

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

**IN THE MATTER OF
GRACE SMITH
LICENSEE**

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**FINAL DECISION
INS 15-15**

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 January 6, 2016 is adopted in full.

IT IS FURTHER ORDERED that the South Dakota Non-resident Insurance Producer License of Grace Smith 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 11 day of January 2016



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
GRACE SMITH**

**PROPOSED DECISION
INS 15-15**

V.

DIVISION OF INSURANCE

An administrative hearing was held in this matter on December 10, 2015. Licensee, Grace Smith (Smith), did not appear or testify at the hearing. The Division of Insurance (Division) was represented by Benjamin Eirikson. The Division had a witness, Gretchen Brodkorb. 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 Smith failed to report to the Division an involuntary termination by TIAA-CREF?

Whether Smith failed to report to the Division a felony prosecution?

Whether Smith failed to respond to inquiries from the Division?

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

FINDINGS OF FACT

I.

Smith was licensed by the Division as an insurance producer on May 17, 2011. Her license as a non-resident producer was currently active.

II.

Smith listed her business location address as TIAA-CREF in Charlotte, North Carolina.

III.

On or about January 20, 2015, Smith was involuntarily terminated from TIAA-CREF. From March 2009, until March 2014, Smith embezzled or stole retirement benefits from the Social Security Administration. The benefits were for her deceased mother and had a value of \$82,628. Smith allegedly continued to collect benefits for her mother after her mother was deceased.

IV.

On March 10, 2015, the Department sent Smith a letter requesting information about her being charged with felony Social Security fraud.

V.

The Division did not receive a response to the March 10, 2015 letter.

VI.

On April 13, 2015, a second letter was sent to Smith's last known address. The letter was sent via certified mail.

VII.

Smith did not respond and the letter was returned to the Division.

VIII.

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

In this case, Smith was charged with felony Social Security fraud and did not report the matter to the Division. SDCL 58-30-194 provides that within thirty days of the initial pretrial hearing date, an insurance producer shall report to the director any felony criminal prosecution of the insurance producer taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal documents.

The Division received information about the Social Security fraud and sent certified letters to Smith. However she did not respond to the letters from the Division which is a deceptive insurance practice. 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 58-33-66(1).

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 violating any insurance laws or rules, subpoena, or order of the director or of another state's insurance director, commissioner, or superintendent. SDCL 58-30-167(2).

Here, Smith was charged with Social Security fraud and was involuntarily terminated from her job in North Carolina. Smith did not report these events to the Division. Additionally, she did not respond to inquiries about the events. The evidence shows Smith violated South Dakota insurance laws. Consequently, the Director of the Division of Insurance may revoke Smith's insurance producer license.

CONCLUSIONS OF LAW

I.

The Division has jurisdiction over Smith 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.

Smith violated the requirements of SDCL 58-30-194 by failing to advise the Division about a felony charge.

III.

Smith failed to respond to inquiries from the Division. SDCL 58-33-66.

IV.

The failure of Smith to report the involuntary termination and felony charge against her is grounds for sanction by the Division pursuant to SDCL 58-30-167(2).

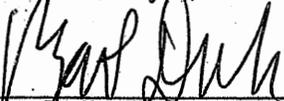
V.

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 Grace Smith be revoked.

Dated January 6, 2016.



Ryan P. Darling
Office of Hearing Examiners
523 East Capitol
Pierre SD 57522