

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

**IN THE MATTER OF
PHILLIP CONNEALY
LICENSEE**

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**FINAL DECISION
INS 13-18**


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 Proposed Order, dated December 5th, is adopted in full.

IT IS FURTHER ORDERED that the South Dakota Non-resident Insurance Producer License of Phillip Connealy 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 16 day of December, 2013



Marcia Hultman, 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
PHILIP CONNEALY**

**PROPOSED ORDER
DLR/INSURANCE 13-18**

An administrative hearing in the above matter was held on July 22, 2013. Philip Bernard Connealy (hereinafter sometimes referred to as "Connealy" or "Licensee") failed to appear. Mr. 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 1 through 5 were admitted and will be denoted by EX followed by the appropriate number.

ISSUE

Whether the Non-Resident Insurance Producer License of Philip Bernard Connealy should be revoked due to his failure to respond in a timely manner to the South Dakota Division of Insurance inquiries, dated January 11, 2013 and February 13, 2013) regarding a Florida administrative action. (§§SDCL 58-30-193, SDCL 58-33-66(1), SDCL 58-30-167(2), 58-33-68)

FINDINGS OF FACT

I.

Philip Bernard Connealy possesses an active Non-Resident Insurance Producer License from the State of South Dakota. Mr. Connealy became licensed in the State of South Dakota on February 8, 2012. His license is scheduled to expire on July 31, 2014. (EX 1)

II.

Gretchen Brodkorb, Compliance Specialist for the South Dakota Division of Insurance obtained information that Mr. Connealy had not reported a Florida administrative action dated March 15, 2012, wherein he was denied licensure in Florida because he was convicted of a Level 5 Felony for Reckless Aggravated Battery. (EX 2-B)

III.

Ms. Brodkorb wrote Mr. Connealy a letter on January 11, 2013 inquiring why Connealy had not reported the Florida administrative action and license denial. (EX 3) He was given twenty days upon receipt to respond. The January 11, 2013 letter was mailed via first class mail to Connealy at 3411 W. 74th Terr., Prairie Village, KS 66208. (EX 3) This was the mailing address listed on the Individual Information Inquiry for Connealy on file with the Division. (EX 1) Ms. Brodkorb received no response.

IV.

Ms. Brodkorb sent a second letter to Mr. Connealy on February 13, 2013 wherein Connealy was given notice that the Division had not received a response from the January 11, 2013 letter. Ms. Brodkorb requested Connealy's explanation as to why the Division has not received a response regarding the Florida action. Mr. Connealy was again given twenty days to respond and was warned that if he failed to provide the requested information within twenty days the Division would be pursuing an administrative action against him. (EX 4) The February 13, 2013 letter was mailed via first class mail and first class certified mail to Connealy at 3411 W. 74th Terr., Prairie Village, KS 66208 and to Connealy c/o BCBS of Kansas City, 2300 Main Street, Kansas City, MO 64108. (EX 4) The letter sent via first class certified mail was delivered on February 15, 2013 at 11:23 a.m. (EX 4) Ms. Brodkorb received no response.

V.

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

VI.

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 Insurance Producer's License of Philip Bernard Connealy. 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). Mr. Connealy did not appear at the hearing.

Gretchen Brodkorb, Compliance Specialist for the South Dakota Division of Insurance, found that Connealy had not reported an administrative action denying licensure taken in the State of Florida. Furthermore, Mr. Connealy failed to respond in a timely manner to an inquiry made by the Division (letters dated January 11, 2013 and February 13, 2013) regarding the Florida administrative action in violation of SDCL 58-33-66(1). That statute, in pertinent part, reads as follows:

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;...

In addition, Mr. Connealy violated SDCL 58-30-193 by not reporting the Florida action to the Division. SDCL 58-30-193 reads as follows:

SDCL 58-30-193. Report by insurance producer of any administrative action taken against insurance producer. 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 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. (emphasis added)

Connealy was given notice of the violation and he refused to take corrective action in that he failed to respond to the Division of Insurance within twenty days of receiving the letters dated January 11, 2013 and February 13, 2013 from Ms. Brodkorb.

Additionally, the Division will consider SDCL 58-30-167. Mr. Connealy violated subsection (2) of SDCL 58-30-167 which is set forth in pertinent part below:

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;....

Applying the law to the Findings of Fact set forth above, it is clear that the Non-Resident Insurance Producer License of Philip Bernard Connealy 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 Amended Notice of Hearing was issued on May 30, 2013 by the South Dakota Division of Insurance.

III.

Neither Philip Bernard Connealy nor anyone on his behalf appeared at the scheduled and noticed time of the hearing.

IV.

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

V.

The Division of Insurance established by clear and convincing evidence that Philip Bernard Connealy committed unfair or deceptive insurance practices by violating SDCL 58-33-66(1) and SDCL 58-30-193.

VI.

The Division of Insurance established by clear and convincing evidence that the South Dakota Non-Resident Insurance Producers License of Philip Bernard Connealy is subject to revocation pursuant to SDCL 58-30-167(2).

VII.

The Division of Insurance established by clear and convincing evidence that the South Dakota Non-Resident Insurance Producers License of Philip Bernard Connealy should be revoked.

VIII.

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

IX.

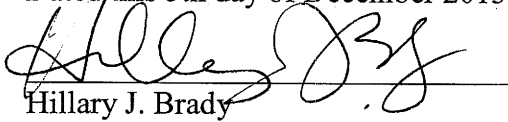
To the extent any of the foregoing are improperly designated and are instead Findings of Fact, they are hereby redesignated and incorporated herein as Findings of Fact.

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

PROPOSED ORDER

The South Dakota Non-Resident Insurance Producers License of Philip Bernard Connealy should be revoked.

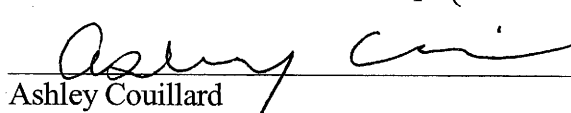
Dated this 5th day of December 2013



Hillary J. Brady
Office of Hearing Examiners
523 E. Capitol Avenue
Pierre, South Dakota 57501-1538

CERTIFICATE OF SERVICE

I certify that on December 5, 2013, at Pierre, South Dakota, a true and correct copy of this Proposed Order was mailed to each of the parties listed below.



Ashley Couillard

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