

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

**IN THE MATTER OF
BRAZOS SPECIALTY RISK, INC.
LICENSEE**

) **FINAL DECISION**
)
) **INS 12-13**

After reviewing the record and the proposed decision 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 Decision, dated November 5, 2012, is adopted in full.

IT IS FURTHER ORDERED that the South Dakota Non-Resident Business Entity Insurance Producer's License of Brazos Specialty Risk, Inc. 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 November, 2012.



Pamela S. Roberts, Secretary
South Dakota Department of Labor and Regulation
700 Governors Drive
Pierre, SD 57501

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

**IN THE MATTER OF
BRAZOS SPECIALTY RISK, INC.**

**PROPOSED ORDER
DOI 12-13**

An administrative hearing in the above matter was held on September 6, 2012. Brazos Specialty Risk, Inc. (hereinafter sometimes referred to as "Brazos" or "Licensee") failed to appear. Frank Marnell appeared as counsel for the Division of Insurance (hereinafter sometimes referred to as "Division"). The matter was tape recorded. There is no written transcript of the tape; therefore, no citation to page number will be included. Exhibits I through 5-B were admitted and will be denoted by EX followed by the appropriate number.

ISSUE

Whether the Non-Resident Business Entity Insurance Producer's License of Brazos Specialty Risk, Inc. should be revoked due to failure to respond in a timely manner to the inquiries of the South Dakota Division of Insurance dated March 12, 2012 and April 12, 2012, regarding the failure to report an administrative action in Texas within thirty days of the final disposition and for failure to notify the Division of its address change within thirty days of the change. (SDCL 58-30-193, SDCL 58-33-66(1), SDCL 58-30-157 and 58-30-167(2))

FINDINGS OF FACT

I.

Brazos Specialty Risk, Inc. possesses an active Non-Resident Business Entity Insurance Producer's License from the State of South Dakota. Brazos became licensed in the State of South Dakota on December 18, 2009. (EX 1)

II.

Gretchen Brodkorb, Compliance Specialist for the South Dakota Division of Insurance, obtained information that there had been an administrative action taken against Brazos in Texas and that this action had not been reported in a timely fashion. This information was discovered on the NAIC RIRS database.

III.

Brazos entered into a Consent Order with the Texas Commissioner of Insurance dated January 13, 2012 wherein Brazos was ordered to pay an administrative penalty of \$9,650.00 within thirty days of the date of the Order. The action was commenced due to

the failure of Brazos to file new or renewal surplus lines policies and documents in compliance with Tex. Ins. Code Ann. § 981.105. (EX 5-A)

IV.

Ms. Brodkorb wrote licensee a letter on March 12, 2012 inquiring why Brazos had not reported the Texas action to the Division within thirty days of the final disposition. That letter was mailed to Brazos Specialty Risk, Inc., 12200 Ford Rd. Ste. 470, Dallas, TX 75234. (EX 2) This address is listed as the contact address on the Firm Information Inquiry kept by the Division. (EX 1)

V.

The Division received notification from the United States Postal Service that the postal service had forwarded Brazos mail to a new address of P.O. Box 560904, Dallas, TX 75356-0904. (EX 3-C)

VI.

Ms. Brodkorb wrote licensee a letter on April 12, 2012 wherein she informed them that they had failed to respond to the March 12, 2012 letter. Licensee was informed of the ramifications of failing to respond and was also informed that they had not provided a forwarding address to the Division and was asked to do so. This letter was mailed to Brazos Specialty Risk, Inc., P.O. Box 560904, Dallas, TX 75356-0904. This letter was sent both first class and via Certified Mail-Return Receipt. Licensee was given twenty days upon receipt to respond. (EX 3-A, 3-B and 3-C)

VII.

Craig Moss, President of Brazos Specialty Risk, Inc. contacted Ms. Brodkorb by e-mail on April 16, 2012. He requested that she call him to discuss the matter. (EX 4). Ms. Brodkorb tried calling him on more than one occasion. He did not pick up the phone, nor did he attempt to contact Ms. Brodkorb. Since that e-mail he has had no contact with the Division. (EX 4)

VIII.

No representative on behalf of Brazos appeared at the hearing. The Division sent their Notice of Hearing on July 30, 2012 to the Ford Road address.

IX.

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

X.

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 of Insurance to revoke the South Dakota Non-Resident Business Entity Insurance Producer's License of Brazos Specialty Risk, Inc. As a consequence of the potential loss of Petitioner'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). Licensee did not appear at the hearing.

SDCL 58-30-193 states that "[A]n 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." Gretchen Brodkorb, compliance agent for the South Dakota Division of Insurance found that Brazos had not reported an administrative action from Texas. Secondly, licensee failed to respond in a timely fashion to the inquiries of the Division (letters dated March 12, 2012 and April 12, 2012) regarding the above administrative action in violation of SDCL 58-33-66(1). Finally, licensee failed to inform the Division of the change of mailing address in violation of SDCL 58-30-157.

Failing to respond to an inquiry from the Division of Insurance is considered an unfair or deceptive practice of the business of insurance as it is set forth in SDCL 58-33-66(1) in pertinent part:

SDCL 58-33-66. Unfair or deceptive insurance practices. Unfair or deceptive acts or practices in the business of insurance include the following:

- (1) 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 58-30-157 mandates that a licensee "...shall inform the director in a form or format prescribed by the director of a change of address within thirty days of the change." Brazos did not do this in this matter.

The Division will consider SDCL 58-30-167 (shown in pertinent part) as follows:

58-30-167. Causes for revocation, refusal to issue or renew license, or for monetary penalty-- Hearing--Notice. 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 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;....

In deciding to revoke an insurance producer's license the Division looks to SDCL 58-33-68 for guidance as follows:

The Division of Insurance, in interpreting and enforcing §§ 58-33-66 and 58-33-67, shall consider all pertinent facts and circumstances to determine the severity and appropriateness of action to be taken in regard to any violation of §§ 58-33-66 to 58-33-69, inclusive, including but not limited to, the following:

- (1) The magnitude of the harm to the claimant or insured;
- (2) Any actions by the insured, claimant, or insurer that mitigate or exacerbate the impact of the violation;
- (3) Actions of the claimant or insured which impeded the insurer in processing or settling the claim;

(4) Actions of the insurer which increase the detriment to the claimant or insured. The director need not show a general business practice in taking administrative action for these violations.

However, no administrative action may be taken by the director for a violation of this section unless the insurer has been notified of the violation and refuses to take corrective action to remedy the situation.

Any administrative action taken by the director shall be pursuant to the provisions of chapter 1- 26.

Applying the law to the Findings of Fact it is clear that the South Dakota Non-Resident Business Entity Insurance Producer's License of Brazos Specialty Risk, Inc. should be revoked.

CONCLUSIONS OF LAW

I.

The Division of Insurance 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.

II.

The Division of Insurance bears the burden of establishing the alleged statutory violations by clear and convincing evidence.

III.

The Division of Insurance established by clear and convincing evidence that Brazos Specialty Risk, Inc. violated SDCL 58-30-193.

IV.

The Division of Insurance established by clear and convincing evidence that Brazos Specialty Risk, Inc. violated SDCL 58-33-66(1).

V.

The Division of Insurance established by clear and convincing evidence that Brazos Specialty Risk, Inc. violated SDCL 58-30-157.

VI.

The Division of Insurance established by clear and convincing evidence that the South Dakota Non-Resident Business Entity Insurance Producer's License of Brazos Specialty Risk, Inc. is subject to revocation.

VII.

The Division of Insurance established by clear and convincing evidence that the South Dakota Non-Resident Business Entity Insurance Producer's License of Brazos Specialty Risk, Inc. should be revoked.

VIII.

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

IX.

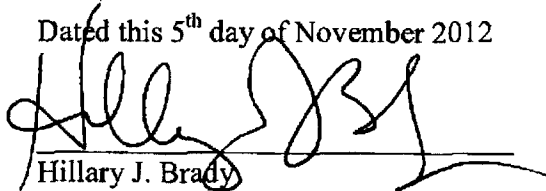
To the extent any of the foregoing are improperly designated and are instead Findings of Fact, they are hereby redesignated and incorporated herein as Findings of Fact.

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 Business Entity Insurance Producer's License of Brazos Specialty Risk, Inc. should be revoked.

Dated this 5th day of November 2012



Hillary J. Brady
Office of Hearing Examiners
523 E. Capitol
Pierre, South Dakota 57501