SOUTH DAKOTA
DEPARTMENT OF LABOR AND REGULATION
DIVISION OF INSURANCE

IN THE MATTER OF   )

JEANNE ALCORN   )   **FINAL DECISION**

)

An administrative hearing was held on this matter on June 11, 2020. The Respondent, Jeanne Alcorn, appeared and testified telephonically at the hearing. The Division of Insurance, part of the Department of Labor and Regulation, ("Division") was represented by attorney Frank Marnell. The Division had a witness, Letisha Pederson, who testified at the hearing. Documentary evidence will be cited as "(Exhibit ___)".

The Office of Hearing Examiners, through Hearing Examiner Ryan Darling, entered and served a Proposed Decision regarding the parties on July 6, 2020. After reviewing the record and the Proposed Decision, this Final Decision follows and includes Findings of Fact, Reasoning, Conclusions of Law, and my reasons for rejecting the Proposed Decision as required by SDCL § 1-26D-8 and Order:

REASONS FOR REJECTING THE
HEARING EXAMINER'S PROPOSED DECISION

1. I reject the Hearing Examiner's Issue on the first page as it is inaccurate. The Division is not requesting to revoke a license. The hearing was to review the reasonableness of the Division's denial of Ms. Alcorn's insurance producer license as provided in the Notice of Hearing. Further, the Division did not and could not allege violations of SDCL §§ 58-30-193 (failing to report an administrative action) nor 58-33-66 and 58-33-68 (failing to respond to Division inquiries) because Ms. Alcorn is an applicant, not a licensed producer, and therefore has no obligation to comply with those statutes in South Dakota.

2. I reject the Hearing Examiner's Proposed Findings of Fact as they are incomplete and inaccurate. None of the Proposed Findings refer to the record. The findings below are complete, supported by the record, and accurate.

3. I reject the Hearing Examiner's Proposed Reasoning as I find it inaccurate, incomplete, and providing inaccurate legal standards for review in this case. The Reasoning section set forth below is supported by the record and applies correct legal standards.

4. I reject the Hearing Examiner's Proposed Conclusions of Law as I find them inaccurate, incomplete, and applying incorrect legal standards.

ISSUE

Whether the Division was reasonable in denying Jeanne Alcorn's 2020 nonresident insurance producer license application pursuant to SDCL § 58-30-168 based upon SDCL § 58-30-167(1), (2), (3), (6), and (8) and the evidence.

FINDINGS OF FACT

1. Jeanne Alcorn applied for a South Dakota Non-Resident Insurance Producer License on April 2, 2020. This application was the subject of the June 11, 2020 hearing. (Exhibit 1)

2. In the online application, an applicant is prompted to respond "YES" or "NO" to a number of questions. In her 2020 application, Jeanne Alcorn answered "NO" to question 1B, regarding whether she had been convicted of a felony. (Exhibit 1)

3. Background Question 1B to Jeanne Alcorn's 2020 application was as follows:

   1B: Have you ever been convicted of a felony, had a judgment withheld or deferred, or are you currently charged with committing a felony? You may exclude juvenile adjudications (offenses where you were adjudicated delinquent in a juvenile court).

   ...

   Note: For Questions 1a, 1b and 1c, "Convicted" includes, but is not limited to, having been found guilty by verdict of a judge or jury, having entered a plea of guilty or nolo contendere or no contest, or having been given probation, a suspended sentence, or a fine. If you answer yes to any of these questions, you must attach to this application: a) a written statement explaining the circumstances of each incident, b) a copy of the charging document, c) a copy of the official document, which demonstrates the resolution of the charges or any final judgment.

   (Exhibit 1)

4. Jeanne Alcorn was subject to an administrative action in the State of California, Department of Insurance, in 2014 for failing to disclose her criminal history, including a felony conviction that was later reduced to a misdemeanor for possession with intent to distribute a controlled substance. The California Department of Insurance issued a restricted license. (Exhibit 2)

5. The Division provided evidence of disclosure issues in a previous application by Jeanne Alcorn. On August 22, 2018, Jeanne Alcorn applied for a nonresident insurance producer license but did not disclose her 2014 California administrative action. In her 2018 application, Jeanne Alcorn answered "YES" to Background Question 1B regarding felony convictions. (Exhibit 3)

6. On December 14, 2018, the Division denied Jeanne Alcorn's 2018 application because she had failed to respond to Division inquiries, provided incorrect information, was subject to another

state's action, violated another state's insurance laws, and demonstrated untrustworthiness. (Exhibit 4)

7. On February 26, 2020 the California, Department of Insurance issued another order, this time lifting Jeanne Alcorn's restrictions from her previous administrative action. (Exhibit 5)

8. Jeanne Alcorn provided a detailed history of her criminal history to the Division, disclosing multiple drug convictions. (Exhibit 6)

9. Jeanne Alcorn was convicted of a felony, later reduced to a misdemeanor. (Exhibit 6)

10. Letisha Pederson, the Division's investigator, reviewed Jeanne's Alcorn's 2020 application and the criminal history Jeanne Alcorn previously submitted which lead the Division to believe that Jeanne Alcorn should have responded "YES" to the 2020 application questions regarding felonies.

11. On April 14, 2020, the Division sent a letter to Jeanne Alcorn requesting an explanation as to application discrepancies between the 2018 and 2020 applications regarding her felony conviction, an explanation why she never responded to the 2018 application, and an explanation as to why she should be granted a license in South Dakota. (Exhibit 7)

12. Jeanne Alcorn responded to the Division on April 15, 2020 that she thought her license was denied in 2018, and therefore no response was needed. (Exhibit 8)

13. On April 23, 2020, the Division denied Jeanne Alcorn's application for, among other allegations, providing incorrect information, for violating another state's laws or order, for attempting to obtain a license through misrepresentation, for having been convicted of a felony, and for demonstrating incompetence or untrustworthiness in the conduct of business in South Dakota or elsewhere. (Exhibit 9)

14. On April 29, 2020, Jeanne Alcorn timely requested a hearing to determine the reasonableness of the Division's decision to deny her application for licensure, pursuant to SDCL 58-30-168. (Exhibit 10)

15. The Division issued a Notice of Hearing on May 7, 2020. (Exhibit 11)

16. At the June 11, 2020 hearing, Jeanne Alcorn requested that letters from her employer be included in the record again. This request was granted. (Exhibit A)

17. Jeanne Alcorn's administrative actions from Exhibits 2 and 5 and criminal history in Exhibit 6 were not disputed at the June 11, 2020 hearing.

18. Any additional Findings of Fact included in the Reasoning section of this decision are incorporated herein by reference.

19. To the extent any of the foregoing are improperly designated and are, instead, Conclusions of Law, they are hereby incorporated herein as Conclusions of Law.

REASONING

This case involves a request by Jeanne Alcorn to determine the reasonableness of the Division's decision to deny her application for an insurance producer's license. As this matter deals with the denial of a professional license, rather than revocation of an existing license, the general burden of proof for administrative hearings, preponderance of the evidence, will apply. See *In re Jarman*, 860 N.W.2d 1 (S.D. 2015) and *In re Setliff*, 645 N.W.2d 601, 605 (S.D. 2002). " "Preponderance of the evidence" is defined as the greater weight of evidence." *Pieper v. Pieper*, 841 N.W.2d 781, 787 (S.D. 2013) quoting *L.S. v. C.T.*, 760 N.W.2d 145, 151 (S.D. 2009). Pursuant to SDCL § 58-30-168, the review is to "determine the reasonableness of the director's action." Therefore, it is the Division's burden to show by the preponderance of the evidence that the agency was reasonable in its decision to deny Jeanne Alcorn's license application.

In deciding to deny a license, the Division must look to SDCL § 58-30-167, providing, in pertinent part:

> The director may... refuse to issue or renew an insurance producer's license... for any one or more of the following causes:
> (1) Providing incorrect, misleading, incomplete, or materially untrue information in the license application;
> (2) Violating any insurance laws or rules, subpoena, or order of the director or of another state's insurance director, commissioner, or superintendent;
> (3) Obtaining or attempting to obtain a license through misrepresentation or fraud;
> ...
> (6) Having been convicted of a felony;
> ...
> (8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere;
> ...

Additionally, ARSD 20:06:01:03 states, in pertinent part:

> In determining whether a person is in good standing, the director may consider, but is not limited to, the following factors:
> ...
> (4) False statements, oral or written, to the division, including omissions;
> ...
> (6) Conduct which is unlawful, dishonest, deceitful, or fraudulent;
> ...

The information supplied by Jeanne Alcorn to the Division in support of her 2020 license application shows an incorrect response to the question regarding felonies. This is a ground to deny the license application under SDCL § 58-30-167(1). Her testimony showed this incorrect response was not an attempt to conceal, therefore SDCL § 58-30-167(3) should not be a ground for denying the license.[1] The felony conviction itself is not in dispute; Jeanne Alcorn provided the felony conviction in the criminal history she supplied. Although this felony was later reduced to a misdemeanor, the application question is clear: "Have you ever been convicted of a felony...". From her previous responses in her 2018 application and the criminal history she previously submitted, Jeanne Alcorn should have responded "YES" to the 2020 application questions regarding felonies. She should have disclosed her felony conviction in her 2020 application, for which Jeanne Alcorn is ultimately responsible. Given the results of the 2018 application denial, Jeanne Alcorn had additional notice to accurately complete applications. Assuring accuracy of information is paramount for insurance producers when handling client information.

Evidence indicates that Jeanne Alcorn violated the insurance laws of California by failing to disclose her criminal history in that state. A restricted license was issued, which was later upgraded to full licensure. It is undisputed that Jeanne Alcorn was subject to administrative actions in California involving her failure to disclose her criminal history. Her lengthy criminal history and inability to correctly complete license applications demonstrate Jeanne Alcorn's incompetence and untrustworthiness, as well as her lack of good standing to be issued an insurance producer license in South Dakota.

Applying the law to the Findings of Fact, the Division has shown by a preponderance of the evidence that the Division was reasonable in denying Jeanne Alcorn's nonresident insurance producer application.

CONCLUSIONS OF LAW

1. The Division has jurisdiction over the parties and subject matter of this hearing pursuant to Title 58 of the South Dakota Codified Laws. The Office of Hearing Examiners is authorized to conduct the hearing and issue a Proposed Decision pursuant to the provisions of SDCL § 1-26D-4.

2. The Division may reject the Hearing Examiner's Proposed Decision by giving reasons for doing so in writing pursuant to SDCL §§ 1-26D-6 and 1-26D-8.

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[1] "...In reviewing proposed findings of fact entered by the presiding hearing examiner, the reviewing agency shall give due regard to the hearing examiner's opportunity to observe the witnesses." SDCL § 1-26D-8. In the Reasoning section of the Proposed Decision, the Hearing Examiner observed Jeanne Alcorn's testimony as follows: "Alcorn may have made errors due to misperception, but her testimony did not indicate she was **trying** to hide information from the Division... The evidence and Alcorn's credible testimony indicates she was not **trying** to violate laws or be deceptive... between the two applications, she reported misdemeanors and felonies." (emphasis added). SDCL § 58-30-167(1), (2), (6), and (8) as cited by the Division for denial of the license have no intent requirement. The evidence shows Jeanne Alcorn was convicted of a felony, provided incorrect responses on her application, was subject to other state actions, and has a criminal history. The existence of these facts provides various grounds for denying the license, even absent Jeanne Alcorn's intent to correctly disclose them on her license application.

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3. The Division bears the burden of establishing that its denial of Jeanne Alcorn's insurance application was reasonable by a preponderance of the evidence.

4. The Division established by a preponderance of the evidence that SDCL § 58-30-167(1), (2), (6), and (8) provide grounds for the denial of Jeanne Alcorn's 2020 license application.

5. The Division has not established by a preponderance of the evidence that SDCL § 58-30-167(3) provides a ground for the denial of Jeanne Alcorn's 2020 license application.

6. The Division established by the preponderance of the evidence that Jeanna Alcorn is not in good standing pursuant to ARSD 20:06:01:03.

7. The Division established by a preponderance of the evidence that its denial of Jeanne Alcorn's nonresident insurance producer license renewal was reasonable.

8. Any additional Conclusions of Law included in the Reasoning section of this decision are incorporated herein by reference.

9. 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 Secretary of the Department of Labor and Regulation enters the following:

FINAL DECISION

The decision by the Director of the Division of Insurance to deny Jeanne Alcorn's license application was reasonable by a preponderance of the evidence. The 2020 South Dakota nonresident insurance producer application submitted by Jeanne Alcorn should be denied.

THEREFORE IT IS HEREBY ORDERED that Jeanne Alcorn's nonresident insurance producer license application is denied.

Parties are hereby advised of the right to further appeal this Final Decision to Circuit Court within 30 days, pursuant to the authority of SDCL Ch. 1-26.

Dated this $2/$ day of July, 2020.

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

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STATE OF SOUTH DAKOTA
DEPARTMENT OF LABOR AND REGULATION

IN THE MATTER OF
JEANNE ALCORN,
LICENSEE

INS 20-10

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 21, 2020.

Dated this 27th day of July, 2020.

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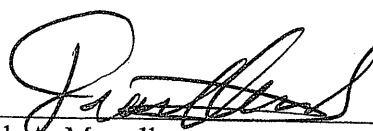Phone (605) 773-3563
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CERTIFICATE OF SERVICE

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:

Jeanne Alcorn
1423 Elk Road
Coalville, UT 84017-9342

Jeanne Alcorn
5202 W. Douglas Corrigan Way, STE 300
SLC, UT 84116

Dated at Pierre, South Dakota this 27th day of July, 2020.

Frank A. Marnell
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