

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

**IN THE MATTER OF
JOHN PRIBIL,
LICENSEE**

)
) **FINAL DECISION**
) **DLR/INS 13-40**

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 Proposed Order, dated March 18, 2014, is adopted in full.

IT IS FURTHER ORDERED that the South Dakota Non-resident Insurance Producer License of John Pribil 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 25th day of March 2014



Marcia Hultman, 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
JOHN PRIBIL**

**PROPOSED DECISION
DLR/INSURANCE 13-40**

An administrative hearing in the above matter was held on November 25, 2013. John Pribil (hereinafter sometimes referred to as "Pribil" or "Licensee") failed to appear. Frank Marnell appeared as counsel for the South Dakota Department of Labor, 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 7 were admitted and will be denoted by EX followed by the appropriate number.

ISSUE

Whether the Non-Resident Insurance Producer License of John Pribil should be revoked due to his failure to respond to Division inquiries dated July 3, 2013 and August 5, 2013 in violation of SDCL §§ 58-33-66 and 58-33-67. (SDCL 58-30-167(2) & (8) and SDCL 58-33-66 and 58-33-68)

FINDINGS OF FACT

I.

At the time of the hearing John Pribil possessed an active Non-Resident Insurance Producer License from the State of South Dakota. Pribil became licensed in the State of South Dakota on November 15, 2010. His license will expire on March 31, 2015. (EX 1)

II.

Matthew Ballard, Compliance Agent for the South Dakota Division of Insurance obtained information from Golden Rule Insurance Company (hereinafter sometimes referred to as "Golden Rule") that John Pribil's appointment with Golden Rule was terminated for cause. Golden Rule found through their investigation, and Mr. Pribil admitted, that Pribil had purchased a social security number from a third party to assist him in fixing his credit. (EX 5-B)

III.

The letter terminating Mr. Pribil for cause was dated June 21, 2013. (EX 2)

IV.

Mr. Ballard wrote Pribil a letter on July 3, 2013 requesting he provide the Division, among other things, an explanation in his own words as to the facts and circumstances surrounding the termination. (EX 4) He was given twenty days to respond. (EX 4) Mr. Ballard did not receive a response from Mr. Pribil. The July 3, 2013 letter was mailed via first class mail to Pribil at

5300 Broken Sound Blvd., NW, Ste 200, Boca Raton, FL 33487-3520. This was the address Mr. Ballard obtained from Pribil's individual information inquiry. (EX 1)

V.

Mr. Ballard sent a second letter to Pribil on August 5, 2013 wherein Pribil was given notice that he failed to respond to Ballard's July 3, 2013 letter and that he was in violation of SDCL 58-33-66(1) (failing to respond to the Division within twenty days of receipt). He once again was given twenty days to respond. (EX 6) The letter was sent via first class mail and certified mail to his mailing address at 5300 Broken Sound Blvd., NW, Ste 200, Boca Raton, FL 33487-3520. (EX 1, 6 & 7) Mr. Ballard testified that the letter was delivered.

VI.

John Pribil did not report the termination for cause from Golden Rule to the South Dakota Division of Insurance. In addition, he did not respond to the letters from the Division dated July 3, 2013 and August 5, 2013.

VII

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

VIII.

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 John Pribil. 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. Pribil did not appear at the hearing.

The Division received notification from Golden Rule Insurance Company that Mr. Pribil was involuntarily terminated for cause because he purchased a social security number form a third person and tried to use it on his reappointment application with Golden Rule. (EX 2) Mr. Pribil then failed to respond in a timely fashion to an inquiry made by the Division (letters dated July 3, 2013 and August 5, 2013) regarding the Golden Rule termination. This failure to respond constitutes a violation of SDCL 58-33-66(1) which is set forth below in pertinent part:

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;...

Mr. Pribil never did respond to the Division.

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

SDCL 58-33-68. 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.

The Division also considers SDCL 58-30-167 for causes for revocation, refusal or renewal of license. The Division has alleged violations of subsections (2) and (8) of SDCL 58-30-167. That subsection is 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;...

(8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere;...

The Division has proven by clear and convincing evidence that Mr. Pribil violated SDCL 58-30-167 (2) & (8) and 58-33-66(1).

Applying the law to the Findings of Fact it is clear that the Non-Resident Insurance Producer License of John Pribil 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 John Pribil violated SDCL 58-30-167(2) and (8).

IV.

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

V.

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

VI.

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

VII.

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

VIII.

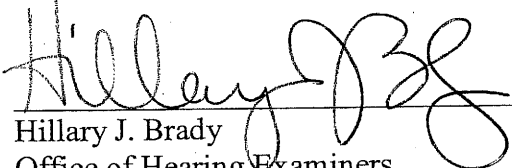
To the extent any of the foregoing are improperly designated and are instead Findings of Fact, they are hereby redesignated and incorporated herein as Findings of Fact.

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

PROPOSED ORDER

The South Dakota Nonresident Insurance Producers License of John Pribil should be revoked.

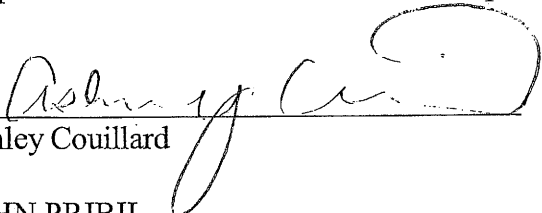
Dated this 18th day of March 2014



Hillary J. Brady
Office of Hearing Examiners
523 E. Capitol Avenue
Pierre, South Dakota 57501

CERTIFICATE OF SERVICE

I certify that on March 18th, 2014 at Pierre, South Dakota, a true and correct copy of this Proposed Order was mailed to each of the parties listed below.


Ashley Couillard

JOHN PRIBIL
5300 BROKEN SOUND BLVD NW
SUITE 200
BOCA RATON FL 33487-3520

FRANK MARNELL
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PIERRE, SD 57501