

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

IN THE MATTER OF)	FINAL DECISION
JOSE ALANIZ, JR.)	INS 14-17
LICENSEE)	

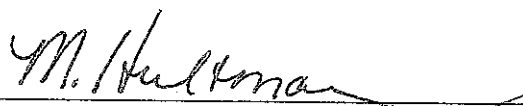
After reviewing the record and the proposed order of the Hearing Examiner in this matter,

IT IS HEREBY ORDERED that pursuant to SDCL 1-26D-4, the Hearing Examiner's Proposed Findings of Fact, Conclusions of Law and Proposed Order, dated December 31, 2014 is adopted in full.

IT IS FURTHER ORDERED that the South Dakota Non-resident Insurance Producer License of Jose Alaniz Jr. 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 17th day of January, 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
JOSE ALANIZ, JR.**

**PROPOSED ORDER
DLR/INSURANCE 14-17**

An administrative hearing in the above matter was held on December 3, 2014. Jose Alaniz, Jr. (hereinafter sometimes referred to as "Alaniz" or "Licensee") failed to appear. Mr. Benjamin Eirikson 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 5 were admitted and will be denoted by EX followed by the appropriate number.

ISSUE

Whether the Non-Resident Insurance Producer License of Jose Alaniz, Jr. should be revoked due to his failure to respond in a timely manner to the South Dakota Division of Insurance inquiries (dated March 13, 2014 and April 18, 2014) regarding administrative actions in Virginia and Delaware. (SDCL 58-33-66(1), SDCL 58-30-167(2) & (9), SDCL 58-33-68, SDCL 58-30-193)

FINDINGS OF FACT

I.

Jose Alaniz, Jr. possesses an active Non-Resident Insurance Producer License from the State of South Dakota. Mr. Alaniz became licensed in the State of South Dakota on August 6, 2012. His license is scheduled to expire on September 30, 2015. (EX 1)

II.

Christine Schilling, Compliance Agent for the South Dakota Division of Insurance, obtained information that there had been administrative actions taken against Alaniz in Virginia and Delaware. Alaniz did not report these actions to the Division of Insurance within thirty days. (EX 2 & 3) Ms. Schilling has since left the Division but the Senior Compliance Agent and Market Conduct Manager for the South Dakota Division of Insurance, Matthew Ballard, had knowledge of this investigation and testified regarding the matter.

III.

Christine Schilling wrote Mr. Alaniz a letter on March 13, 2014 inquiring why Alaniz had not reported the Virginia and Delaware administrative actions. (EX 4) He was given twenty days upon receipt to respond. The letter was mailed March 13, 2014 via first class mail to Alaniz at 520 N. Cantu, Weslaco, TX 78596. (EX 4) This was the mailing address listed on the Individual Information Inquiry for Alaniz on file with the Division. (EX 1)

IV.

Ms. Schilling sent a letter to Mr. Alaniz on April 18, 2014 wherein Alaniz was given notice that the Division had not received the information that was requested from him in the March 13, 2014 letter. Ms. Schilling requested Alaniz's information regarding the Virginia and Delaware administrative action. Mr. Alaniz was again given twenty days to respond and was warned that if he failed to provide the requested information within twenty days the Division would be pursuing an administrative action against him. (EX 5) The April 18, 2014 letter was mailed via first class mail and first class certified mail to Alaniz at 520 N. Cantu, Weslaco, TX 78596. (EX 5) This was the mailing address listed on the Individual Information Inquiry for Alaniz on file with the Division. (EX 1) The letter sent via certified mail was returned to the Division as "Unclaimed - Unable to Forward". (EX 5)

V.

The Delaware Insurance Commissioner signed a Final Order on December 12, 2013 revoking Mr. Alaniz's Delaware Producer License for failure to report an adverse action in another jurisdiction or by another governmental agency within 30 days of the final disposition of the matter. (EX 2)

VI.

The Virginia Bureau of Insurance denied the issuance of a producer's license to Alaniz on January 29, 2014 because he provided incomplete information on an application. This is an administrative action under South Dakota law. (EX 3)

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 Non-Resident Insurance Producer's License of Jose Alaniz, Jr. 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. Alaniz did not appear at the hearing.

Christy Schilling, Compliance Agent for the South Dakota Division of Insurance, found that Alaniz had not reported administrative actions taken in the Virginia and Delaware. Furthermore, Mr. Alaniz failed to respond in a timely manner to inquiries made by the Division (dated March 13, 2014 and April 18, 2014) regarding the administrative actions 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)

Alaniz was given notice of the violation and he refused to take corrective action in that he failed to respond to the Division of Insurance within twenty days of receiving the letters dated March 13, 2014 and April 18, 2014 from Ms. Schilling.

Additionally, the Division will consider SDCL 58-30-167. Mr. Alaniz violated subsections (2) and (9) of SDCL 58-30-167 which are 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;....

(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 set forth above, it is clear that the Non-Resident Insurance Producer License of Jose Alaniz, Jr. 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 October 29, 2014 by the South Dakota Division of Insurance.

III.

Neither Jose Alaniz, Jr. 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 Jose Alaniz, Jr. committed unfair or deceptive insurance practices by violating SDCL 58-33-66(1).

VI.

The Division of Insurance established by clear and convincing evidence that the South Dakota Non-Resident Insurance Producers License of Jose Alaniz, Jr. is subject to revocation pursuant to SDCL 58-30-167(2) and (9).

VII.

The Division of Insurance established by clear and convincing evidence that the South Dakota Non-Resident Insurance Producers License of Jose Alaniz, Jr. should be revoked.

VIII.

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

IX.

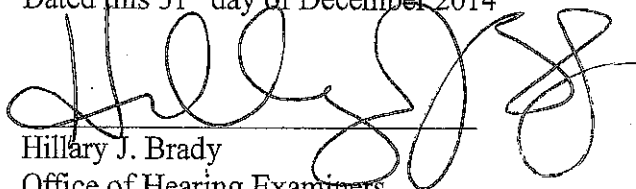
To the extent any of the foregoing are improperly designated and are instead Findings of Fact, they are hereby redesignated and incorporated herein as Findings of Fact.

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 Jose Alaniz, Jr. should be revoked.


Dated this 31st day of December 2014



Hillary J. Brady
Office of Hearing Examiners
523 E. Capitol Avenue
Pierre, South Dakota 57501-1538

CERTIFICATE OF SERVICE

I certify that on December 31, 2024, at Pierre, South Dakota, a true and correct copy of this Proposed Order was mailed to each of the parties listed below.


Ashley Couillard

JOSE ALANIZ JR
520 N CANTU
WESLACO, TX 78596

BENJAMIN EIRICKSON
ATTORNEY
DIVISION OF INSURANCE
124 SOUTH EUCLID AVE., 2ND FLOOR
PIERRE, SD 57501