

**SOUTH DAKOTA  
DEPARTMENT OF LABOR AND REGULATION  
OFFICE OF THE SECRETARY**

<b>IN THE MATTER OF</b>	)	<b>FINAL DECISION</b>
<b>DE BORAH DUNBAR</b>	)	<b>INS 13-25</b>
<b>LICENSEE</b>	)	

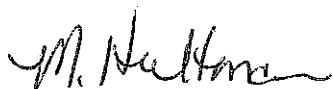
After reviewing the record and the proposed order of the Hearing Examiner in this matter,

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 December 4, 2013, is adopted in full.

IT IS FURTHER ORDERED that the South Dakota Non-resident Insurance Producer License of De Borah Dunbar 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 9 day of April 2014.



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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  
DE BORAH DUNBAR  
(aka DE Borah Dunbar)**

**PROPOSED DECISION  
DLR/INSURANCE 13-25**

An administrative hearing in the above matter was held on September 5, 2013. De Borah Dunbar (hereinafter sometimes referred to as "Dunbar" or "Licensee") failed to appear. Mallori Barnett 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 De Borah Dunbar should be revoked due to her failure to respond in a timely manner to the South Dakota Division of Insurance inquiries dated February 19, 2013 and March 19, 2013 (SDCL 58-33-66(1) and SDCL 58-30-167(2) & (8))

**FINDINGS OF FACT**

**I.**

On the date of this hearing De Borah Dunbar possessed an active Non-Resident Insurance Producer License from the State of South Dakota. Dunbar became licensed in the State of South Dakota on November 27, 2012. (EX 1) Her license expired on September 30, 2013. (EX 1)

**II.**

Matthew Ballard, Compliance Agent for the South Dakota Division of Insurance obtained information from Amica, an insurance company, that Dunbar's appointment to Amica was involuntarily terminated for misconduct. Dunbar was not honest with the manager during the investigation regarding her misconduct and the company also found that she was entering false and/or inaccurate information during the application process with respect to at least one California consumer. (EX 2)

**III.**

Mr. Ballard wrote Dunbar a letter on February 19, 2013 requesting she provide the Division, among other things, an explanation in her own words as to the facts and circumstances surrounding the termination. (EX 3) She was given twenty days upon receipt to respond. (EX 3) The February 19, 2013 letter was mailed via first class mail to Dunbar at 1800 North Green Valley Pkwy, Apt. 921, Henderson, NV 89074-5820. This was the address Mr. Ballard obtained

from Dunbar's individual information inquiry. (EX 1 &3) Mr. Ballard did not receive a response.

#### IV.

Mr. Ballard sent a second letter to Dunbar on March 19, 2013 wherein Dunbar was given notice that she failed to respond to Ballard's February 19, 2013 letter and that she was in violation of SDCL 58-33-66(1) (failing to respond to the Division within twenty days of receipt). She once again was given twenty days to respond. (EX 4) The letter was sent via first class mail and certified mail to Dunbar at 1800 North Green Valley Pkwy, Apt. 921, Henderson, NV 89074-5820 (EX 1 & 4) The letter sent via certified mail was delivered on March 27, 2013. (EX 5)

#### V.

Mr. Ballard received no response to his attempts to contact Dunbar in February or March of 2013.

#### VI.

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

#### VII.

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 De Borah Dunbar. 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. Dunbar did not appear at the hearing.

Even though Dunbar's license was expired in September of 2013, pursuant to SDCL 58-30-170 the "...director retains the authority to enforce the provisions of and impose any penalty or remedy authorized by §§ 58-30-141 to 58-30-195, inclusive, and Title 58 against any person who is under investigation for or charged with any violation of §§ 58-30-141 to 58-30-195, inclusive, or Title 58 even if the person's license or registration has been surrendered or has lapsed by operation of law."

The Division received notification from Amica that Dunbar was terminated for cause (misconduct). In a letter dated February 11, 2013, Amica's Employee Relations Manager indicated that Dunbar's involuntary termination was based on the following:

There were insurance applications processed by the employee with respect to California consumers which contained irregularities. When questioned about these issues, the employee provided responses we could not verify. Ultimately we concluded the employee was not honest with the manager during the investigation. We also found that she was entering false and/or inaccurate information during the application process with respect to at least one California consumer. (EX 2)

In addition to the termination for cause, Dunbar then failed to respond in a timely fashion to inquiries made by the Division (letters dated March 19, 2013 and April 19, 2013) regarding the Amica termination. This failure to respond constitutes a violation of SDCL 58-33-66(1) which states in pertinent part 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 deciding to revoke an insurance producer's license the Division looks to SDCL 58-33-68 for guidance as follows:

**SDCL 58-33-68.** 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.

Dunbar was notified of the violation and refused to respond to the Division's letter of inquiry.

The Division also considers SDCL 58-30-167 for causes for revocation, refusal or renewal of license. The Division has alleged violations of subsections (2) and (8) of SDCL 58-30-167. Those subsections are 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;

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

The Division proved by clear and convincing evidence that Dunbar violated SDCL 58-30-167(2) & (8) and 58-33-66(1).

Applying the law to the Findings of Fact it is clear that the Non-Resident Insurance Producer License of De Borah Dunbar 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 De Borah Dunbar violated SDCL 58-30-167 (2) & (8).

### IV.

The Division of Insurance established by clear and convincing evidence that De Borah Dunbar violated SDCL 58-33-66(1).

### V.

The Division of Insurance established by clear and convincing evidence that the South Dakota Nonresident Insurance Producers License of De Borah Dunbar is subject to revocation.

### VI.

The Division of Insurance established by clear and convincing evidence that the South Dakota Nonresident Insurance Producers License of De Borah Dunbar should be revoked.

### VII.

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

### VIII.

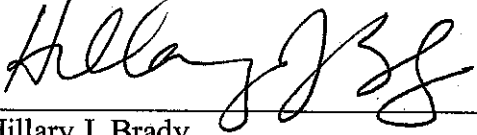
To the extent any of the foregoing are improperly designated and are instead Findings of Fact, they are hereby redesignated and incorporated herein as Findings of Fact.

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 De Borah Dunbar should be revoked.

Dated this 4<sup>th</sup> day of December 2013



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

**CERTIFICATE OF SERVICE**

I certify that on December 4, 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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