

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

**IN THE MATTER OF
ERIC BRANCH,
LICENSEE**

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)

**FINAL DECISION
INS 18-11**

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 June 29, 2018, is adopted in full.

IT IS FURTHER ORDERED that the South Dakota Non-resident Insurance Producer License of Eric Branch 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 24 day of July, 2018.



Marcia Hultman, Secretary
South Dakota Department of Labor and Regulation
700 Governors Drive
Pierre, SD 57501

STATE OF SOUTH DAKOTA
DEPARTMENT OF LABOR AND REGULATION

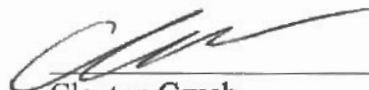
IN THE MATTER OF
ERIC BRANCH

INS 18-11

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 July 24, 2018.

Dated this 31th day of July, 2018.



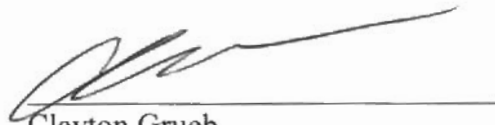
Clayton Grueb
Legal Counsel
South Dakota Division of Insurance
2330 N. Maple Ave. Suite 1
Rapid City, SD 57701
(605) 394-3396

CERTIFICATE OF SERVICE

I, Clayton Grueb, the undersigned, do hereby certify that on the date shown below, 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:

Eric Branch
608 E. 2nd St., Apt. 3
Boston, MA 02127

Dated this 31th day of July, 2018 in Rapid City, South Dakota.



Clayton Grueb
Legal Counsel
South Dakota Division of Insurance
2330 N. Maple Ave. Suite 1
Rapid City, SD 57701
(605) 394-3396

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

**IN THE MATTER OF
ERIC BRANCH**

**INS 18-11
PROPOSED DECISION**

This matter came for hearing before the Office of Hearing Examiners on June 29th, 2018 pursuant to a Notice of Hearing issued by the South Dakota Division of Insurance ("Division") on May 31, 2018. Clayton Grueb appeared as counselors for the Division. Eric Branch did not appear, either in person or through counsel. The Division admitted its Exhibits 1 through 4 into evidence and moved that the Hearing Examiner enter these Proposed Findings of Fact, Conclusions of Law, and Proposed Decision as a default disposition to this contested case.

ISSUE

Whether the Non-Resident Insurance Producer License of Eric Branch should be revoked due to failing to timely respond to the Division; failing to timely report an administrative action(s) to the Division; for demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere; for misrepresenting the terms of an insurance contract; and for acting as an agent for an insurer without holding a proper appointment, in violation of SDCL §§ 58-30-167 (8), 58-30-175, 58-33-66, and 58-33-68.

FINDINGS OF FACT

1. Eric Branch was licensed by the Division as an insurance producer on November 21, 2016. The license is currently active. (Exhibit 1).
2. Eric Branch acted an agent for an insurer without holding a proper appointment with the insurer. (Exhibit 2).
3. The Division sent inquiries to Eric Branch at the address of record regarding the appointment matter. (Exhibit 3-4).
4. Eric Branch did not respond to the Division's inquiries. (Exhibit 3-4).
5. Any additional Findings of Fact included in the Reasoning section of this decision are incorporated herein by reference.
6. 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 Non-Resident Insurance Producer's License of Eric Branch. 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 58-30-175 prohibits insurance producers for acting as an agent or selling any policies for an insurer unless the insurance producer becomes an appointed insurance producer of that insurer. SDCL 58-33-66(1) requires Eric Branch to respond to the Division and supply requested documents within twenty days from the receipt of a request. In addition, 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 Eric Branch violated the insurance laws, sold policies for an insurer without a proper appointment, and failed to respond to Division inquiries regarding the action. The evidence further indicates that Eric Branch used fraudulent, coercive, or dishonest practices, or demonstrated incompetence or untrustworthiness in the conduct of his business. Applying the law to the Findings of Fact it is clear the Non-Resident Insurance Producer License of Eric Branch is subject to revocation and should be revoked.

CONCLUSIONS OF LAW

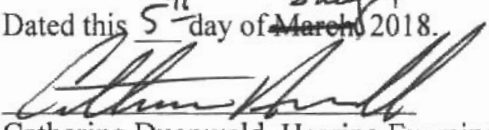
1. The Division has jurisdiction over Eric Branch and the subject matter of this contested case. The Office of Hearing Examiners is authorized to conduct the hearing and issue a proposed decision pursuant to SDCL 1-26D-4.
2. The Division bears the burden of establishing the alleged statutory violations by clear and convincing evidence.
3. The Division established by clear and convincing evidence that Eric Branch violated SDCL § 58-30-175.
4. The Division established by clear and convincing evidence that Eric Branch violated SDCL § 58-33-66.
5. The Division established by clear and convincing evidence that the South Dakota Non-Resident Insurance Producer License of Eric Branch is subject to revocation pursuant to SDCL§ 58-33-167(2) and (8).
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

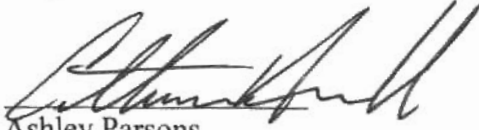
The South Dakota Non-Resident Insurance Producer License of Eric Branch should be revoked.

Dated this 5th day of July ~~March~~ 2018.


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

CERTIFICATE OF SERVICE

I certify on ~~June~~ ^{July} 5, 2018, at Pierre, South Dakota, a true and correct copy of this Proposed Decision was mailed to each of the parties below.



Ashley Parsons
Office of Hearing Examiners

Eric Branch
608 E. 2nd St., Apt. 3
Boston, MA 02127

Clayton Grueb
Division of Insurance
2330 N. Maple Ave, Suite 1
Rapid City, SD 57701