

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

**IN THE MATTER OF  
STEPHEN J. SALEM**

) **FINAL DECISION**  
) **DLR 16-02**  
)

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 June 6, 2016 are adopted in full.

IT IS FURTHER ORDERED the South Dakota non-resident insurance producer license of Stephen J. Salem is hereby 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 20 day of June, 2016.



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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  
STEPHEN J. SALEM**

**DLR 16-02  
PROPOSED ORDER**

An administrative hearing in the above matter was held on May 18, 2016. Stephen Salem (Licensee) failed to appear. Frank Marnell appeared as counsel for the Division of Insurance (Division). Gretchen Brodkorb appeared as witness for the Division. This matter was recorded.

**ISSUE**

Whether the Non-Resident Insurance Producer License of Stephen Salem should be revoked due to his failure to respond in a timely manner to the South Dakota Division of Insurance inquiries dated September 23, 2015, and November 6, 2015, and for his failure to report an administrative action in another jurisdiction (Iowa) in violation of SDCL §§ 58-30-193, SDCL 58-33-66(1) and SDCL 58-30-167(2), (8), and (9).

**FINDINGS OF FACT**

1. Stephen Salem possesses an active Non-Resident Insurance Producer License from the State of South Dakota. Salem became licensed in the State of South Dakota on February 8, 2013.
2. Gretchen Brodkorb, Compliance Specialist for the South Dakota Division of Insurance for five years, obtained information that Salem had an administrative action taken against him in the State of Iowa on August 5, 2015. The Division's records indicated that Salem had not reported Iowa's actions to the South Dakota Division of Insurance.
3. Ms. Brodkorb wrote Salem a letter on September 23, 2015 inquiring why he had not reported the action to the Division within the appropriate time frame. He was given twenty days to respond and Ms. Brodkorb received no response. The letter was via first class mail to Stephen J Salem, 1506 Country Club Dr, Elk Point SD 57025. This was the address Ms. Brodkorb had obtained from Salem's individual information inquiry.
4. Ms. Brodkorb sent a second letter to Salem on November 6, 2015 wherein Salem was given notice that he failed to respond to Brodkorb's September 23, 2015 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. The letter was sent via first class and certified mail to his mailing address in Elk Point, South Dakota. The USPS attempted to deliver the certified mail on November 9 and 14, 2015. Mr. Salem did not claim the certified letter. The first class letter was not returned to the Division as undeliverable. Ms. Brodkorb received no response from Mr. Salem.

5. On January 5, 2016, Ms. Amy Ondell, a Compliance Specialist with the Division, e-mailed Mr. Salem at sjsalem@gmail.com and steve.salem@coloniallife.com. She asked Mr. Salem to contact her in regards to the action in Iowa. She gave Mr. Salem an additional three days to respond to avoid further action being taken against his resident license. Mr. Salem did not respond to Ms. Ondell.
6. Any additional Findings of Fact included in the Reasoning section of this decision are incorporated herein by reference.
7. 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 Resident Insurance Producer's License of Stephen J. Salem. 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. Salem did not appear at the hearing.

SDCL 58-30-193 states that "[A]n 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." Gretchen Brodkorb, compliance assistant for the South Dakota Division of Insurance found that Salem had not reported an administrative action from Iowa that was dated August 6, 2015. In addition, Mr. Salem failed to respond in a timely fashion to the inquiry of the Division (letters dated September 23, 2015 and November 6, 2015) regarding the above administrative action in violation of SDCL 58-33-66(1) which states in pertinent part 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.

In addition, the Division will consider SDCL 58-30-167 (shown in pertinent part) 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;....

Applying the law to the Findings of Fact it is clear that the Non-Resident Insurance Producer License of Stephen J. Salem should be revoked.

## CONCLUSIONS OF LAW

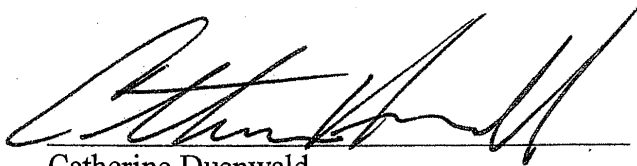
1. The Division of Insurance has jurisdiction over the parties and subject matter of this hearing pursuant to Title 58 of the South Dakota Codified Laws. The Office of Hearing Examiners is authorized to conduct the hearing and issue a proposed decision pursuant to the provisions of SDCL 1-26D-4.
2. The Division of Insurance bears the burden of establishing the alleged statutory violations by clear and convincing evidence.
3. The Division of Insurance established by clear and convincing evidence that Stephen J. Salem violated SDCL 58-30-193.
4. The Division of Insurance established by clear and convincing evidence that Stephen J. Salem violated SDCL 58-33-66(1).
5. The Division of Insurance established by clear and convincing evidence that the South Dakota Resident Insurance Producers License of Stephen J. Salem is subject to revocation.
6. The Division of Insurance established by clear and convincing evidence that the South Dakota Resident Insurance Producers License of Stephen J. Salem should be revoked.
7. Any additional Conclusions of Law included in the Reasoning section of this decision are incorporated herein by reference.
8. 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 South Dakota Nonresident Insurance Producers License of Stephen J. Salem should be revoked.

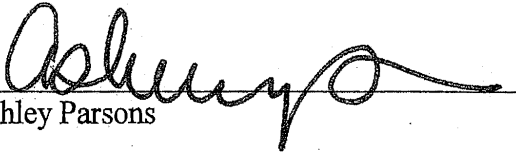
Dated this 6<sup>th</sup> day of June, 2016,



Catherine Duenwald  
Office of Hearing Examiners  
523 East Capitol  
Pierre, SD 57501

**CERTIFICATE OF SERVICE**

I certify that on June 6<sup>th</sup>, 2016, at Pierre, South Dakota, a true and correct copy of this Proposed Order was mailed to each of the parties listed below.

  
Ashley Parsons

STEPHEN SALEM  
1506 COUNTRY CLUB DRIVE  
ELK POINT SD 57025

FRANK MARNELL  
ATTORNEY  
DIVISION OF INSURANCE  
124 SOUTH EUCLID AVE. 2ND FLOOR  
PIERRE SD 57501

STATE OF SOUTH DAKOTA  
DEPARTMENT OF LABOR AND REGULATION

IN THE MATTER OF  
STEPHEN J. SALEM

NOTICE OF ENTRY OF PROPOSED  
FINDINGS OF FACT, CONCLUSION OF LAW,  
AND DECISION AND FINAL DECISION

NOTICE IS HEREBY GIVEN, that attached hereto, is a true and correct copy of the Proposed Findings of Fact, Conclusions of Law, and Decision, and Final Decision entered by Marcia Hultman, Secretary of the South Dakota Department of Labor and Regulation, on June 20, 2016.

Dated this 24<sup>th</sup> day of June, 2016.



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Frank A. Marnell  
Insurance Division Senior Legal Counsel  
South Dakota Department of Labor and Regulation  
124 South Euclid Avenue, 2<sup>nd</sup> Floor  
Pierre, SD 57501  
(605) 773-3563

**CERTIFICATE OF SERVICE**

I, Frank Marnell, the undersigned, do hereby certify that on this 24<sup>th</sup> day of June, 2016, a true and correct copy of the Proposed Findings of Fact, Conclusions of Law, and Decision, and Final Decision with respect to the above-entitled action was sent U.S. Certified Mail thereon, to the following:

Stephen J. Salem  
1506 Country Club Dr.  
Elk Point, SD 57025

Dated this 24<sup>th</sup> day of June, 2016.



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Frank A. Marnell  
Insurance Division Senior Legal Counsel  
South Dakota Department of Labor and Regulation  
124 South Euclid Avenue, 2<sup>nd</sup> Floor  
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