

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

**IN THE MATTER OF  
JEFFREY C. RODD**

) **FINAL DECISION**  
) **INS 12-20**

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 July 31, 2013, is adopted in full.

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 5<sup>th</sup> 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  
JEFFREY C. RODD**

**PROPOSED ORDER  
DLR/INSURANCE 12-20**

An administrative hearing in the above matter was held on April 16, 2013. Jeffrey C. Rodd (hereinafter sometimes referred to as "Rodd" or "Licensee") failed to appear. Mr. Frank Marnell appeared as counsel for the Division of Insurance (hereinafter sometimes referred to as "Division"). References to the hearing transcript in this matter will be denoted as "HT" followed by the corresponding page number and references to the exhibits will be denoted as "EX" followed by the corresponding exhibit number. Exhibits 1 through 24 were admitted.

**ISSUE**

Whether the Non-Resident Insurance Producer License of Jeffrey C. Rodd should be revoked due to the violations set forth in the Amended Notice of Hearing dated March 11, 2013. (SDCL 58-30-193, SDCL 58-33-66, SDCL 58-33-67, SDCL 58-33-37, SDCL 58-30-171, SDCL 58-30-174, SDCL 58-30-167(1), (2), (3), (7), (8), (9) and (12), SDCL 58-30-193)

**FINDINGS OF FACT**

I.

Jeffrey C. Rodd possesses an active Non-Resident Insurance Producer License from the State of South Dakota. Bullard became licensed in the State of South Dakota on July 10, 2007. His license is scheduled to expire on September 30, 2013. (EX 1) At the time of the incidents involved in this matter Rodd was hosting a radio show called "Safe Money Radio". (HT 13; EX 6)

II.

While investigating another matter, Matthew Ballard, Compliance Agent for the South Dakota Division of Insurance, obtained information about Jeffrey Rodd. This led to the matter involved in this action. (HT 6)

III.

Evelyn Zubke purchased a Forethought Annuity Contract from David Kempema and Jeffrey Rodd. Ms. Zubke indicated the contract was signed in Webster, South Dakota on July 16, 2011. (HT 7-9)

#### IV.

Ms. Zubke's Forethought contract lists David Kempema as primary agent and Jeffrey Rodd as the secondary agent and the commission split between the two of them was fifty-fifty. (HT 9)

#### V.

The contract shows it was signed in Sioux City, IA. (HT 9) However, a letter from Mr. Rodd's attorney stated "This review has elicited facts which permit Mr. Rodd to represent that Ms. Zubke's application was in fact signed in Webster, South Dakota, not Sioux City, Iowa as the application purports." (HT10; EX 4). The letter further stated that there is not a business relationship between Rodd and Kempema. It states that Rodd was contacted through his radio show by Mrs. Zubke and because she was not in his area he referred it to a third party group, the Sunderland Marketing Group, who then referred it to David Kempema. (HT 11)

#### VI.

Based on the above representations and after discussion with his superior, Mr. Ballard sent a warning letter to Mr. Rodd on January 19, 2012. The letter indicated that it was a warning only. The letter further stated that although the Division believed a violation existed regarding the Zubke application, they were not going to take action against Mr. Rodd. (HT 12; EX 5) No further action was taken by the Division at that time. (EX 12 & 13)

#### VII.

At a later date Mr. Ballard found two posted advertisements for Safe Money Radio by chance while traveling. These were posted in a restroom in Lennox, South Dakota. The advertisements list Jeffrey Rodd as a radio host and David J. Kempema was listed as his regional associate. (HT 13; EX 6) Mr. Ballard took pictures of the advertisements with his cellphone and sent them to his work address. (HT 15)

#### VIII.

Mr. Ballard testified his impression from the advertisements, which provided the radio stations and time of the radio program, was that Rodd and Kempema could sell IRA's, annuities, 401K's pensions and CD rollovers. (HT 14) It appeared very clearly that they had a business relationship which was not what the Division had been led to believe by Rodd earlier. (HT 15)

#### IX.

Based on the discovery of the advertisements and the seeming business relationship between Rodd and Kempema in contradiction to what the Division was led to believe by Rodd, the case against Rodd was re-opened. (HT 15 & 16)

X.

Ballard sent a letter dated April 16, 2012 to Rodd's attorney regarding the contradictions between the two advertisements and the previous responses. (HT 16; EX 7) Mr. Ballard also requested "...a complete list of policies from which Mr. Rodd and Mr. Kempema received split commissions." (HT 16) Mr. Ballard also requested in the letter an explanation of Rodd and Kempema's business relationship; how many years had Kempema served as a regional associate for Rodd and why Rodd's advertisement was directing South Dakota consumers to contact Kempema regarding insurance products despite the fact that Kempema had not been a licensed insurance producer in South Dakota for over seven years. (HT 16 & 17; EX 7)

XI.

Through his attorney Rodd denied any knowledge of the advertisements and stated that he had never authorized them. He also stated Kempema had never been designated as a "regional associate". (HT 18; EX 8)

XII.

No list of policies was provided to the Division where Rodd and Kempema received split commissions. (HT 18)

XIII.

Ballard sent a letter to Rodd through Rodd's attorney on May 16, 2012 wherein he once again requested an explanation of the business relationship between Kempema and Rodd and the complete list of policies from which they received split commissions. In that letter Rodd was also cited with failure to respond within twenty days in violation of SDCL 58-33-66(1) and 58-33-68. (HT 19; EX 9)

XIV.

In a May 21, 2012 response from Rodd, through his attorney, the Division was informed that the only commission split between Kempema and Rodd was the Evelyn Zubke matter. (HT 20; EX 10)

XV.

Ballard was informed in a telephone call with Rodd's attorney either shortly before or shortly after the May 21, 2012 letter, that Rodd stated there was no business relationship between Rodd and Kempema. (HT 20)

XVI.

Mr. Ballard sent a letter dated April 25, 2012 to Forethought Life Insurance Company (hereinafter sometimes referred to as "Forethought"). He inquired as to whether there were any

policies Rodd and Kempema had written together and had been compensated for via split commission. (HT 21; EX 13)

XVII.

Mr. Ballard received a response from Forethought dated April 30, 2012. Forethought reported that it did review the files of Kempema and Rodd and it identified four cases that the two had worked together on annuity sales. Forethought attached the four annuity contracts that the two had shared commission on to the letter. (HT 23; EX 11, 12-A, 12-B and 12-C)

XVIII.

John Dine and Betty Dine filled out annuity applications with Forethought where the primary agent was David Kempema and the secondary agent was Jeffrey Rodd and the two received a fifty-fifty commission split. (HT 24; EX 12-A and 12-B)

XIX.

David Hoogestraat filled out an annuity application where the primary agent was Jeffrey Rodd and the secondary agent was David Kempema and they received a fifty-fifty commission split. (HT 25; EX 12-C)

XX.

David Kempema owns an advertising company called Canned Ads with a website entitled cannedads.com. (HT 26, EX 22) He also owned an insurance agency which was called DJK Financial Services. (HT 26)

XXI.

Mr. Ballard found an advertisement for DJK Financial Services (Kempema's insurance company). The advertisement contained a unique drawing of a roller coaster. (HT 27) Mr. Ballard had seen this roller coaster in an advertisement provided to Counsel for the Division that was provided by Rodd at a Deposition. It appears to have the same hand drawing of the roller coaster. (HT 27; EX 22 & 23)

XXII.

Rodd had a Summary Cease and Desist Order issued against him from the State of Minnesota dated February 14, 2013. It alleged that Rodd engaged in the sale of unregistered securities in the State of Minnesota when he was not licensed to sell securities in the State of Minnesota. (HT 28; EX 24) The Summary Order would have become final thirty days after the service of the Summary Order if Rodd did not request a hearing on same. (EX 24) Mr. Ballard testified that he has knowledge from his counterparts in Minnesota that the order has become final. (HT 29) Rodd did not report this civil administrative action from Minnesota to the State of South Dakota within the allowed thirty days. (HT 30)

XXIII.

The Division of Insurance received an application for an insurance license from Rodd on June 15, 2007. 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)**

Rodd answered “No”. (HT 31; EX 14)

XXIV.

The Division investigated and ultimately a letter was written to Rodd regarding his “No” answer to the question listed on the bottom of page 3 and is continued on the top of the page 4 of the application. (HT 34; EX 15 & 17)

XXV.

Rodd had entered into a Consent Order with the Commissioner of Commerce for the State of Minnesota. That Order became effective on November 2, 2001. This constitutes an administrative action under South Dakota law. At that time it had been alleged that Mr. Rodd sold unregistered securities in the form of telephone purchase and service investment contracts in violation of Minnesota statutes. He also failed to disclose material facts and was not a licensed securities agent or broker. (HT 34 & 35; EX 16) This was the action he denied having knowledge of on his 2007 application to South Dakota. (HT 35)

XXVI.

Rodd made application to the State of Wisconsin for a permanent individual intermediary agent’s license on June 19, 2007. This application was denied. The State of Wisconsin provided a letter to Mr. Rodd denying his application on August 8, 2007. He was denied the license because he did not disclose a prior administrative action in Minnesota. (HT 36; EX 18)

XVII.

David Kempema failed to renew his South Dakota license and it expired December 21, 2004. (HT 37; EX 20)

XXVIII.

David Kempema was not licensed in South Dakota when he and Rodd split the commission in the Zubke matter (2011-2012 timeframe).

XXIX.

David Kempema was also the recipient of a permanent Cease and Desist Order from the State of South Dakota signed by the Secretary of Labor and Regulation on June 12, 2007. (HT 38; EX 21)

XXX.

The hearing was originally scheduled for November 26, 2012. Based upon Mr. Rodd's request and claims that he was in ill health and couldn't travel, with confirmation from his doctor, the matter was continued until April 16, 2013.

XXXI.

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

XXXII.

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 Jeffrey C. Rodd. 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. Rodd did not appear at the hearing.

The facts are set forth in depth in the Finding of Facts and there is no need to reiterate them in this Reasoning section. Matthew Ballard, compliance agent for the South Dakota Division of Insurance, completed an in-depth investigation of licensee Rodd. Stemming from that investigation the Division of Insurance found that Jeffrey Rodd had violated numerous insurance statutes. Violations will be set forth below.

The Division has shown by clear and convincing evidence that Jeffrey Rodd violated SDCL 58-33-66. That statute is set forth 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;
- (2) Knowingly supplying the Division of Insurance with false, misleading, or incomplete information.

Rodd indicated that he and Kempema had only split commissions one time when in actuality, Forethought Life Insurance Company provided proof of the split commission on four annuity policies. The misinformation from Rodd was provided in letters dated January 12, 2012 and May 21, 2012. In addition he misled the Department in letters dated January 12, 2012, April 19, 2012 and May 21, 2012 by mischaracterizing the business relationship as a single transaction where commission was split.

In addition the Division has shown by clear and convincing evidence that Jeffrey Rodd violated SDCL 58-33-37. That statute is as follows:

**SDCL 58-33-37 False application as misdemeanor--False claim or proof of loss as misdemeanor or felony.** Any person who knowingly makes any false or fraudulent statement or representation with reference to any application for insurance is guilty of a Class 1 misdemeanor. Any person who knowingly presents or causes to be presented a false or fraudulent claim for the purpose of obtaining any money or benefit, or who submits any proof in support of such a claim for the payment of a loss upon a contract of insurance, or who prepares, makes, or subscribes a false or fraudulent account, certificate, affidavit or proof of loss, or other document or writing, with intent that the same may be presented or used in support of such a claim, is guilty of a Class 2 misdemeanor if such claim is for an amount of four hundred dollars or less; a Class 1 misdemeanor if such claims is for an amount greater than four hundred dollars and less than one thousand dollars; and a Class 4 felony if such claim is one thousand dollars or greater.



Violation of the above statute was shown by Rodd's admission that the application for insurance was signed in Webster, SD, not in Sioux City, IA as was noted on the annuity application. This violation was the subject of a warning letter to Rodd which stated that future violations of South Dakota law could result in action alleging this violation.

Thirdly, the Division has shown by clear and convincing evidence that Jeffrey Rodd violated SDCL 58-30-171, SDCL 58-30-174 and 58-30-167(12). Those statutes are as follows:

**SDCL 58-30-171. Payment to unlicensed insurance producer prohibited.** No insurer or insurance producer may pay a commission, service fee, brokerage, or other valuable consideration to a person for selling, soliciting, or negotiating insurance in this state if that person is required to be licensed under §§ 58-30-141 to 58-30-195, inclusive, and is not so licensed. Nothing in this section allows an insurer to pay commissions to a non-appointed insurance producer if an appointment is otherwise required.

**SDCL 58-30-174. Payment or assignment of fixed dollar amount for referral--Limitations.** No insurer or insurance producer may pay or assign a commission, service fee, brokerage fee, or any other valuable consideration for a referral to any person not appropriately licensed pursuant to this chapter unless the payment or assignment is a fixed dollar amount that is not related to the amount of commission or premium for an insurance transaction and that is not dependent upon whether the referral results in a transaction.

**SDCL 58-30-167. Causes for suspension, revocation, refusal to issue or renew license, or monetary penalty--Notice--Hearing--Final determination.** 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:...

(12) Knowingly accepting insurance business from an individual who sells, solicits, or negotiates insurance and is not licensed; ...

The Division showed the above statutes were violated by Rodd's accepting insurance business and splitting commissions with David Kempema who was not a licensed insurance producer in the state of South Dakota at the time of the sales

Next, the Division has shown by clear and convincing evidence that Jeffrey Rodd violated SDCL 58-30-167(1) and (3). That statute follows in pertinent part:

**SDCL 58-30-167. Causes for suspension, revocation, refusal to issue or renew license, or monetary penalty--Notice--Hearing--Final determination.** 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;
- (3) Obtaining or attempting to obtain a license through misrepresentation or fraud;

The Division showed by clear and convincing evidence that Jeffrey C. Rodd failed to disclose a November 2, 2001 Minnesota administrative action on his 2007 application for licensure. In addition, Rodd was issued a Warning Letter stating that future violations of South Dakota law could result in action alleging this violation.

Next, the Division has shown by clear and convincing evidence that Jeffrey Rodd violated SDCL 58-30-193. That statute states:

**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.

The Division showed that Rodd failed to report a Wisconsin administrative action taken on August 8, 2007 and was issued a Warning Letter. Furthermore, in addition, Mr. Rodd violated SDCL 58-30-193 by not reporting the Minnesota administrative action to the Division.

Finally, above, the Division has shown Rodd violated subsection (1), (3) and (12) of SDCL 58-30-167. In addition, the Commission has shown by clear and convincing evidence through other state's administrative actions against Rodd that Rodd violated these additional subsections of SDCL 58-30-167:

- (2) Violating any insurance laws or rules, subpoena, or order of the director or of another state's insurance director, commissioner, or superintendent;....

(7) Having admitted or been found to have committed any insurance unfair trade practice or fraud;

(8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere;

(9) Having an insurance producer license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory;

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.

The Division proved their allegations by clear and convincing evidence. Applying the law to the Findings of Fact it is abundantly clear that the Non-Resident Insurance Producer License of Jeffrey C. Rodd 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.

Neither Jeffrey C. Rodd nor anyone on his behalf appeared at the scheduled and noticed time of the hearing.

III.

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

IV.

The Division of Insurance established by clear and convincing evidence that Jeffrey Rodd violated SDCL 58-30-193, SDCL 58-33-66, SDCL 58-33-67, SDCL 58-33-37, SDCL 58-30-171, SDCL 58-30-174, SDCL 58-30-167(1), (2), (3), (7), (8), (9) and (12), SDCL 58-30-193.

V.

The Division of Insurance established by clear and convincing evidence that the South Dakota Nonresident Insurance Producers License of Jeffrey C. Rodd is subject to revocation pursuant to SDCL 58-30-167(1), (2), (3), (7), (8), (9) and (12).

VI.

The Division of Insurance established by clear and convincing evidence that the South Dakota Nonresident Insurance Producers License of Jeffrey C. Rodd should be revoked.

VII.

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

VIII.

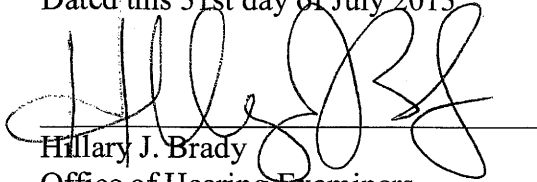
To the extent any of the foregoing are improperly designated and are instead Findings of Fact, they are hereby redesignated and incorporated herein as Findings of Fact.

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

**PROPOSED ORDER**

The South Dakota Nonresident Insurance Producers License of Jeffrey C. Rodd should be revoked.

Dated this 31st day of July 2013

A handwritten signature in black ink, appearing to read "Hillary J. Brady", is written over a horizontal line. The signature is stylized and cursive.

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