

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

**IN THE MATTER OF
ACE FINANCIAL GROUP LTD.
LICENSEE**

)
) **FINAL DECISION**
) **INS 15-02**


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 May 6, 2015 is adopted in full.

IT IS FURTHER ORDERED that the South Dakota Non-resident Insurance Producer License of Ace Financial Group Ltd. for the Temporary Cease and Desist Order from Larry Deiter, Director of South Dakota Division of Insurance should, in its entirety, be made permanent.

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 13TH day of May 2015



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
ACE FINANCIAL GROUP LTD.**

**PROPOSED ORDER
DLR/INSURANCE 15-02**

An administrative hearing in the above matter was held on February 20, 2015. ACE Financial Group Ltd., (hereinafter sometimes referred to as "ACE") failed to appear. Brendan Stratton 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 can be included. Exhibits 1 through 7 were admitted and will be denoted by EX followed by the appropriate number.

ISSUE

Whether there is cause to not make permanent the Temporary Order to Cease and Desist dated February 2, 2015.

FINDINGS OF FACT

I.

The Division received a call from an individual who was trying to find E & O insurance on the internet and found what they thought was a distrustful company. That company was ACE Financial Group Ltd.

II.

Gretchen Brodkorb, Compliance Agent with the South Dakota Division of Insurance investigated the matter. Ms. Brodkorb has eight years of experience with the Division of Insurance.

III.

Ms. Brodkorb ascertained that Ace Financial Group Ltd. has no Certificate of Authority to conduct business in South Dakota. ACE does not have a sales tax license with the State of South Dakota. ACE would need to possess a sales tax license if they were licensed to operate in South Dakota by the Division of Insurance. (EX 1) They did not remit any premium taxes to the state of South Dakota.

IV.

Ms. Brodkorb investigated ACE on the internet. She was able to obtain a quote for insurance from their website. She did this by entering "South Dakota" as the primary state of operation. (EX 2)

V.

The addresses listed for ACE that were listed on their website are the same as those for an insurance company called iWorld (iWorld Financial Group). (EX 3)

VI.

Previously, in another enforcement action, the Division sent iWorld a Temporary Cease and Desist Order to cease and desist operations in the state of South Dakota. (EX 4) This culminated in a final decision ordering that iWorld cease and desist operations in the state of South Dakota. This final order was signed on July 8, 2013. (EX 5) The cease and desist order was a result of iWorld transacting business in the state of South Dakota without obtaining first correct licensure.

VII.

On October 30, 2014 ACE's website stated: "...the Policy you purchased with iWorld Financial Group is still valid with the new company ACE Financial Limited. Ace Financial Limited bought out the book of business and policies from iWorld Financial Group. ACE will still honor all Coverages and Claims listed in all Policies formerly issued by iWorld."

VIII.

The Division sent ACE a Temporary Order to Cease and Desist along with the Notice of Hearing on February 2, 2015.

IX.

No representative on behalf of ACE appeared at the hearing.

X.

Any additional Findings of Fact 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, Conclusions of Law, they are hereby redesignated and incorporated herein as Conclusions of Law.

REASONING

This case involves a Temporary Order to Cease and Desist issued on February 2, 2015 by the Division of Insurance against ACE Financial Group, Ltd. The facts are set out in the Findings of Fact and will not be repeated in this Reasoning section.

In South Dakota, pursuant to SDCL 58-6-1, a certificate of authority is required for the transaction of insurance business, and as such, no person may act as an insurer and no insurer or its insurance producers, attorneys, subscribers, or representatives may directly transact insurance in this state except as authorized by a subsisting certificate of authority issued to the insurer by the director. Investigation by the Division showed ACE did not possess a Certificate of Authority.

While no criminal prosecution is at stake here it is interesting to note that it is a Class II misdemeanor in South Dakota to be an unauthorized insurer. SDCL 58-8-1 states:

No person may in this state, directly or indirectly, act as insurance producer for, or otherwise represent any insurer not then authorized to transact insurance business in this state, in the solicitation, negotiation, or effectuation of insurance or of annuity contracts, inspection of risks, fixing of rates, investigation or adjustment of losses, collection of premiums, or in any other manner in the transaction of insurance business with respect to subjects of insurance resident, located or to be performed in this state. Any violation of this section is a Class 2 misdemeanor.

SDCL 10-44-2 states that "...[A]ny company doing insurance business in this state shall pay a tax ... to the Division of Insurance at the time the company files its annual statement, or, if no annual statement is required, then before March first of each year." Investigation by the Division showed that ACE has not been paying any premium taxes, or any taxes whatsoever, to the State of South Dakota.

The Division met their burden in showing that ACE has violated the insurance regulatory laws of South Dakota.

It is the Proposed Order of this hearing examiner that the Temporary Cease and Desist Order in the matter of ACE Financial Group, Ltd. should, in its entirety be made permanent based on the facts that ACE Financial Group Ltd. is operating illegally in the State of South Dakota and it is not remitting premium taxes for the business which it is transacting here.

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.

III.

The Division of Insurance met their burden in establishing that ACE was transacting business in the State of South Dakota without first receiving licensure in violation of SDCL §§ 58-6-1 and 58-8-1.

IV.

The Division of Insurance met their burden in establishing that ACE is unlawfully negotiating and selling insurance, and collecting premiums in South Dakota in violation of SDCL §§ 58-6-1.

V.

The Division of Insurance met their burden in establishing that ACE has failed to pay premium tax on products sold in South Dakota in violation of § 10-44-2.

VI.

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

VII.

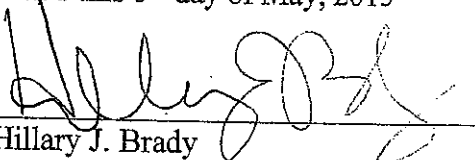
To the extent any of the foregoing are improperly designated and are instead Findings of Fact, they are hereby redesignated and incorporated herein as Findings of Fact.

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

PROPOSED DECISION

The Temporary Cease and Desist Order regarding ACE Financial Group Ltd. signed and dated February 2, 2015 by Larry Deiter, Director of the South Dakota Division of Insurance should, in its entirety, be made permanent.

Dated this 5th day of May, 2015



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