

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

KORY GARCZYNSKI,
RESPONDENT.

:
:
: NOTICE OF ORDER
: AND FORFEITURE
:

: Order 0005884
: Case # 17 UNL 108

TO: Kory Garczynski
1051 S. Terrace St.
Janesville, WI 53546

A hearing was held on October 15, 2018, at the Hill Farms State Office Building, 4822 Madison Yards Way, Madison, WI 53705, Room N103. The hearing began at 10:00 A.M. and concluded at approximately 11:00 A.M. Present at the hearing were Respondent Kory Garczynski, Attorney Matthew McCasland on behalf of DSPS, and Administrator Christopher Joch, fact finder. This hearing and the forthcoming Order was held in accordance with Wis. Admin. Code § SPS 305.125(6)-(7).

Respondent was provided the opportunity to present statements and documents regarding the contested notice of administrative forfeiture and the grounds for the assessment as required by Wis. Admin. Code § SPS 305.125(6)(c)6.

The Department, through Attorney McCasland, was provided the opportunity to present the Department's position as allowed by Wis. Admin. Code § SPS 305.125(6)(c)7.

Wherefore, after considering the statements and documents presented by Respondent and the Department, I, Christopher Joch, hereby make the following determination:

Respondent advertised as a plumber when his website, vehicle and business cards stated that he offered plumbing services. Respondent admitted that he advertised in the plumbing field and stated that he did so because he was unaware of other ways to advertise his drain cleaning business.

Attorney McCasland provided evidence that Respondent's website had three testimonials praising Respondent's work as a plumber as of October 12, 2018. The website had a plumbing section and a picture of Respondent engaging in what would appear to the general public as plumbing.

Respondent previously stated on November 22, 2016, in a conversation with DSPS Investigator Gonzalez, that he could see why people would think he is a licensed plumber based on his website and he stated that he would change his website if he needs to.

Based on the above, Respondent violated Wis. Stat. § 145.11 Advertising restrictions. Respondent offered plumbing services and advertised as a plumber without being a licensed master plumber or employing a licensed master plumber.

The prohibitions and penalties for violating Wis. Stat. § 145.11 are set forth in Wis. Stat. § 145.12. Specifically, it states that any person who engages in or follows the business or occupation of, or advertises or holds himself or herself out as or acts temporarily or otherwise as a master plumber or who otherwise violates any provisions of this chapter, shall be fined not less than \$100 nor more than \$500 or imprisoned for 30 days or both. Each day such violation continues shall be a separate offense. Respondent has advertised as a plumber for almost two years and per statute each day shall be a separate offense.

Therefore, Respondent shall be required to pay a **\$1,000.00** forfeiture for his repeated violations of Wis. Stat. § 145.11 and a cease and desist letter shall be sent to Respondent stating that he is required to stop engaging in advertising as a plumber. Such payment shall be addressed to "Wisconsin Department of Safety and Professional Services" and shall be received within 30 days of this Order and sent to:

Department Monitor
Division of Legal Services and Compliance
Department of Safety and Professional Services
4822 Madison Yards Way
P.O. Box 7190, Madison, WI 53707-7190
Telephone (608) 267-3817; Fax (608) 266-2264
DSPSMonitoring@wisconsin.gov

A \$1,000.00 forfeiture is reasonable because Respondent has been holding himself out as a plumber for over two years. Respondent admitted that his purpose for advertising as a plumber was to gain additional business for his non-plumbing work. As of the date of the hearing as well as the date of this determination, Respondent's website listed and continues to offer plumbing services. The Department has provided a preponderance of evidence that Respondent engaged in illegally advertising as a plumber. It is reasonable to believe that Respondent has received over \$1,000.00 in income in part because of his advertising as a plumber.

The State of Wisconsin has a vested interest in protecting the general public with regards to plumbers. Plumbers are required to be licensed by the State. This additional training and licensing protects citizens from the potential harm that could occur if unlicensed individuals engaged in plumbing. There is a need to protect the plumbing industry so that only individuals with the licenses get the benefits of advertising as a plumber. Plumbers have a learned trade. Allowing individuals to coattail on the good name of Wisconsin plumbers is a danger to the general public and the plumbing profession.

This decision is issued as required by Wis. Admin. Code § SPS 305.125(7).

Appeal Rights:

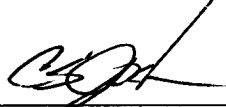
A person adversely affected by the decision of the administrator under Wis. Admin. Code § SPS 305.125(7) may request a hearing by the secretary to review an assessment of administrative forfeiture and the grounds for assessment in accordance with all of the following procedures:

1. A request for a hearing shall be made in writing to the secretary.
2. A request for a hearing shall include a statement of the specific reasons why the person believes the forfeiture assessment and the grounds for assessment should be overturned.
3. A request for a hearing shall be denied if the request is received more than 30 days after issuance of the decision by the administrator under sub. (7).

A hearing held by the secretary or designee to review the decision of the administrator on an administrative forfeiture shall be a contested case hearing. The hearing and the decision issued after the hearing shall be governed by the provisions under ch. 227, Stats. Wis. Admin. Code § SPS 305.125(8).

Such petition for hearing shall be by verified petition filed with the department, setting out specifically and in full detail the order upon which a hearing is desired and every reason why such order is unreasonable, and every issue to be considered by the department on the hearing. The petitioner shall be deemed to have finally waived all objections to any irregularities and illegalities in the order upon which a hearing is sought other than those set forth in the petition. Wis. Stat. 101.02(6)(f).

Dated at Madison, Wisconsin on November 7, 2018.



Christopher Joch
Division Administrator
Department of Safety and Professional Services