

**SOUTH DAKOTA
DEPARTMENT OF LABOR AND REGULATION
OFFICE OF THE SECRETARY**

**IN THE MATTER OF
FRANK PINTABONE
LICENSEE**

) **FINAL DECISION**
)
) **INS 12-08**

After reviewing the record and the proposed order of the Hearing Examiner in this matter,

IT IS HEREBY ORDERED that pursuant to SDCL 1-26D-4, the Hearing Examiner's Findings of Fact, Conclusions of Law and Proposed Decision, dated June 26, 2012, is adopted in full.

IT IS FURTHER ORDERED that the South Dakota Nonresident Insurance Producer License of Frank Pintabone will hereby be revoked.

Parties are hereby advised of the right to further appeal the final decision to Circuit Court within (30) days of receiving such decision, pursuant to the authority of SDCL 1-26.

Dated this 11th day of July, 2012.



Pamela S. Roberts, Secretary
South Dakota Department of Labor and Regulation
700 Governors Drive
Pierre, SD 57501

**STATE OF SOUTH DAKOTA
OFFICE OF HEARING EXAMINERS**

**IN THE MATTER OF
FRANK J. PINTABONE**

**PROPOSED ORDER
INSURANCE 12-08**

An administrative hearing in the above matter was held on April 24, 2012. Frank J. Pintabone (hereinafter sometimes referred to as "Pintabone" or "Licensee") failed to appear. Amber L. Mulder appeared as counsel for the Division of Insurance (hereinafter sometimes referred to as "Division"). The matter was tape recorded. There is no written transcript of the tape; therefore no citation to page number will be included. Exhibits 1 through 8 were admitted and will be denoted by EX followed by the appropriate number.

ISSUE

Whether the Non-Resident Insurance Producer License of Frank J. Pintabone should be revoked due to his failure to respond in a timely manner to the South Dakota Division of Insurance inquiries dated December 21, 2012 and January 20, 2012, for his failure to report an administrative action in another jurisdiction (Wisconsin) and for his failure to inform the Director of the Division of Insurance within 30 days of a change of address. (SDCL 58-30-193, SDCL 58-33-66(1), SDCL 58-30-167(2) and (9) and SDCL 58-30-157).

FINDINGS OF FACT

I.

Frank J. Pintabone possesses an active Non-Resident Insurance Producer License from the State of South Dakota. Pintabone became licensed in South Dakota on June 21, 2011. (EX 1)

II.

Heather Lang, Compliance Agent for the South Dakota Division of Insurance obtained information that Pintabone had an administrative action taken against him in the State of Wisconsin (Wisconsin Case # 11-C34093). This action was a license denial by Wisconsin that was based on two violations of the Wisconsin Insurance code (not responding promptly to written requests for information from the Wisconsin Commissioner of Insurance and not providing evidence of a surplus lines license in his home state). (EX 2)

III.

The Division's records indicated that Pintabone had not reported Wisconsin's administrative action to the South Dakota Division of Insurance.

IV.

Ms. Lang wrote Pintabone a letter on December 16, 2012 notifying him that the Division was aware of the action and the fact that Pintabone did not report it to the Division. (EX 3) He was given twenty days to respond. The December 16, 2012 letter was mailed via first class mail to Mr. Pintabone at 109 Palmer Street, Easton, PA 18042-7236. (EX 3) This was the address Ms. Lang had obtained from Pintabone's individual information inquiry (EX 1)

V.

Ms. Lang obtained a forwarding address for Pintabone and a second letter was sent on December 21, 2011 informing Pintabone of the same information as was included in the December 16, 2011 letter. (EX 4) He was given twenty days to respond. The December 21, 2012 letter was mailed via first class mail to Mr. Pintabone at 205 Palmer Street, Easton, PA 18042-7238. (EX 4) Ms. Lang received no response

VI.

Ms. Lang sent a third letter to Pintabone on January 20, 2012 wherein Pintabone was given notice that he failed to respond to Lang's December 21, 2011 letter and that he was in violation of SDCL 58-33-66 (failing to respond to the Division within twenty days of receipt). He once again was given twenty days to respond. (EX 5) The letter was sent via certified mail to 205 Palmer Street, Easton, PA 18042-7238. The certified mail was delivered on January 23, 2012. (EX 6) Ms. Lang received no response.

VII.

Notice of Hearing and a letter were sent via first class mail to the 205 Palmer Street address and via certified mail to Pintabone at the 109 Palmer Street address on March 20, 2012. (EX 7) The certified mailing to 109 Palmer Street was returned and received by the Division on April 3, 2012. It was stamped that the forwarding time for Pintabone had expired. (EX 8)

VIII.

Any additional Findings of Fact included in the Reasoning section of this decision are incorporated herein by reference.

IX.

To the extent any of the foregoing are improperly designated and are, instead, Conclusions of Law, they are hereby redesignated and incorporated herein as Conclusions of Law.

REASONING

This case involves a request by the Division of Insurance to revoke the South Dakota Nonresident Insurance Producer's License of Frank J. Pintabone. As a consequence of the potential loss of Petitioner's livelihood from the lack of licensure, the burden of proof in this matter is higher than the preponderance of evidence standard, which applies in a typical administrative hearing. "In matters concerning the revocation of a professional license, we determine that the appropriate standard of proof to be utilized by an agency is clear and convincing evidence." *In re Zar*, 434 N.W.2d 598, 602 (S.D. 1989). Our Supreme Court has defined "clear and convincing evidence" as follows:

The measure of proof required by this designation falls somewhere between the rule in ordinary civil cases and the requirement of our criminal procedure, that is, it must be more than a mere preponderance but not beyond a reasonable doubt. It is that measure or degree of proof which will produce in the mind of the trier of facts a firm belief or conviction as to the allegations sought to be established. The evidence need not be voluminous or undisputed to accomplish this.

Brown v. Warner, 78 S.D. 647, 653, 107 NW2d 1, 4 (1961). Mr. Pintabone did not appear at the hearing.

SDCL 58-30-193 states that "[A]n insurance producer shall report to the director any administrative action taken against the insurance producer in another jurisdiction or by another governmental agency in this state within thirty days of the final disposition of the matter. This report shall include a copy of the order, consent order, or other relevant legal documents." Heather Lang, compliance agent for the South Dakota Division of Insurance found that Pintabone had not reported an administrative action from Wisconsin that was dated August 31, 2011. In addition, Mr. Pintabone failed to respond in a timely fashion to the inquiry of the Division (letters dated December 21, 2011 and January 20, 2012) regarding that Wisconsin administrative action in violation of SDCL 58-33-66(1) which states in pertinent part as follows:

SDCL 58-33-66. Unfair or deceptive insurance practices. Unfair or deceptive acts or practices in the business of insurance include the following:

- (1) Failing to respond to an inquiry from or failing to supply documents requested by the Division of Insurance within twenty days of receipt of such inquiry or request;...

Furthermore, SDCL 58-30-157 states that “[A} licensee shall inform the director in a form or format prescribed by the director of a change of address within thirty days of the change.” Mr. Pintabone did not do this.

In deciding to revoke an insurance producer’s license the Division looks to SDCL 58-33-68 for guidance as follows:

The Division of Insurance, in interpreting and enforcing §§ 58-33- 66 and 58-33-67, shall consider all pertinent facts and circumstances to determine the severity and appropriateness of action to be taken in regard to any violation of §§ 58-33-66 to 58-33-69, inclusive, including but not limited to, the following:

- (1) The magnitude of the harm to the claimant or insured;
- (2) Any actions by the insured, claimant, or insurer that mitigate or exacerbate the impact of the violation;
- (3) Actions of the claimant or insured which impeded the insurer in processing or settling the claim;
- (4) Actions of the insurer which increase the detriment to the claimant or insured. The director need not show a general business practice in taking administrative action for these violations.

However, no administrative action may be taken by the director for a violation of this section unless the insurer has been notified of the violation and refuses to take corrective action to remedy the situation.

Any administrative action taken by the director shall be pursuant to the provisions of chapter 1- 26.

In addition, the Division will consider SDCL 58-30-167 (shown in pertinent part) as follows:

58-30-167. Causes for revocation, refusal to issue or renew license, or for monetary penalty-- Hearing--Notice. The director may suspend for not more than twelve months, or may revoke or refuse to continue, any license issued under this chapter, or any license of a surplus lines broker after a hearing. Notice of such hearing and of the charges against the licensee shall be given to the licensee and to the insurers represented by such licensee or to the appointing agent of a producer at least twenty days before the hearing. The director may suspend, revoke, or refuse to issue or renew an insurance producer's license or may accept a monetary penalty in

accordance with § 58-4-28.1 or any combination thereof, for any one or more of the following causes:...

(2) Violating any insurance laws or rules, subpoena, or order of the director or of another state's insurance director, commissioner, or superintendent;....

(9) Having an insurance producer license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory;

Applying the law to the Findings of Fact it is clear that the Non-Resident Insurance Producer License of Frank J. Pintabone should be revoked .

CONCLUSIONS OF LAW

I.

The Division of Insurance has jurisdiction over the parties and subject matter of this hearing pursuant to Title 58 of the South Dakota Codified Laws. The Office of Hearing Examiners is authorized to conduct the hearing and issue a proposed decision pursuant to the provisions of SDCL 1-26D-4.

II.

The Division of Insurance bears the burden of establishing the alleged statutory violations by clear and convincing evidence.

III.

The Division of Insurance established by clear and convincing evidence that Frank J. Pintabone violated SDCL 58-30-193.

IV.

The Division of Insurance established by clear and convincing evidence that Frank J. Pintabone violated SDCL 58-33-66(1).

V.

The Division of Insurance established by clear and convincing evidence that Frank J. Pintabone violated SDCL 58-30-16(2) & (9).

VI.

The Division of Insurance established by clear and convincing evidence that Frank J. Pintabone violated SDCL 58-30-157.

VII.

The Division of Insurance established by clear and convincing evidence that the South Dakota Nonresident Insurance Producers License of Frank J. Pintabone is subject to revocation.

VIII.

The Division of Insurance established by clear and convincing evidence that the South Dakota Nonresident Insurance Producers License of Frank J. Pintabone should be revoked.

IX.

Any additional Conclusions of Law included in the Reasoning section of this decision are incorporated herein by reference.

X.

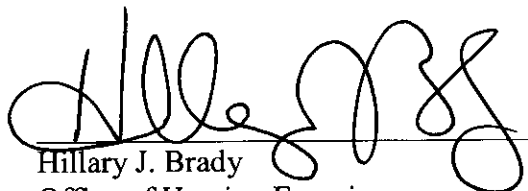
To the extent any of the foregoing are improperly designated and are instead Findings of Fact, they are hereby redesignated and incorporated herein as Findings of Fact.

Based on the above Findings of Fact, Reasoning and Conclusions of Law, the Hearing Examiner enters the following:

PROPOSED DECISION

The South Dakota Nonresident Insurance Producers License of Frank J. Pintabone should be revoked.

Dated this 26th day of June, 2012



Hillary J. Brady
Office of Hearing Examiners
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Pierre, South Dakota 57501-1538