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Before The
State Of Wisconsin
DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES

In the Matter of the Disciplinary Proceedings
Against Josa R. Lewis, Respondent.

FINAL DECISION AND ORDER

Order No. **ORDER 0007707**

Division of Legal Services and Compliance Case No. 18 RSG 010

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 3rd day of December, 2021.

Chief Legal Counsel
Department of Safety and Professional Services



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of the Disciplinary Proceedings
Against Josa R. Lewis, Respondent

DHA Case No. SPS-21-0046
DLSC Case No. 18 RSG 010

PROPOSED DECISION AND ORDER

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

Josa R. Lewis

Milwaukee, WI 53202

Department of Safety and Professional Services
P.O. Box 8935
Madison, WI 53708-8935

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

The Notice of Hearing and the Complaint in this matter were served on Respondent Josa R. Lewis (Respondent) by the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), on June 2, 2021, by both certified and regular mail to the address Respondent kept on file with the Department, consistent with Wis. Admin. Code § SPS 2.08. Respondent failed to file an answer to the Complaint, as required by Wis. Admin. Code § SPS 2.09(4).

Following the expiration of the 20-day period to file an answer, Administrative Law Judge (ALJ) Andrea Brauer scheduled a telephone conference for July 29, 2021, at 11:00 am. Notice of this prehearing conference was sent to both parties. Respondent failed to appear for the prehearing conference.

Based on Respondent's failure to file an answer to the Complaint and failure to appear at the prehearing conference, the Division moved for a finding that Respondent was in default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c).

On July 30, 2021, the ALJ Notice of Default against Respondent and ordered the Division to file a recommended proposed decision and order before September 2, 2021.

FINDINGS OF FACT

Facts Related to the Alleged Violations

Findings of Facts 1-6 are set forth in the Division's Complaint against Respondent filed in this matter.

1. Respondent Josa R. Lewis (DOB 1/8/1987) is permitted by the state of Wisconsin as a private security person, having permit number 58213-108, first issued on June 15, 2017, and expired as of September 1, 2018. Respondent's most recent address on file with the Department is in Milwaukee, Wisconsin 53202.
2. On June 13, 2018, Respondent mailed a conviction report form to the Department. Division of Legal Services and Compliance Case No. 18 RSG 010 was subsequently opened for investigation.
3. On March 15, 2018, Respondent was involved in a domestic disturbance involving Respondent's ex-girlfriend and her child, a minor. On the night of the incident, police officers interviewed Respondent's ex-girlfriend and the minor, who stated that Respondent pointed a loaded firearm at them during a dispute.
4. On June 11, 2018, Respondent pled guilty to one count of intentionally pointing a firearm at a person as a domestic abuse incident, in violation of Wis. Stat. §§ 941.20(1)(c) and 973.055(1), a class A Misdemeanor.
5. On June 6, 2019, a search of Department records revealed that Respondent does not have a firearm permit.
6. Pursuant to Wis. Stat. § 440.08(3), Respondent retains the right to renew his private security person permit until August 31, 2023.

Facts Related to Default

7. On June 2, 2021, the Division served the Notice of Hearing and the Complaint on Respondent at his address on file with the Department by both certified and regular mail. The Notice of Hearing stated: "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 other costs pursuant to Wis. Admin. Code § SPS 2.18, without further notice or hearing.”

8. Respondent failed to file an Answer to the Complaint.

9. Following the expiration of the 20-day period to file an answer, ALJ Andrea Brauer scheduled a telephone prehearing conference for July 29, 2021. Notice of this prehearing conference was sent to all parties, with instructions that Respondent provide to the ALJ a telephone number at which he could be reached no later than July 28, 2021. The Notice instructed: “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 he could be reached for the prehearing conference.

11. On July 29, 2021, Respondent failed to appear at the prehearing conference. The ALJ attempted to reach Respondent at two telephone numbers that the Department had on file for him. Respondent did not answer the ALJ’s calls, and no voicemail could be left. The Division moved for a finding that Respondent was in default based on his failure to file an answer to the Complaint and failure to appear at the telephone prehearing conference, pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c).

12. On July 30, 2021, the ALJ issued a Notice of Default against Respondent and ordered the Division to file and serve a recommended proposed decision and order no later than September 2, 2021.

13. The Division timely filed its recommended proposed decision and order.

14. 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

Jurisdictional Authority

The Department has the authority to impose discipline against the Respondent’s permit. Wis. Stat. § 440.26. The undersigned ALJ has authority to preside over this disciplinary proceeding in accordance with Wis. Stat. § 227.46(1). Wis. Admin. Code § SPS 2.10(2).

Default

Respondent is in default for failing to file an answer to the Complaint and for failing to appear at the telephone conference held on July 29, 2021. Accordingly, 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)(c).

Violation

The Division may reprimand the holder of a permit or revoke, suspend, or limit the permit of a private security person for unprofessional conduct. Wis. Admin. Code § SPS 35.02 and Wis. Stat. § 440.26(6). Conduct that is grounds for the Department to take disciplinary action includes, but is not limited to:

- a. Conviction of a misdemeanor or violation of any state or local law that is punishable by a forfeiture. Wis. Stat. § 440.26(6)(a)1.
- b. Engaging in conduct reflecting adversely on the professional qualification. Wis. Stat. § 440.26(6)(a)2 and Wis. Admin. Code § SPS 35.01(2).
- c. Violation of any law which substantially relates to the practice of a private security person. Wis. Admin. Code § SPS 35.01(2).
- d. Violation of section 440.26, Wis. Stats., or any rule promulgated or order issued under section 440.26, Wis. Stats. Wis. Stat. § 440.26(6)(a)4.

On March 15, 2018, Respondent was involved in a domestic disturbance involving Respondent's ex-girlfriend and her child, a minor, where Respondent pointed a loaded firearm at them during a dispute. On June 11, 2018, Respondent pled guilty to one count of Intentionally Pointing a Firearm at a Person as a Domestic Abuse incident, a class A Misdemeanor, in Milwaukee County (Case No. 2018CM000743). 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 circumstances surrounding this violation substantially relate to Respondent's practice as a private security person for many reasons, but primarily, 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. If Respondent cannot care for and handle a firearm in a legally responsible fashion, this would be of great concern to potential employers and the Wisconsin citizens Respondent is charged to protect. Further, if Respondent would use a firearm to threaten a child and other individuals, then he should not be entrusted as a private security person who is employed to protect the public and not use force to intimidate or threaten.

The Department has previously found convictions related to care, handling, or use of a firearm substantially related to the practice of a private security person for the purpose of imposing discipline. *See In the Matter of Disciplinary Proceedings Against Leslie H. George,*

ORDER 0004728 (May 23, 2016); *In the Matter of Disciplinary Proceedings Against Michael A. Lock Jr.*, ORDER 0004762 (June 15, 2016).

By engaging in conduct qualifying as grounds for taking disciplinary action on his permit, along with Respondent's failure to make any argument to the contrary and the deemed admission of all properly pled allegations, Respondent is subject to discipline pursuant to Wis. Stat. § 440.26(6)(a)1., 2., 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 recommends 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 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 a right to renew his permit until August 31, 2023.

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 the 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. Additionally, private security persons are permitted to carry firearms in the course of their duties. Contrary to this authority and responsibility, Respondent has violated a law regarding handling and care of a firearm while also threatening the vulnerable. Respondent's conduct demonstrates a lack of respect for the law and willingness to threaten force with a firearm for personal gain. 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 his lack of respect for the law, Respondent has demonstrated a lack of respect for the Board's authority. Respondent failed to cooperate throughout this proceeding and the Department's attempts to resolve this matter. Thus, the Board cannot assure the public of Respondent's fitness, and Respondent should not be eligible to be a private security person. Therefore, revocation of Respondent's right to renew his credential is an appropriate response to his disrespect for the law, public welfare, and the licensing authority governing his profession.

Promoting rehabilitation is one of the purposes of discipline; however, rehabilitation is not likely in this case. The Board cannot ascertain whether rehabilitative measures might be effective as Respondent has been unresponsive to resolution attempts and unreachable during this proceeding. Moreover, revocation in this case is necessary to deter other licensees from refusing to cooperate with the Board as it relates to a disciplinary matter and for matters of unprofessional conduct. Licensees need to know this conduct will not be tolerated.

In light of the facts of this case and the factors set forth in *Aldrich*, revocation of Respondent's right to renew his private security person permit is warranted.

Costs

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.

Considering the factors significant in this case, it is appropriate for Respondent to pay the full costs of the investigation and prosecution of these proceedings. First, Respondent defaulted, and every count alleged in the Complaint was deemed admitted. The Division did not waste

resources or incur additional costs by alleging multiple counts and then failing to prove those counts. Second, Respondent's conduct and violations are serious. Respondent's discipline resulted from violating a law regarding handling a firearm. The Division sought to revoke Respondent's right to renew his permit to practice private security in Wisconsin. The level of discipline is significant; it indicates a need to protect the public from further misconduct and to deter other credential holders from engaging in similar conduct. Third, Respondent made no argument concerning whether costs should be assessed against him. When a respondent fails to argue a position, the Division is not obliged to make the argument for him. Finally, the Department of Safety and Professional Services 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 private security persons in Wisconsin.

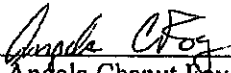
ORDER

Accordingly, it is hereby ORDERED that Respondent Josa R. Lewis's right to renew his private security person permit (no. 58213-108) is REVOKED, effective on the date the final decision is signed by the Board.

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 September 29, 2021.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
4822 Madison Yards Way, 5th Floor North
Madison, Wisconsin 53705-5400
Tel. (414) 227-4025
Fax: (608) 264-9885
Email: Angela.ChaputFoy@wisconsin.gov

By: 
Angela Chaput Foy
Administrative Law Judge