

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

IN THE MATTER OF)	
SELF-EMPLOYED HEALTH INSURANCE &)	FINAL DECISION
GROW WITH MKG, LLC)	INS 21-20


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 September 3, 2021 is adopted in full.

IT IS FURTHER ORDERED that the temporary cease and desist order issued by the South Dakota Division of Insurance against the above-named respondents shall be made permanent and remain in effect until further order from the Division.

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 10th day of September, 2021.



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
SELF-EMPLOYED HEALTH
INSURANCE & GROW
WITH MKG, LLC

INS 21-20

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 September 10, 2021.

Dated this 21st day of September, 2021.



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

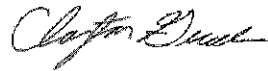
CERTIFICATE OF SERVICE

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:

Self-Employed Health Insurance
555 12th Street NW
Washington, DC 20004

Grow with MKG LLC
1033 Larkspur Loop
Saint Johns, FL 32259

Dated this 21st day of September, 2021 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

INS 21-20

**SELF-EMPLOYED HEALTH INSURANCE &
GROW WITH MKG LLC**

PROPOSED DECISION

This matter came for hearing before the Office of Hearing Examiners on September 2, 2021, pursuant to a Notice of Hearing issued by the South Dakota Division of Insurance (“Division”) on August 18, 2021. Clayton Grueb appeared as counsel for the Division. No one appeared on behalf of the respondents. The Division moved for default judgement, and admitted Exhibits 1 through 10 into evidence. After hearing the testimony and reviewing the evidence, the Hearing Examiner now enters these Proposed Findings of Fact, Conclusions of Law, and Proposed Decision in this contested case.

ISSUE

Whether the Division’s Temporary Order to Cease and Desist should be made permanent due to the Respondents by directly or indirectly, acting as an insurance producer or in any other manner in the transaction of insurance business with respect to subjects of insurance resident in this state without a proper license or authority, and for directly or indirectly making, publishing, disseminating, circulating an advertisement, containing any assertion, representation, or statement, which was untrue, deceptive, or misleading in violation of SDCL §§ 58-4-7, 58-8-1, 58-30-143, 58-30-149, 58-33-6, 58-33A-10 and ARSD 20:06:10:04.

FINDINGS OF FACT

1. SELF-EMPLOYED HEALTH INSURANCE and GROW WITH MKG LLC (here after referred to jointly as “RESPONDENTS”) all have a last known mailing address of 555 12th St. NW, Washington DC and 1033 Larkspur Loop, Saint Johns, FL 32259.
2. The RESPONDENTS directly or indirectly advertised insurance products in the State of South Dakota without proper licensure. (Exhibits 1 through 4).
3. RESPONDENTS directly or indirectly making, publishing, disseminating, circulating an advertisement, containing any assertion, representation, or statement, which was untrue, deceptive, or misleading. (Exhibit 1 & 2).

4. RESPONDENTS failed to respond to the Division's attempts to communicate with them. (Exhibits 5 through 8).
5. Mardy Gould is the individual controlling the RESPONDENTS. (Exhibits 5 & 10)
6. Mardy Gould obtained an insurance producers license in South Dakota after the advertisements in question were made. (Exhibit 9).
7. Any additional Findings of Fact 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 conclusions of law, they are hereby redesignated and incorporated herein as conclusions of law.

REASONING

This case involves a request by the Division to enter a permanent Cease and Desist Order against the RESPONDENTS. As this matter deals with individuals acting without a proper professional license, the general burden of proof for administrative hearings of preponderance of the evidence, will apply. *In re Setliff*, 645 N.W.2d 601, 605 (2002 S.D.)

SDCL § 58-4-7 states that "if the director of the Division of Insurance believes, from substantial evidence, that any person is violating or about to violate any provision of (the insurance code), the director may issue a temporary cease and desist order pending a hearing ... an order or judgment may be entered awarding such temporary or permanent injunction as is proper."

SDCL § 58-8-1 states that "No person may in this state, directly or indirectly, act as insurance producer for, or otherwise represent any insurer not then authorized to transact insurance business in this state, in the solicitation, negotiation, or effectuation of insurance or of annuity contracts, inspection of risks, fixing of rates, investigation or adjustment of losses, collection of premiums, or in any other manner in the transaction of insurance business with respect to subjects of insurance resident, located or to be performed in this state. Any violation of this section is a Class 2 misdemeanor."

SDCL § 58-30-143 states that "No person may sell, solicit, or negotiate insurance in this state for any line of insurance unless the person is licensed for that line of authority in accordance with §§ 58-30-141 to 58-30-195, inclusive."

SDCL § 58-30-149 states that "A business entity acting as an insurance producer is required to obtain an insurance producer license."

SDCL § 58-33-6 states that "No person shall make, publish, disseminate, circulate, or place before the public, or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance or with respect to any person in the conduct of his insurance business, which is untrue, deceptive, or misleading. Violation of this section is a Class 2 misdemeanor."

SDCL § 58-33A-10 states that "Any advertisements shall be truthful and not materially misleading in fact or by implication. The form and content of an advertisement of a policy shall be sufficiently complete and clear so as to avoid deception. No advertisement may have the capacity and tendency to materially mislead or deceive. In determining whether an advertisement has the capacity and tendency to materially mislead or deceive, the director shall make the determination from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence within the segment of the public to which it is directed."

ARSD 20:06:10:06 states that "Advertisements and solicitations must be truthful and not misleading in fact or by implication. Words or phrases, the meaning of which is clear only by implication or by familiarity with insurance terminology, may not be used."

The evidence indicates that the RESPONDENTS did violate the Insurance Code of South Dakota by failing to obtain proper licensure and by using false or misleading advertisements in the state. The evidence further indicates that the Division was appropriate in issuing a Temporary Order to Cease and Desist. Applying the law to the Findings of Fact, the Division has shown by the preponderance of the evidence that the RESPONDENTS have violated the Insurance Code and that a permanent order enjoining them from conducting insurance business in South Dakota is justified.

CONCLUSIONS OF LAW

1. The Division has jurisdiction over the RESPONDENTS 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 by the preponderance of the evidence that the RESPONDENTS have violated the South Dakota Insurance Code.


3. The Division established by the preponderance of the evidence that the RESPONDENTS violated SDCL §§ 58-8-1, 58-30-143, 58-30-149 due to the RESPONDENTS not having proper licensure.
4. The Division established by the preponderance of the evidence that the RESPONDENTS violated SDCL §§ 58-33-6, 58-33A-10 and ARSD 20:06:10:04 by using false or misleading advertisements.
5. Any additional Conclusions of Law 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 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 Division of Insurance's Temporary Order to Cease and Desist should be made permanent and the RESPONDENTS should be permanently enjoined from transacting insurance business in South Dakota.

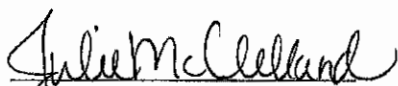
Dated this 3 day of September, 2021.



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

CERTIFICATE OF SERVICE

I certify on September 3, 2021, at Pierre, South Dakota, a true and correct copy of this Proposed Decision was mailed to each of the parties below.



Julie McClelland
Office of Hearing Examiners

Self-Employed Health Insurance
555 12th Street NW
Washington, DC 20004

Grow with MKG LLC
1033 Larkspur Loop
Saint Johns, FL 32259

Clayton Grueb
Division of Insurance
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