept. 17, 2013). Respondent engaged in theft from the very type of establishment she could be called upon to protect from theft and other crimes as a private security person. Her conduct substantially relates to the profession of private security person.

Further, the undisputed facts establish that Respondent failed to notify the Department within 48 hours of the entry of the judgment of conviction against her. Wisconsin Stat. § 440.26(4m)(b) requires the holder of a license or permit who is found to have committed a misdemeanor to “notify the department in writing of the date, place and nature of the conviction or finding within 48 hours after the entry of the judgment of conviction or 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 entry of the judgment of conviction constitutes a violation of Wis. Stat. § 440.26(4m)(b) and Wis. Admin. Code § SPS 35.01(2).

Based on the facts of this case, and the fact that Respondent has made no argument to the contrary, I conclude that Respondent violated Wis. Stat. § 440.26(4m)(b) and engaged in conduct reflecting adversely on her professional qualification pursuant to Wis. Admin. Code § 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. 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 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).

Private security persons are charged with protecting the public, keeping the peace, and preventing the occurrence of criminal actions, primarily, retail theft, the crime Respondent committed. When individuals violate the very laws they are charged by their professions with enforcing and violate the substantial responsibility and trust their professions confer, they should not continue to be entrusted with that permit.

In addition to ignoring the requirements of the law, Respondent has also ignored the Department's legitimate authority. Respondent has demonstrated that she does not respect the Department's authority or rules of her profession. Respondent did not disclose her conviction within the required time frame. Respondent's lack of accountability was further demonstrated throughout the Department's investigation and in this proceeding, in which Respondent did not participate. Accordingly, Respondent has failed to fulfill the responsibilities of her profession, and as such, is not fit to be a permitted private security person. Therefore, revocation of Respondent's private security person permit is an appropriate response to her disrespect for the law, the public welfare, and the licensing authority governing her profession.

Promoting rehabilitation is one of the purposes of discipline; however, rehabilitation is unlikely here. Respondent failed to comply with the reporting requirements of her permit, which exist to ensure the continuing competence of the credential holder. Because Respondent refuses to submit to the authority of the licensing agency or take any responsibility for her actions, it is contrary to public safety for Respondent to continue to hold a permit. Revocation of Respondent's permit would coincide with the 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 security person permit is warranted.

#### Costs

As a result of the Department revoking Respondent's 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 are 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, Respondent did not properly inform the Department of this violation. Further, Respondent has not cooperated with the Department's investigation or these proceedings. As a result, the Division sought, and was granted, a revocation of Respondent's private security person permit. The revocation of a credential equates to the general absence of mitigating factors in this case. In addition, Respondent, by nature of being in default, has made no argument concerning whether costs



should be assessed against her. 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.

Therefore, 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 Donlaya R. McCullum's private security person permit (number 45151-108) 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 any 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 May 21, 2018.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
4822 Madison Yards Way, 5<sup>th</sup> Floor  
Madison, Wisconsin 53705  
Tel. (608) 266-7709  
Fax (608) 264-9885

By:   
Jennifer E. Nashold  
Administrative Law Judge