

**SOUTH DAKOTA  
DEPARTMENT OF LABOR AND REGULATION  
DIVISION OF INSURANCE**

**IN THE MATTER OF  
DOMINIC ALESSI**

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)

**FINAL DECISION  
INS 13-05**

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

IT IS HEREBY ORDERED that pursuant to SDCL 1-26D-4, the Hearing Examiner's Proposed Findings of Fact, Conclusions of Law and Decision, dated July 3, 2013, is adopted in full.

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 29<sup>th</sup> day of July, 2013.



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  
DOMINIC ALESSI**

**PROPOSED ORDER  
INSURANCE 13-05**

An administrative hearing in the above matter was held on April 25, 2013. Dominic Alessi (hereinafter sometimes referred to as "Alessi" or "Licensee") failed to appear. Mallori Barnett 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's License of Dominic Alessi should be revoked due to his failure to respond in a timely manner to the South Dakota Division of Insurance inquiries dated July 11, 2012, August 13, 2012, September 13, 2012 and October 16, 2012 and for his failure to report an administrative action in another jurisdiction (Ohio) within thirty days. (SDCL 58-30-193, SDCL 58-33-66(1))

**FINDINGS OF FACT**

I.

Dominic Alessi possesses an active Non-Resident Insurance Producer License from the State of South Dakota. Alessi became licensed in the State of South Dakota on April 21, 2010. His license is scheduled to expire on July 31, 2013. (EX 1)

II.

Gretchen Brodkorb, Compliance Specialist for the South Dakota Division of Insurance, obtained information within the course of her duties for the Division that Mr. Alessi had an administrative action taken against his insurance license in Ohio.

III.

The Ohio administrative action involved the revocation of Alessi's license for his failure to respond to a subpoena issued by the Ohio Department of Insurance. On May 5, 2012 his license was not revoked but he was ordered to pay a civil penalty of \$200.00. (EX 8)

IV.

Ms. Brodkorb sent Alessi a letter on July 11, 2013 inquiring about the previous administrative action. (EX 2) He was given twenty days to respond to the Division upon receipt of the letter.

The letter was mailed via first class mail to Dominic Alessi at 19912 Gardenview Dr., Maple Heights, OH 44137-1883. (EX 2) This was the address listed on Alessi's Individual Information Inquiry on file with the Division. (EX 1) Ms. Brodkorb received no response.

V.

Ms. Brodkorb sent Alessi a second letter on August 13, 2012 once again inquiring about the previous administrative action. (EX 3) In addition, Mr. Alessi was put on notice that his failure to supply the information served as a violation of SDCL 58-33-66(1). He was again given twenty days upon receipt of the letter to respond. The letter was mailed via first class mail and certified mail to Alessi at 19912 Gardenview Dr., Maple Heights, OH 44137-1883. (EX 3) The United States Postal Service confirmed that the letter arrived in Maple Heights, OH. It only indicates that Notice was left on August 22, 2012. (EX 4)

VI.

Ms. Brodkorb mailed a letter to Alessi on September 13, 2012. (EX 5) This letter was sent via first class mail to 19912 Gardenview Dr., Maple Heights, OH 44137-1883. This letter indicated that the previous letters showed the administrative action had taken place in Wisconsin when it had actually taken place in Ohio. (EX 5) He was given twenty days upon receipt of the letter to respond to the Division. (EX 5) Ms. Brodkorb received no contact from Mr. Alessi.

VII.

Ms. Brodkorb sent Alessi a final letter on October 16, 2012 once again inquiring about the Ohio action. (EX 6) In addition he was warned that his failure to supply the information served as a violation of SDCL 58-33-66(1). He was again given twenty days upon receipt of the letter to respond. The letter was mailed via first class mail and certified mail to Alessi at 19912 Gardenview Dr., Maple Heights, OH 44137-1883. (EX 3) The United States Postal Service confirmed that the letter sent via certified mail was delivered on October 25, 2012. (EX 7)

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 Non-Resident Insurance Producer's License of Dominic Alessi. 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. Alessi did not appear at the hearing.

Gretchen Brodkorb, compliance specialist for the South Dakota Division of Insurance, found that Dominic Alessi had an administrative action in Ohio which was not reported to the South Dakota Division of Insurance. (The specifics regarding the Ohio administrative action are contained in Exhibit 8.) Furthermore, Alessi failed to respond in a timely fashion, in violation of SDCL 58-33-66(1), to inquiries made by the Division (letters dated July 11, 2012, August 13, 2012, September 13, 2012 and October 16, 2012) regarding the administrative action. SDCL 58-33-66(1), in pertinent part, reads 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;...

Pursuant to SDCL 58-30-193, "[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." Santos did not do this. The word "shall" in our statutes "manifests a mandatory directive," conferring no discretion. SDCL 2-14-2.1. The term "shall" does not allow for discretion. The Supreme Court has repeatedly stated that: "When 'shall' is the operative verb in a statute, it is given 'obligatory or mandatory' meaning." *Full House, Inc. v. Stell*, 2002 SD 14; 640 N.W.2d 61; 2002 S.D. Lexis 14 citing to *Fritz v. Howard Township*, 1997 SD 122, P15, 570 N.W.2d 240, 242 (citing *In re Groseth Int'l, Inc.*, {640 N.W.2d 68} 442 N.W.2d 229, 231-32 (SD 1989)). In deciding to revoke an insurance producer's license the Division will consider SDCL 58-30-167 (shown in pertinent part) below:

**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;....

Applying the law to the Findings of Fact it is clear that the Non-Resident Insurance Producer License of Dominic Alessi 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 Notice of Hearing was issued on April 5, 2013 by the South Dakota Division of Insurance.

#### **III.**

Neither Dominic Alessi nor anyone on his behalf appeared at the scheduled and noticed time of the hearing.

#### **IV.**

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

#### **V.**

The Division of Insurance established by clear and convincing evidence that Dominic Alessi failed to report to the Director of Insurance the Ohio administrative action within thirty days of the final disposition of the matter in violation of SDCL 58-30-193.

VI.

The Division of Insurance established by clear and convincing evidence that Dominic Alessi committed unfair or deceptive insurance practices by violating SDCL 58-33-66(1).

VII.

The Division of Insurance established by clear and convincing evidence that the South Dakota Non-Resident Insurance Producers License of Dominic Alessi is subject to revocation pursuant to SDCL 58-30-167(2).

VIII.

The Division of Insurance established by clear and convincing evidence that the South Dakota Non-Resident Insurance Producers License of Dominic Alessi should be revoked.

IX.

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

X.

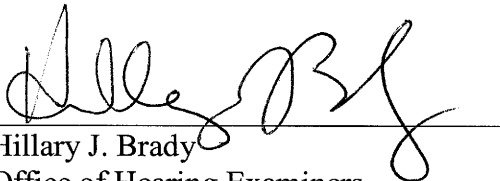
To the extent any of the foregoing are improperly designated and are instead Findings of Fact, they are hereby redesignated and incorporated herein as Findings of Fact.

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

**PROPOSED DECISION**

The South Dakota Non-Resident Insurance Producers License of Dominic Alessi should be revoked.

Dated this 3rd day of July 2013



Hillary J. Brady  
Office of Hearing Examiners  
210 E. 4th Street  
Pierre, South Dakota 57501-1538