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

In the Matter of the Disciplinary Proceedings
Against Patrick Cole and Cole Private Security
LLC, Respondents

FINAL DECISION AND ORDER

Order No. **ORDER 0008590**

Division of Legal Services and Compliance Case No. 22 RAL 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 27th day of June, 2023.

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
Patrick L. Cole and Cole Private Security LLC,
Respondents

DHA Case No. SPS-23-0009
DLSC Case No. 22 RAL 004

RECOMMENDED PROPOSED DECISION AND ORDER

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

Patrick L Cole

Beloit, WI 53511

Patrick L. Cole
1175 Emerald Dr.
Hartford, WI 53027
coleprivsecwi@gmail.com

Cole Private Security LLC
1175 Emerald Dr.
Hartford, WI 53027

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 Megan Reed
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 Respondents Patrick L. Cole and Cole Private Security

LLC (Respondents). The Complaint alleged Respondents' credentials were subject to disciplinary action pursuant to Wis. Stat. § 440.26(6)(a)2. and 4. and Wis. Admin. Code § SPS 35.01 because Respondents engaged in conduct reflecting adversely on professional qualification pursuant to Wis. Admin. Code § SPS 35.01(13) by assigning a person to perform private detective or security personnel duties who had not been issued a license or permit prior to performing the services.

The Division served Respondents on February 9, 2023, by sending a copy of the Notice of Hearing and Complaint to their address on file with the Department by both certified and regular mail, consistent with Wis. Admin. Code § SPS 2.08. Respondents 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). Respondents failed to appear for the telephone prehearing conference held before the Division of Hearings and Appeals on March 14, 2023. The Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c). The Respondent contacted the Division of Hearings and Appeals to provide an updated address but advised that the business, Cole Private Security had not been in operation for three or five years. In light of Respondents' failure to file an Answer to the Complaint and failure to appear for the telephone prehearing conference, the Administrative Law Judge (ALJ) found Respondents to be in default and issued a Notice of Default and Order on March 14, 2023. Consistent with the Notice, the Division filed a recommended proposed decision and order by April 21, 2023.

FINDINGS OF FACT

Facts Related to the Alleged Violations

Findings of Fact 1–9 are taken from the Division's Complaint against Respondents filed in this matter. The facts are undisputed based upon the Respondent's failure to file an answer.

1. Respondent Patrick L. Cole (Birth Year 1964) is permitted by the State of Wisconsin as a private security person, having permit number 52872-108, first issued on July 21, 2015 and expired as of September 1, 2020. Pursuant to Wis. Stat. § 440.08(3), Respondent retains the right to renew his permit until August 31, 2025. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 1175 Emerald Dr., Hartford, Wisconsin 53027. The Respondent provided an updated address of 2415 Lookout Drive, Beloit, Wisconsin 53511.

2. Respondent Cole Private Security LLC is licensed by the State of Wisconsin as a private detective agency, having license number 17128-62, first issued on July 21, 2015 and expired as of September 1, 2019. Pursuant to Wis. Stat. § 440.08(3), Respondent retains the right to renew its license until August 31, 2024. Respondent's most recent address on file with the Department is 1175 Emerald Dr., Hartford, Wisconsin 53027.

3. Respondent Patrick L. Cole is identified in Department records as the responsible licensee in charge of Respondent Cole Private Security LLC.

4. On July 8, 2019, the Department received a complaint alleging that Respondent Cole Private Security LLC had allowed an individual (E.A.) to perform private security services without a permit. The Division of Legal Services and Compliance (DLSC) subsequently opened Case Number 22 RAL 004 for investigation.

5. On July 1, 2019, E.A. was involved in a physical altercation with a woman while providing private security on behalf of Respondent Cole Private Security LLC. E.A. did not possess a private security person permit, but was armed with a firearm and was wearing protective body armor.

6. On February 9, 2021, Respondent Cole spoke with a Department investigator by phone. Respondent Cole stated that Respondents had not provided security services for two years.

7. On January 31, 2022, Respondent Cole stated that Respondents did not plan on returning to the private security field.

8. On March 9, 2022, Respondent Cole stated that he retired in 2019 and did not plan on returning to private security work, and that E.A. only worked one night, "before completing his certification."

9. According to Department records, E.A. has never held or applied for a private security person credential.

Facts Related to Default

10. The Complaint and Notice of Hearing in this matter were served on Respondents on February 9, 2023, by both certified and regular mail, consistent with Wis. Admin. Code § SPS 2.08. The Notice of Hearing advised Respondents: "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."

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

12. Following expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for March 14, 2023. Notice of this prehearing conference was sent to all parties, with instructions that Respondents provide to the ALJ a telephone number at which they could be reached no later than March 13, 2023. The Notice instructed Respondents: "The Respondents' failure to appear at a scheduled conference or hearing may result in default judgment being entered against the Respondent."

13. Respondents failed to provide a telephone number at which they could be reached for the prehearing conference.

14. At the prehearing conference held on March 14, 2023 at 10:00 a.m., the Division provided the telephone number on file with the Department for Respondents. The ALJ called this number and left a voicemail, stating that Respondents should contact the ALJ at the telephone number provided by 10:15 a.m., otherwise the prehearing conference would be held without Respondents.

15. Following the prehearing conference, Respondent Patrick Cole did contact the ALJ and provided an updated address and further advised that Cole Private Security had closed 3-4 years ago. However, the Respondents took no further action to contest the action against them.

16. Based on Respondents' failure to file an Answer to the Complaint and failure to appear at the March 14, 2023 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).

17. On March 14, 2023, the ALJ issued a Notice of Default and Order, requiring the Division to file and serve no later than April 21, 2023 a recommended proposed decision and order.

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

19. Respondents did not file a response to the Notice of Default or to the Division's recommended proposed decision and order.

DISCUSSION

Default

As stated in the March 14, 2023 Notice of Default and Order, Respondents are in default for failing to file an Answer to the Complaint and failing to appear at the telephone prehearing conference held on March 14, 2023. As a result, an order may be entered against Respondents 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).

Violation of Wis. Admin. Code § SPS 35.01(13)

The Department may reprimand the holder of a private security permit or private detective agency license, or may revoke, suspend, or limit the permit or license for conduct reflecting adversely on professional qualification. Wis. Admin. Code § SPS 35.02 and Wis. Stat. § 440.26(6).

Conduct reflecting adversely on professional qualification includes, but is not limited to, assigning any person to perform private detective or security personnel duties who has not been issued a license or permit prior to performing the services. Wis. Admin. Code § SPS 35.01(13).

The undisputed facts establish that on July 1, 2019, Respondents assigned an unlicensed person to perform security services when that person did not possess a private security permit or private detective license. The person was armed with a firearm and wearing protective body armor. This person then engaged in a physical altercation with a woman and was arrested.

Respondents' actions in ignoring the licensing rules of the state show a lack of respect for the law and a disregard for the safety of citizens and businesses Respondents were hired to protect.

By engaging in conduct qualifying as grounds for taking disciplinary action on their licenses, along with Respondents' failure to make any argument to the contrary, Respondents are subject to discipline pursuant to Wis. Stat. § 440.26(6)(a)2. 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). Based upon the Respondents' report that their security agency ceased operations years ago, the possibility for rehabilitation is moot. However, the Department has a continued interest and obligation to ensure the protection of the public.

"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 credential holder'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 Respondents' credentials are currently expired and they report no longer operating a security agency, 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 Cole Private Security LLC has an automatic right to renew its private detective agency license until August 31, 2024, and Respondent Cole has an automatic right to renew his private security permit until August 31, 2025, just by paying the required fees. Therefore, the same reasons justifying discipline in cases in which the respondents are currently credentialed apply to this case, since Respondents may renew their credentials 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 and private detective agencies 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. Respondents failed to comply with the requirements to assign only appropriately credentialed individuals to work private security. Those requirements exist to ensure the competence of private security persons assigned to protect the public. Respondents acted inconsistent with the expectations of their profession and ignored their responsibility by assigning an unlicensed person to work as an armed guard. The fact that this person then got into an altercation and was arrested shows the dangers and risks of assigning individuals who do not have the competence and accountability that a licensed person would have. As noted above, the Department's licensing requirements assure the public that an individual is competent to practice their profession. But here, Respondents disregarded these requirements and assigned an unlicensed person who demonstrated incompetence in the performance of their duties and thus endangered the public. When individuals demonstrate an inability to handle the amount of responsibility commensurate with holding professional credentials, they should not continue to be entrusted with those credentials.

For all of the reasons set forth above, it is contrary to public safety for Respondents to continue to hold credentials. The Division requests that Respondents' right to renew their credentials be revoked. Notably, Respondents have not contested this disciplinary proceeding and have made no argument to support continued licensure. In light of the facts of this case and consistent with the factors set forth in *Aldrich*, revocation of Respondents' right to renew their credentials is warranted. Therefore, the Division's recommendation to revoke the Respondents' right to renew their credentials is reasonable and appropriate.

Costs

The Department is vested with discretion concerning whether to assess all or part of the costs of this proceeding against Respondents. *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 Respondents to pay the full costs of the investigation and prosecution of these proceedings. Respondents defaulted and the factual allegations identified in the Complaint were deemed admitted. 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. Further, 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 Respondents 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.

I find that the costs of this proceeding shall be assessed against Respondents, and that the amount of costs be determined pursuant to Wis. Admin. Code § SPS 2.18.

CONCLUSIONS OF LAW

1. The Department is authorized under Wis. Admin. Code § SPS 35.02 and Wis. Stat. § 440.26(6) to take disciplinary action against a licensed private security agency for violations of Chapters SPS 30-35 of the Wisconsin Administrative Code committed by a licensed private detective or security persons employed by the agency when the conduct reflects adversely on their professional qualification. Wis. Admin. Code §§ SPS 35.01 and 35.02 and Wis. Stat. § 440.26(6)(a)2.
2. The Respondents engaged in conduct that reflected adversely on their professional qualification by assigning a person to perform private detective or security personnel duties who has not been issued a license or permit prior to performing the services contrary to Wis. Admin. Code § SPS 35.01(13).
3. By engaging in conduct qualifying as grounds for taking disciplinary action on their licenses, along with Respondents' failure to make any argument to the contrary, Respondents are subject to discipline pursuant to Wis. Stat. § 440.26(6)(a)2. and 4. and Wis. Admin. Code § SPS 35.01.
4. Revocation of the Respondents' right to renew their credentials is reasonable and appropriate, and consistent with Department precedent.
5. It is appropriate for the Respondents to pay the full costs of the investigation and prosecution in this matter pursuant to Wis. Admin. Code § SPS 2.18.
6. The Division of Hearings and Appeals has authority to issue this proposed decision pursuant to Wis. Stat. § 227.46 and Wis. Admin. Code § SPS 2.10.

ORDER

Accordingly, it is ORDERED that Respondent Patrick L. Cole's right to renew his private security person permit (number 52872-108) is REVOKED, effective on the date the Final Decision and Order is signed by the Department.

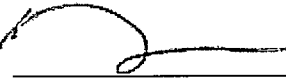
IT IS FURTHER ORDERED that Respondent Cole Private Security LLC's right to renew its private detective agency license (17128-62) is REVOKED, effective on the date the Final Decision and Order is signed by the Department.

IT IS FURTHER ORDERED that Respondents 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 May 25, 2023.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
4822 Madison Yards Way, 5th Floor North
Madison, Wisconsin 53705
Tel. (608) 266-2447
Fax: (608) 264-9885
Email: Kristin.Fredrick@wisconsin.gov

By:



Kristin P. Fredrick
Administrative Law Judge