

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

**IN THE MATTER OF
BENJAMIN FISTEL
LICENSEE**

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**FINAL DECISION
INS 15-04**

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 April 17, 2015 is adopted in full.

IT IS FURTHER ORDERED that the South Dakota Non-resident Insurance Producer License of Benjamin Fistel 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 22nd day of April 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
BENJAMIN FISTEL**

**PROPOSED DECISION
INS 15-04**

V.

DIVISION OF INSURANCE

An administrative hearing was held in this matter on April 9, 2015. Licensee, Benjamin Fistel (Fistel), did not appear or testify at the hearing. The Division of Insurance (Division) was represented by Benjamin Erickson. The Division had a witness, Amy Ondell. Based on the evidence, the arguments of the parties, and the law, the Hearing Examiner enters the following Findings of Fact, Conclusions of Law, and Proposed Order.

ISSUES

Whether Fistel failed to report to the Division administrative actions against him by the states of Colorado, Virginia, and North Carolina within 30 days?

Whether Fistel failed to respond to inquiries from the Division?

Whether the Division may revoke Fistel's license as an insurance producer?

FINDINGS OF FACT

I.

Fistel was licensed by the division as an insurance Non-Resident Producer on December 17, 2009. His license number is 40079558.

II.

Fistel's license is currently active. His last known address provided to the Division was 139 NE 1st St Ste 400, Miami Florida 33132-2545.

III.

On June 25, 2013, the Colorado Division of Insurance sent a letter to Fistel and told him that his application for an insurance license had been denied. There were several reasons for the denial including: violation of an insurance law in another state, unfair trade practice or fraud, and failure to demonstrate competence or good moral character.

IV.

On December 17, 2013, the Division sent Fistel an inquiry regarding the administrative action taken in Colorado.

V.

The Division sent the letter to Fistel at his address of record, 139 NE 1st ST Ste 400, Miami Florida 33132-2545.

VI.

On January 20, 2014, the Division sent a second inquiry via first class and certified mail to Fistel at his address of record. The letters were returned to the Division.

VII.

The state of Virginia revoked Fistel's insurance license on May 9, 2014.

VIII.

On August 13, 2014, Fistel and the North Carolina Department of Insurance entered into a settlement agreement.

IX.

The events in findings of fact three, seven, and eight are considered administrative actions.

X.

The Division requested a hearing to revoke Fistel's insurance producer license because of the administrative actions and because he failed to respond to inquiries by the division.

XI.

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

There were three separate administrative actions in three different states: Colorado, Virginia, and North Carolina. However, none of these actions were reported to the Division. SDCL 58-30-193 states that an 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.

Fistel also failed to respond to inquiries from the Division. Letters were mailed on December 17, 2013, and January 20, 2014. The Division did not receive a response from Fistel. SDCL 58-33-66(1) provides that unfair or deceptive acts or practices in the business of insurance include 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.

SDCL 58-30-167 provides that 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:

- (1) Providing incorrect, misleading, incomplete, or materially untrue information in the license application;
- (2) Violating any insurance laws or rules, subpoena, or order of the director or of another state's insurance director, commissioner, or superintendent;

In this case, Fistel violated some insurance laws. Fistel was involved in administrative actions in three states. However, he failed to report these incidents to the Division. Additionally, he did not keep in contact with the Division or provide information when asked by the Division. The evidence shows that the Division has good reasons to revoke Fistel's insurance producer license.

CONCLUSIONS OF LAW

I.

The Division has jurisdiction over Fistel and the subject matter of this contested case. The Office of Hearing Examiners has authority to conduct the appeal pursuant to the provisions of SDCL 1-26D.

II.

Fistel violated the requirements of SDCL 58-30-193 in failing to advise the Division within thirty days of the State of administrative action against him in other states license.

III.

The failure of Fistel to report administrative actions against his insurance producer license is grounds for sanction by the Division pursuant to SDCL 58-30-167(2).

IV.

Fistel committed an unfair or deceptive act in the business of insurance by failing to respond to an inquiries from the Division within twenty days as required by SDCL 58-33-66(1).

V.

These violations of the statutes permit the Director of the Division of Insurance to revoke Fistel's insurance producer license and/or impose other sanctions as set forth in SDCL 58-30-167.

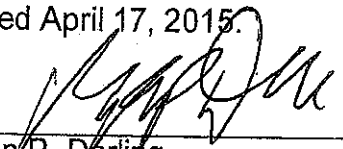
VI.

Any Conclusions of Law in the reasoning section of this decision are incorporated herein by reference. 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.

PROPOSED ORDER

It is the Proposed Order of the Hearing Examiner that the license of Benjamin Victor Fistel be revoked.

Dated April 17, 2015.



Ryan P. Darling
Office of Hearing Examiners
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Pierre SD 57522