

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

**IN THE MATTER OF
RYAN A. DEIGHTON**

) **FINAL DECISION**
) **INS 13-13**

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 29, 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 9th day of August, 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
RYAN A. DEIGHTON**

**PROPOSED ORDER
DLR/INSURANCE 13-13**

An administrative hearing in the above matter was held on May 6, 2013. Ryan A. Deighton (hereinafter sometimes referred to as "Deighton" or "Licensee") failed to appear. Mr. Frank Marnell 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 Bail Bonds Producer License of Ryan A. Deighton should be revoked due to his failure to respond in a timely manner and in writing to the South Dakota Division of Insurance inquiries in violation of South Dakota statute. (§§SDCL 58-33-68, SDCL 58-33-66(1) and SDCL 58-22-21(6) and (8))

FINDINGS OF FACT

I.

Ryan A. Deighton is licensed as a bail bonds producer by the State of South Dakota. He has been so licensed since August 13, 2008. His license expired on May 1, 2013. (EX 1)

II.

Matthew Ballard, Compliance Agent for the South Dakota Division of Insurance obtained information from Gordon Swanson, Chief Deputy State's Attorney for Minnehaha County that Deighton had \$35,100.00 worth of outstanding default judgments owed to Minnehaha County in relation to his work as a bail bondsman. In addition, Mr. Swanson indicated that he had tried to resolve the matter informally with Deighton but that Deighton had ignored Swanson's correspondence. (EX 2)

III.

Mr. Ballard wrote Deighton a letter on May 15, 2012 stating he had received information from Mr. Swanson that Deighton owed \$35,000.00 in default judgments and that he was not responding to Mr. Swanson's correspondence. Ballard also informed Deighton that the Division was previously contacted in January 2012 regarding judgment defaults Deighton owed in Lincoln County. Deighton was informed that the Division requested that he pay Minnehaha County in the full amount owed and provide verification to the Division of the payment. Furthermore, Deighton was to provide the Division with an explanation why Minnehaha County

had not yet been paid. Deighton was warned in the letter that his response was required within twenty days of receipt of the letter. (EX 3)

IV.

Mr. Ballard sent an e-mail to Deighton on June 15, 2012 stating that he was aware of Mr. Deighton's conversation with Joshua Andersen, Senior Legal Counsel for the South Dakota Division of Insurance, however, Deighton still needed to respond to the Division in writing pursuant to SDCL §58-33-66(1). (EX 3)

V.

Mr. Ballard sent a letter to Deighton dated July 5, 2012 wherein Deighton was given notice that the Division had not received a response from the May 15, 2012 or June 15, 2012 correspondence from the Division. Deighton was informed that the letter served as official notice pursuant to SDCL 58-33-68 that Deighton was in violation of SDCL 58-33-66(1). He was informed he needed to respond within twenty days of receipt and was warned that if he failed to provide the requested information within twenty days the Division may pursue a revocation of his license. (EX 5) The July 5, 2012 letter was mailed via first class mail and first class certified mail to Deighton at 1100 S. Gordon Dr., Sioux Falls, SD 57110. (EX 5) This was the address provided to the Division by Deighton. (EX 1)

VI.

Deighton sent Mr. Ballard an e-mail on July 24, 2012. Deighton informed Mr. Ballard that he had paid \$25,000.00 to Minnehaha County on May 30, 2012. He stated he hadn't paid Minnehaha County prior to that point as he did not have the \$35,100.00. He stated he was trying to collect a bad debt and did not want to use his "build up account". He admitted he should have taken care of things sooner. He also stated he needed more time to procure the \$10,100.00 still owed. (EX 6)

VII.

Mr. Ballard e-mailed Deighton on August 2, 2012 requesting a detailed plan on how he was going to resolve the matter. Deighton replied on August 22, 2012 that he was in the process of collecting a ten thousand dollar debt on a bad bond from a co-signer and he couldn't give Ballard an exact date on when he would have the matter taken care of. He assured Mr. Ballard that he would be in contact with him "by the end of next week". (EX 7)

VIII.

Sun Surety Insurance Company wrote a letter dated January 24, 2013 wherein they reported to the Division as follows: "Ryan Deighton's appointment with Sun Surety Insurance Company has been cancelled for cause effective January 23, 2013. We transferred a power of attorney from another agent to Mr. Deighton in September 2012 so that Mr. Deighton could write a \$30,000 bond." They further informed the division that Deighton has never reported the bond to Sun

Surety and has never paid the premium due the company. Sun Surety had been unsuccessful in their attempts to reach Mr. Deighton. (EX 8)

IX.

Mr. Ballard has not had any contact from Deighton despite Ballard's repeated phone calls.

X.

Deighton received ample and continued warning from the Division and failed to complete the tasks that were required of him by the Division.

XI.

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

XII.

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 Bail Bonds Producer License of Ryan Deighton. 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. Deighton did not appear at the hearing.

The facts are set forth in detail in the Findings of Fact above and therefore do not warrant repeating in this Reasoning section. SDCL 58-22-21 sets forth the causes for revocation of a Bail Bonds Producer License. The Division is asserting that subsections (6) and (8) would apply in this matter. That statute in pertinent part is set forth as follows:

SDCL 58-22-21. Causes for denial, suspension, revocation, or refusal to renew license. The director may deny, suspend, revoke, or refuse to renew any license issued under this chapter for any of the following causes:

(6) Fraudulent or dishonest practices in the conduct of business under the license;

(8) If, in the judgment of the director, the licensee has, in the conduct of affairs under the license, demonstrated incompetency, or untrustworthiness, or conduct or practices rendering the licensee unfit to carry on the bail bond business or making the licensee's continuance in such business detrimental to the public interest, or that the licensee is no longer in good faith carrying on the bail bond business, or that the licensee is guilty of rebating, or offering to rebate, or unlawfully dividing, or offering to divide such licensee's premiums in the case of professional bondsperson, and for such reasons is found by the director to be a source of detriment, injury, or loss to the public.

The Division has shown by clear and convincing evidence that Ryan Deighton committed fraudulent or dishonest practices while being licensed as a bail bondsman in that he was to make payments of money owed the county and didn't follow through. In addition he demonstrated incompetency and untrustworthiness for the same reason.

Furthermore, Ryan Deighton failed to respond in a timely manner to inquiries made by the Division in letters dated May 15, 2012 and July 5, 2012 and an e-mail dated June 15, 2012 in violation of SDCL 58-33-66(1). That statute, 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;...

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. (emphasis added)

Deighton received ample and continued warning from the Division and failed to complete the tasks that were required of him.

Additionally, the Division will consider SDCL 58-30-167. Deighton violated subsection (2) of SDCL 58-30-167 by violating SDCL 58-22-21(6) & (8). SDCL 58-30-167 is set forth 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 South Dakota Bail Bonds Producer License of Ryan Deighton should be revoked pursuant to the above statutes and SDCL 58-30-170¹.

¹ **58-30-170. Authority of director to impose penalty or remedy.** The director retains the authority to enforce the provisions of and impose any penalty or remedy authorized by §§ 58-30-141 to 58-30-195, inclusive, and Title 58 against any person who is under investigation for or charged with any violation of §§ 58-30-141 to 58-30-195, inclusive, or Title 58 even if the person's license or registration has been surrendered or has lapsed by operation of law.

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 March 27, 2013 by the South Dakota Division of Insurance.

III.

Neither Ryan Deighton 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 showed by clear and convincing evidence that the Division provided notice of violation to Deighton pursuant to SDCL 58-33-68. The Division showed by clear and convincing evidence that Deighton failed to take corrective action.

VI.

The Division of Insurance established by clear and convincing evidence that Ryan Deighton violated SDCL 58-22-21(6) & (8).

VII.

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

VIII.

The Division of Insurance established by clear and convincing evidence that the South Dakota Bail Bonds Producer License of Ryan Deighton is subject to revocation pursuant to SDCL 58-30-167(2).

IX.

The Division of Insurance established by clear and convincing evidence that the South Dakota Bail Bonds Producer License of Ryan Deighton should be revoked.

X.

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

XI.

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 ORDER

The South Dakota Non-Resident Insurance Producers License of Ryan Deighton should be revoked.

Dated this 29th day of July 2013



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