

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

**IN THE MATTER OF
MICHAEL A. GRAHAM**

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**FINAL DECISION
INS 19-09**

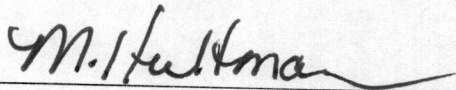
After reviewing the record and the proposed order of the Hearing Examiner in this matter,

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 19, 2019, is adopted in full.

IT IS FURTHER ORDERED that the denial of the South Dakota Non-resident Insurance Producer License of Michael Graham was reasonable.

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 27 day of June, 2019.



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

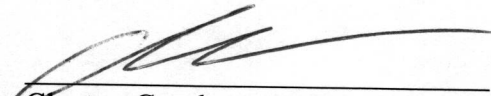
IN THE MATTER OF
MICHAEL A. GRAHAM

INS 19-09

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 27, 2019.

Dated this 28th day of June, 2019.



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

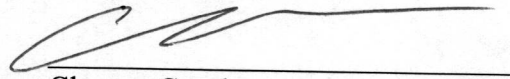
CERTIFICATE OF SERVICE

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 and first class mail thereon, to the following:

Michael Graham
2200 W. Commercial Blvd. Suite 309
Ft. Lauderdale, FL 33309

Michael Graham
3355 Pinewalk Dr. N. Apt. 204
Margate, FL 33063

Dated this 28th day of June, 2019 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
MICHAEL A GRAHAM**

**INS 19-09
PROPOSED DECISION**

v.

DIVISION OF INSURANCE

An administrative hearing was held in this matter on April 26, 2019. Licensee, Michael Graham (Graham) appeared and testified at the hearing. Graham had a witness, Shirley Garcia. The Division of Insurance (Division) was represented by Clayton Grueb. The Division had a witness, Letisha Pederson. 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 the Division may deny Graham's application for a license as an insurance producer?

FINDINGS OF FACT

1. Graham applied for a non-resident insurance producers license in South Dakota on August 17, 2018.
2. On the application Graham answered yes when asked if he had ever been convicted of a misdemeanor.
3. On the application Graham answered no when asked if he had ever been convicted of a felony.
4. On the application Graham answered no when asked if he had ever been involved in an administrative proceeding.
5. The Commonwealth of Pennsylvania issued a "Consent Order" on July 6, 2007. Graham was previously arrested for possession of cocaine and public drunkenness. Graham waived a formal hearing. The Order dealt with rules and regulations and the ability to sell insurance in Pennsylvania.
6. The Division sent a letter to Graham on August 23, 2018. Graham was asked to explain why he denied being involved in an administrative action.
7. The Division spoke to Graham on August 24, 2018 and advised him on what additional information was required.
8. The Division did not receive a response from Graham, so they sent a certified Letter to Graham on September 24, 2018. He was asked to respond to the august 23, 2018 letter (a copy was included).

9. On or about September 26, 2018, Graham provided answers to the August 23, 2018 letter. In response to the question on an administrative action, Graham states that he must have inadvertently answered the question incorrectly.
10. The Division emailed a letter to Graham on September 28, 2018 and asked him to provide further information on a Misdemeanor Domestic Battery Criminal Mischief in 2016 and a Criminal Mischief Damage Property offense in 2008.
11. The Division Sent a letter to Graham on November 6, 2018 that denied his application for an Insurance Producer License. The reasons for denial were for failing to report an administrative action and failing to respond to Division inquiries within twenty days.
12. Graham filed a timely appeal of the denial.
13. 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

SDCL §58-30-193 states that an 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. In this case, Graham did not report an administrative action from Pennsylvania. Graham alleges that he was unaware that it was an administrative action because it was a "Consent Order". However, the Order involved laws and the ability to sell insurance in Pennsylvania. Graham should have been aware of the seriousness of the matter and should have reported it to the Division.

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 and having an insurance producer license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory. At the conclusion of the matter, the director shall send a letter to the licensee, the insurers represented by such licensee, and the appointing agent of a producer, stating the final determination of the matter. SDCL §58-30-167 (2) & (9).

Graham also committed an unfair or deceptive insurance practice when he failed to answer inquiries from the Division. 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 evidence shows that the Division should deny Graham's Insurance producers license request. There was an unreported administrative action in another state. Additionally, Graham did not respond to inquiries from the Division about the action within twenty days.

CONCLUSIONS OF LAW

1. The Division has jurisdiction over Graham 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.
2. Graham violated the requirements of SDCL 58-30-193 by failing to advise the Division of the administrative action in Pennsylvania.
3. Graham committed an unfair or deceptive act in the business of insurance by failing to respond to an inquiry from the Division within twenty days as required by SDCL 58-33-66(1).
4. These violations of the statutes permit the Director of the Division of Insurance to deny Graham's insurance producer license application as set forth in SDCL 58-30-167.
5. 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 Division of Insurance be affirmed.

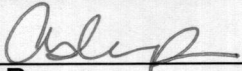
Dated June 19, 2019.



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

CERTIFICATE OF SERVICE

I certify that on June 19th, 2019, at Pierre, South Dakota, a true and correct copy of the Findings of Fact, Conclusions of Law and Proposed Order in the above-entitled matter was sent via U.S. Mail or Inter-Office Mail to each party listed below.



Ashley Parsons

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FT LAUDERDALE FL 33309

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