SOUTH DAKOTA
DEPARTMENT OF LABOR AND REGULATION
OFFICE OF THE SECRETARY

IN THE MATTER OF	)	**FINAL DECISION**
JOHN FREEMAN	)	
LICENSEE	)	**INS 14-12**

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 Decision, dated October 31, 2014 is adopted in full.

IT IS FURTHER ORDERED that the South Dakota Nonresident Insurance Producer License of John Freeman 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 7 day of November, 2014.

M. Hultman

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
JOHN FREEMAN

PROPOSED ORDER
DLR/INSURANCE 14-12

An administrative hearing in the above matter was held on September 17, 2014. John Freeman (hereinafter sometimes referred to as "Freeman" 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 John Freeman should be revoked due to his failure to respond in a timely manner to the South Dakota Division of Insurance inquiries (dated March 13, 2014 and April 18, 2014) regarding a Florida administrative action. (SDCL 58-33-66(1), SDCL 58-30-167(2) & (9), 58-33-68, 58-30-193)

FINDINGS OF FACT

I.

John Freeman possesses an active Non-Resident Insurance Producer License from the State of South Dakota. Mr. Freeman became licensed in the State of South Dakota on August 27, 2012. His license is scheduled to expire on April 30, 2015. (EX 1)

II.

Matthew Ballard, a compliance agent for the South Dakota Division of Insurance, obtained information from Christy Schilling, a former compliance agent with the South Dakota Division of Insurance, that Mr. Freeman had not reported a Florida administrative action. At the time of the hearing Ms. Schilling was no longer employed with the Division of Insurance, however, Mr. Ballard took over the case in her absence.

III.

Ms. Schilling wrote Mr. Freeman a letter on March 13, 2014 inquiring why Freeman had not reported the Florida administrative action. (EX 3) He was given twenty days upon receipt to respond. The March 13, 2014 letter was mailed via first class mail to Freeman at 8745 W. Cornell Avenue, Apt. 1, Lakewood, CO 80227-4842. (EX 3) This was the mailing address listed on the Individual Information Inquiry for Freeman on file with the Division. (EX 1) The Division received no response.

IV.

Ms. Schilling sent a second letter to Mr. Freeman on April 18, 2014 wherein Freeman was given notice that the Division had not received a response from the March 13, 2014 letter. Ms. Schilling requested Freeman's information regarding the Florida administrative action. Mr. Freeman 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 which may include a revocation of his license. (EX 4) The April 18, 2014 letter was mailed via first class mail and first class certified mail to Freeman at 8745 W. Cornell Avenue, Apt,. 1, Lakewood, CO 80227-4842. (EX 4) The letter sent First Class Certified Mail was returned to the Division on May 20, 2014 after it went unclaimed. (EX 5) No response has been received by the Division.

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 John Freeman. 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. Freeman did not appear at the hearing.

Christy Schilling, at the time of the investigation, Compliance Specialist for the South Dakota Division of Insurance, found that Freeman had not reported an administrative action taken in the state of Florida. Furthermore, Mr. Freeman failed to respond in a timely manner to inquiries

made by the Division (dated March 13, 2014 and April 18, 2014) 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;...

Furthermore, it is a violation of the insurance laws not to report an administrative action against the licensee. SDCL 58-30-193 is as follows:

> **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.

It is clear from the record that Mr. Freeman did not report the Florida administrative action to the Division. His administrative action in Florida was a denial of license based upon his indicating he had never been convicted of a crime when indeed he had entered a plea of guilty to a felony in Texas in 1999.

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.
> > <u>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.</u>

III.

Neither John Freeman 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 John Freeman committed unfair or deceptive insurance practices by violating SDCL 58-33-66(1) in that he failed to respond to an inquiry from the Division.

VI.

The Division of Insurance established by clear and convincing evidence that the South Dakota Non-Resident Insurance Producers License of John Freeman is subject to revocation pursuant to SDCL 58-30-167(2) and (9).

VII.

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

Dated this 31st day of October 2014

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

CERTIFICATE OF SERVICE

I certify that on November 3, 2014, 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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