

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

**IN THE MATTER OF
BILL RAYE MARKVE,
LICENSEE**

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)

**FINAL DECISION
INS 18-01**

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 Non-resident Insurance Producer License of Bill Raye Markve 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
BILL RAYE MARKVE**

INS 18-01

**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 15th, 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:

Bill Raye Markve
PO Box 349
Dakota Dunes, SD 57049

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

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

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

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


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

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

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

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

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
BILL MARKVE**

**INS 18-01
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. Bill Markve did not appear, either in person or through counsel. The Division moved that the Hearing Examiner enter an Order of Confidentiality regarding the exhibits presented as they contain personal and medical information; the motion was granted. The Division called its witness, Letisha Pederson, and the Hearing Examiner admitted the Division's Exhibits A through E into evidence. At the close of evidence, the Division 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. The motion was granted.

ISSUE

Whether the Resident Insurance Producer License of Bill Markve should be revoked due to failing to timely respond to the Division regarding complaints about his insurance activities in violation of SDCL §§ 58-30-167(2) and (8), and 58-33-66.

FINDINGS OF FACT

1. Bill Markve holds an active resident insurance producer's license in South Dakota. (Exhibit A).
2. Bill Markve was the subject of a 2017 complaint against him alleging an improper sale of a universal life policy. (Exhibit B).
3. The Division sent an inquiry regarding the complaint to Bill Markve at his address of record, which was delivered. (Exhibit C).
4. Bill Markve did not respond to the Division's inquiry.
5. Bill Markve was the subject of another complaint in 2016. (Exhibits D).
6. Bill Markve failed to timely respond to the Division's inquiry regarding the 2016 complaint, resulting in a Warning Letter being issued by the Division for failing to respond. (Exhibits D and E).

7. Bill Markve was the subject of an administrative action with the South Dakota Division of Securities, now merged into the Division of Insurance for aiding unlicensed agents, failing to deliver policies, and providing incomplete disclosures regarding securities and insurance qualified products which resulted in a total civil penalty of \$40,000 and imposed certain restrictions on Bill Markve's securities registration. (Exhibit F).
8. Bill Markve was the subject of an administrative action with the Division of Insurance for failing to maintain ledgers and other records, trust account deficiencies, and failing to promptly refund money to consumers resulting in a monetary penalty of \$20,000 and imposed specific trust account requirements regarding Bill Markve's insurance business. (Exhibit G).
9. Any additional Findings of Fact included in the Reasoning section of this decision are incorporated herein by reference.
10. 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 Resident Insurance Producer's License of Bill Markve. 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 Bill Markve failed to respond to Division inquiries regarding complaints taken against him and has been the subject of serious administrative actions in South Dakota previously. Applying the law to the Findings of Fact it is clear the Resident Insurance Producer License of Bill Markve is subject to revocation and should be revoked.

CONCLUSIONS OF LAW

1. The Division has jurisdiction over Bill Markve 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 Bill Markve violated SDCL § 58-33-66 by failing to respond to the Division's inquiries regarding insurance complaints.
4. The Division established by clear and convincing evidence that Bill Markve has been the subject of administrative actions in this state regarding his insurance business.
5. The Division established by clear and convincing evidence that the South Dakota Resident Insurance Producer License of Bill Markve is subject to revocation.
6. The Division established by clear and convincing evidence that the South Dakota Resident Insurance Producer License of Bill Markve should be revoked.
7. Any additional Conclusions of Law included in the Reasoning section of this decision are incorporated herein by reference.

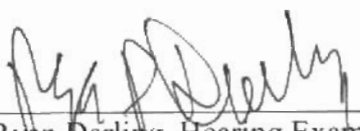
8. To the extent any of the foregoing are improperly designated and are instead findings of fact, they are hereby redesignated and incorporated herein as Findings of Fact.

Based on the above Findings of Fact, Reasoning, and Conclusions of Law, the Hearing Examiner enters the following:

PROPOSED DECISION

The South Dakota Resident Insurance Producer License of Bill Markve 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

Bill Raye Markve
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
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UnitedHealthCare Ins. Co.
185 Asylum St.
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