

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

IN THE MATTER OF)	
NAOMI OLIVIA NAWROCKI)	FINAL DECISION
LICENSEE)	INS 13-14

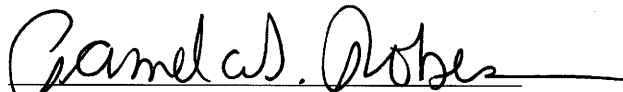
After reviewing the record and the proposed decision of the Hearing Examiner in this matter,

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 August 19, 2013, is adopted in full.

IT IS FURTHER ORDERED that the South Dakota Non-resident Insurance Producer License of Naomi Olivia Nawrocki 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 22nd day of August 2013



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
NAOMI OLIVIA NAWROCKI**

**PROPOSED ORDER
INSURANCE 13-14**

An administrative hearing in the above matter was held on May 17, 2013. Naomi Olivia Nawrocki (hereinafter sometimes referred to as "Nawrocki" 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 1 through 7 were admitted and will be denoted by EX followed by the appropriate number.

ISSUE

Whether the Non Resident Insurance Producer's License of Naomi Olivia Nawrocki should be revoked due to her failure to respond in a timely manner to the South Dakota Division of Insurance inquiries dated December 10, 2012 and January 14, 2013 and her failure to report an administrative action in another jurisdiction (Colorado). (SDCL 58-30-167(1), (2) & (3), SDCL 58-33-66(1) and 58-30-193)

FINDINGS OF FACT

I.

Naomi Olivia Nawrocki possesses an active Non-Resident Insurance Producer License from the State of South Dakota. Nawrocki became licensed in the State of South Dakota on August 27, 2012. Her license is scheduled to expire on September 20, 2013. (EX 1)

II.

Gretchen Brodkorb, Compliance Specialist for the South Dakota Division of Insurance, obtained information within the course of her duties that Ms. Nawrocki had an administrative action taken against her license in Colorado.

III.

The Colorado administrative action involved the Ms. Nawrocki voluntarily entering into an agreement with the Colorado Division of Insurance to withdraw her insurance producer application. (EX 2)

IV.

The Agreement to Withdraw Insurance Producer Application was dated September 19, 2012 by Ms. Nawrocki and a Notary Public from California. (EX 2) By statute this action was to be reported to the South Dakota Division of Insurance within thirty (30) days.

V.

Ms. Brodkorb wrote Ms. Nawrocki a letter on December 10, 2012 inquiring about the Colorado action. (EX 3) She was given twenty days upon receipt of the letter to respond to the Division. The letter was mailed via first class mail to Nawrocki at 9335 Chesapeake Dr., San Diego, CA 92123-1010. (EX 3) This was the address listed on Nawrocki's Individual Information Inquiry on file with the Division. (EX 1) Ms. Brodkorb received no response.

VI.

Ms. Brodkorb sent Ms. Nawrocki another letter on January 14, 2013 once again inquiring about the Colorado action. (EX 4-A) Nawrocki was again given twenty days upon receipt of the letter to respond. The letter was mailed via first class mail to Nawrocki at 9335 Chesapeake Dr., San Diego, CA 92123-1010. This letter was sent via first class mail and certified mail. (EX 4-A & 4-B) The certified letter was delivered on January 18, 2013. (EX 4-C)

VII.

As of the time of the hearing the Division had not received any communication from Nawrocki.

VIII.

Ms. Nawrocki had an administrative action against her in California. That action was dated September 24, 2011. (EX 6)

IX.

Ms. Nawrocki made application to the South Dakota Division of Insurance for a Non-Resident Producer's license on July 28, 2012. A question that begins on the bottom of page 3 and is continued on the top of the page 4 of the application asks as follows:

Have you or any business in which you are or were an owner, partner, officer or director or member or manager of limited liability company, ever been involved in an administrative proceeding regarding any professional or occupational license or registration? "Involved" means having a license censured, suspended, revoked, canceled, terminated; or being assessed a fine, a cease and desist order, a prohibition order, a compliance order, placed on probation or surrendering a license to resolve an administrative action. (emphasis added)

Nawrocki answered "No". (EX 5)

X.

The California action occurred prior to Nawrocki's submission of her application to the South Dakota Division of Insurance for a non-resident producer's license.

XI.

Matthew Ballard, Compliance Agent for the South Dakota Division of Insurance, wrote Ms. Nawrocki a letter on August 27, 2012 indicating that the Division had found that she failed to disclose an action taken against her license in California when she submitted her application for a producer's license on July 28, 2012. He stated "Any future violation of South Dakota insurance law could result in an administrative action alleging the future violation as well as the one contained in this warning letter." (EX 7)

XII.

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

XIII.

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 Nonresident Insurance Producer's License of Naomi Olivia Nawrocki. 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). Ms. Nawrocki did not appear at the hearing.

Gretchen Brodkorb, Compliance Specialist for the South Dakota Division of Insurance, found that Naomi Nawrocki had an administrative action in Colorado which was not reported to the South Dakota Division of Insurance. (The specifics regarding the Colorado administrative action are contained in Exhibit 2). Furthermore, Nawrocki failed to respond in a timely fashion, in violation of SDCL 58-33-66(1), to inquiries made by the Division (letters dated December 10,

2012 and January 14, 2013) about the administrative action. SDCL 58-33-66(1), 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 Ms. Nawrocki violated SDCL 58-30-193. That statute reads as follows:

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. (emphasis added)

Nawrocki did not report the Colorado action in a timely fashion to the Division. The word "shall" in our statutes "manifests a mandatory directive," conferring no discretion. SDCL 2-14-2.1. The term "shall" does not allow for discretion. The Supreme Court has repeatedly stated that: "When 'shall' is the operative verb in a statute, it is given 'obligatory or mandatory' meaning." Full House, Inc. v. Stell, 2002 SD 14; 640 N.W.2d 61; 2002 S.D. Lexis 14 citing to Fritz v. Howard Township, 1997 SD 122, P15, 570 N.W.2d 240, 242 (citing In re Groseth Int'l, Inc., {640 N.W.2d 68} 442 N.W.2d 229, 231-32 (SD 1989)).

In deciding to revoke an insurance producer's license the Division will consider SDCL 58-30-167 (shown 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:...

- (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....

Applying the law to the Findings of Fact it is clear that the Non-Resident Insurance Producer License of Naomi Olivia Nawrocki 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 Notice of Hearing was issued on April 15, 2013 by the South Dakota Division of Insurance.

III.

Neither Naomi Olivia Nawrocki nor anyone on her 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 Naomi Olivia Nawrocki committed unfair or deceptive insurance practices by violating SDCL 58-33-66(1).

VI.

The Division of Insurance established by clear and convincing evidence that Naomi Olivia Nawrocki violated SDCL 58-30-193.

VII.

The Division of Insurance established by clear and convincing evidence that the South Dakota Nonresident Insurance Producers License of Naomi Olivia Nawrocki is subject to revocation pursuant to SDCL 58-30-167 (1) (2) & (3).

VIII.

The Division of Insurance established by clear and convincing evidence that the South Dakota Nonresident Insurance Producers License of Naomi Olivia Nawrocki should be revoked.

IX.

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

X.

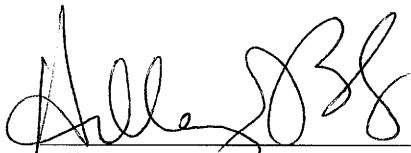
To the extent any of the foregoing are improperly designated and are instead Findings of Fact, they are hereby redesignated and incorporated herein as Findings of Fact.

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

PROPOSED DECISION

The South Dakota Nonresident Insurance Producers License of Naomi Olivia Nawrocki should be revoked.

Dated this 19th day of August 2013

A handwritten signature in black ink, appearing to read 'Hillary J. Brady', written over a horizontal line.

Hillary J. Brady
Office of Hearing Examiners
210 E. 4th Street
Pierre, South Dakota 57501-1538