

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

**IN THE MATTER OF
BM&A, INC.,
LICENSEE**

)
)
)

**FINAL DECISION
INS 18-03**

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 March 2, 2018, is adopted in full.

IT IS FURTHER ORDERED that the South Dakota Business Entity License of BM&A, Inc. 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 13th day of March, 2018.



Marcia Hultman, Secretary
South Dakota Department of Labor and Regulation
123 W. Missouri Ave.
Pierre, SD 57501

STATE OF SOUTH DAKOTA
DEPARTMENT OF LABOR AND REGULATION

IN THE MATTER OF
BM&A, INC.

INS 18-03

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 March 13th, 2018.

Dated this 14th day of March, 2018.



Frank A. Marnell
Insurance Division Senior Legal Counsel
South Dakota Dept. of Labor and Regulation
124 S. Euclid Ave., 2nd Floor
Pierre, SD 57501
Phone (605) 773-3563
Fax (605) 773-5369

CERTIFICATE OF SERVICE

I, Frank Marnell, the undersigned, do hereby certify that on the date shown below, a true and correct copy of the Final Decision, Proposed Findings of Fact, Conclusions of Law, and Decision with respect to the above-entitled action was sent U.S. First Class Mail thereon, to the following:

BM&A, Inc.
625 Sioux Point Road
Dakota Dunes, SD 57049

Pacific Life Ins. Co.
700 Newport Center Dr.
Newport Beach, CA 92660

Lincoln National Life Ins. Co.
1300 S Clinton St.
Ft. Wayne, IN 46802

John Hancock Life Ins. Co. (USA)
PO BOX 600
Buffalo, NY 14201-0600

Dated at Pierre, South Dakota this 14th day of March, 2018.



Frank A. Marnell
Insurance Division Senior Legal Counsel
South Dakota Dept. of Labor and Regulation
124 S. Euclid Ave., 2nd Floor
Pierre, SD 57501
Phone (605) 773-3563
Fax (605) 773-5369

**STATE OF SOUTH DAKOTA
OFFICE OF HEARING EXAMINERS**

**IN THE MATTER OF
BM&A, INC.**

**INS 18-03
PROPOSED DECISION**

This matter came for hearing before the Office of Hearing Examiners on March 2, 2018, pursuant to a Notice of Hearing issued by the South Dakota Division of Insurance ("Division") on January 23rd, 2018. Frank Marnell appeared as counsel for the Division. No counsel for BM&A, Inc. appeared. The Division admitted its Exhibits A through E into evidence and moved that the Hearing Examiner enter these Proposed Findings of Fact, Conclusions of Law, and Proposed Decision as a default disposition in this contested case.

ISSUE

Whether the business entity license of BM&A, Inc. should be revoked due to failing to timely respond to the Division regarding its insurance activities in violation of SDCL §§ 58-30-167(2) and (8), and 58-33-66.

FINDINGS OF FACT

1. BM&A, Inc. is a business entity holding an active business entity license in South Dakota. Exhibit A.
2. BM&A, Inc. was sent a routine inquiry by the Division on August 3, 2017 and October 3, 2017 to its address of record. Exhibits B and C.
3. BM&A, Inc. did not respond to the Division's inquiry.
4. The certified letter to BM&A, Inc. was returned to the Division as "unable to forward." Exhibit D.
5. In an effort to contact BM&A, Inc., the Division sent an additional e-mail on October 13, 2017. No response was received. Exhibit E.
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 to revoke the South Dakota business entity license of BM&A, Inc.. As a consequence of the potential loss of Respondent'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).

SDCL § 58-33-66 states that "Unfair or deceptive acts or practices in the business of insurance include... [f]ailing 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..." Regarding revocation of an insurance producer's license, the Division considers SDCL § 58-30-167 (shown in pertinent part) as follows:

The director may... revoke or refuse to continue, any license issued under this chapter... after a hearing... The director may... revoke... an insurance producer's... 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;
 - (8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere;
- ...

The evidence indicates that BM&A, Inc. failed to respond to Division inquiries. Applying the law to the Findings of Fact it is clear the business entity license of BM&A, Inc. is subject to revocation and should be revoked.

CONCLUSIONS OF LAW

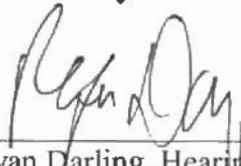
1. The Division has jurisdiction over BM&A, Inc. and the subject matter of this contested case. The Office of Hearing Examiners is authorized to conduct the hearing and issue a proposed decision pursuant to SDCL 1-26D-4.
2. The Division bears the burden of establishing the alleged statutory violations by clear and convincing evidence.
3. The Division established by clear and convincing evidence that BM&A, Inc. violated SDCL § 58-33-66 by failing to respond to the Division's inquiries.
4. The Division established by clear and convincing evidence that the South Dakota business entity license of BM&A, Inc. is subject to revocation.
5. The Division established by clear and convincing evidence that the South Dakota business entity license of BM&A, Inc. should be revoked.
6. Any additional Conclusions of Law 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 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 business entity license of BM&A, Inc. should be revoked.

Dated this 2 day of March, 2018.



Ryan Darling, Hearing Examiner
Office of Hearing Examiners
523 East Capitol Ave.
Pierre, SD 57501

CERTIFICATE OF SERVICE

I certify on March 2nd, 2018, at Pierre, South Dakota, a true and correct copy of this Proposed Decision was mailed to each of the parties below.



Ashley Parsons

BM&A, Inc.
PO Box 349
Dakota Dunes, SD 57049

Auto-Owners Life Ins. Co.
6101 Anacapi Blvd
Lansing, MI 48917

Metropolitan Life Ins. Co.
200 Park Ave.
New York, NY 10165

American Home Life Ins. Co.
400 S Kansas Ave.
Topeka, KS 66603

Lincoln National Life Ins. Co.
1300 S Clinton St.
Ft. Wayne, IN 46802

Integrity Life Ins. Co.
400 Broadway
Cincinnati, OH 45202

Security Life of Denver Co.
5780 Powers Ferry Road NE
Atlanta, GA 30327

UnitedHealthCare Ins. Co.
185 Asylum St.
Hartford, CT 06103

Voya Ins. and Annuity Co.
5780 Powers Ferry Road NE
Atlanta, GA 30327

Frank A. Marnell
South Dakota Division of Insurance
124 S. Euclid Ave., 2nd Floor
Pierre, SD 57501