

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

IN THE MATTER OF)	FINAL DECISION
AJA BEASLEY)	INS 14-18
LICENSEE)	

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 31, 2014, is adopted in full.

IT IS FURTHER ORDERED that the South Dakota Nonresident Insurance Producer License of Aja Beasley 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 17th day of January 2015.



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
AJA BEASLEY**

**PROPOSED ORDER
DLR/INSURANCE 14-18**

An administrative hearing in the above matter was held on December 3, 2014. Aja Beasley (hereinafter sometimes referred to as "Beasley" or "Licensee") failed to appear. Mr. Brendan Stratton 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 Aja Beasley should be revoked due to her failure to respond in a timely manner to the South Dakota Division of Insurance inquiries (dated March 13, 2014 and April 14, 2014) regarding a Wisconsin administrative action. (SDCL 58-33-66(1), SDCL 58-30-167(2) & (8), 58-33-68, 58-30-193)

FINDINGS OF FACT

I.

Aja Beasley possesses an active Non-Resident Insurance Producer License from the State of South Dakota. Ms. Beasley was originally licensed in the State of South Dakota on January 16, 2007. Her license is scheduled to expire on April 30, 2015. (EX 1)

II.

Amy Ondell, Compliance Specialist, for the South Dakota Division of Insurance, obtained information that there had been an administrative action taken against Beasley in Wisconsin. Ms. Beasley had not reported this action to the Division of Insurance. (EX 5)

III.

Ms. Ondell wrote Ms. Beasley a letter on March 13, 2014 inquiring why Beasley had not reported the Wisconsin administrative action. (EX 2) She was given twenty days upon receipt to respond. The March 13, 2014 letter was mailed via first class mail to Beasley at 1308 Willow Avenue, Elkins Park, PA, 19027-3135. (EX 2) This was the mailing address listed on the Individual Information Inquiry for Beasley on file with the Division. (EX 1)

IV.

Ms. Ondell sent a second letter Ms. Beasley on April 14, 2014 wherein Beasley was given notice that the Division had not received the information that was requested from her in the March 13, 2014 letter. Ms. Ondell requested Beasley's information regarding the Wisconsin administrative action. Ms. Beasley was again given twenty days to respond and was warned that if she failed to provide the requested information within twenty days the Division would be pursuing an administrative action against her. (EX 3) The April 14, 2014 letter was mailed via first class mail and first class certified mail to Beasley at 1308 Willow Avenue, Elkins Park, PA, 19027-3135. (EX 3 & 4) This was the mailing address listed on the Individual Information Inquiry for Beasley on file with the Division. (EX 1) The letter sent via certified mail was returned to the Division unclaimed on May 15, 2014. (EX 4)

V.

The Wisconsin Office of the Commissioner of Insurance revoked Ms. Beasley's license because they had become aware of a Montana administrative action revoking her license in Montana because she had demonstrated a lack of fitness or trustworthiness, failed to remit premiums to an insurer and/or misappropriated premiums. The date of that Final Decision and Order was December 4, 2013. Ms. Beasley failed to respond to Wisconsin regarding the Montana action. (EX 5)

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 Non-Resident Insurance Producer's License of Aja Beasley. 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. Beasley did not appear at the hearing.

Amy Ondell, Compliance Specialist for the South Dakota Division of Insurance, found that Beasley had not reported an administrative action taken in the state of Wisconsin. (EX 5) The necessity of reporting administrative actions is addressed in SDCL 58-30-193 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.

Furthermore, Ms. Beasley failed to respond in a timely manner to inquiries made by the Division (dated March 13, 2014 and April 14, 2014) regarding the Wisconsin 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 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)

Beasley was given notice of the violation and she refused to take corrective action in that she failed to respond to the Division of Insurance within twenty days of receiving the letters dated February 12, 2014 and March 13, 2014 from Ms. Ondell.

Additionally, the Division will consider SDCL 58-30-167. Ms. Beasley violated subsections (2) and (8) of SDCL 58-30-167 which are 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;....

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

Applying the law to the Findings of Fact set forth above, it is clear that the Non-Resident Insurance Producer License of Aja Beasley 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 October 29, 2014 by the South Dakota Division of Insurance.

III.

Neither Aja Beasley 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 Aja Beasley 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 Aja Beasley committed unfair or deceptive insurance practices by violating SDCL 58-30-193.

VII.

The Division of Insurance established by clear and convincing evidence that the South Dakota Non-Resident Insurance Producers License of Aja Beasley is subject to revocation pursuant to SDCL 58-30-167(2) and (8).

VIII.

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

IX.

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

X.

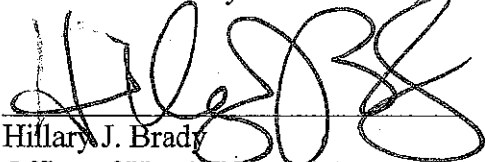
To the extent any of the foregoing are improperly designated and are instead Findings of Fact, they are hereby redesignated and incorporated herein as Findings of Fact.

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

PROPOSED ORDER

The South Dakota Non-Resident Insurance Producers License of Aja Beasley should be revoked.

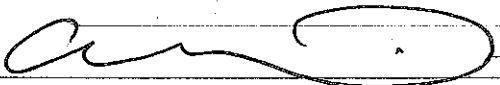
Dated this 31st day of December, 2014



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

CERTIFICATE OF SERVICE

I certify that on December 31, 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

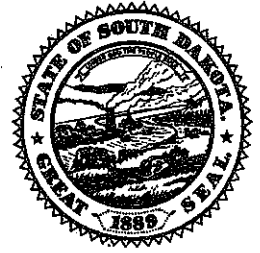
AJA BEASLEY
1308 WILLOW AVENUE
ELKINS PARK PA 19027-3135

BRENDON STRATTON
ATTORNEY
DIVISION OF INSURANCE
124 SOUTH EUCLID AVE., 2ND FLOOR
PIERRE, SD 57501

South Dakota

**BUREAU OF ADMINISTRATION
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December 31, 2014

Marcia Hultman
Department of Labor Secretary
700 Governors Drive
Pierre, SD 57501

Re: In the Matter of Aja Beasley Jr. v Department of Insurance (14-18)

Dear Ms. Hultman:

Please find attached the complete file regarding the above-referenced matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ashley Couillard".

Ashley Couillard
Office of Hearing Examiners

Division of Insurance

124 S. Euclid Ave.

2nd Floor

Pierre, SD 57501

Phone: 605-773-3563

Fax: 605-773-5369

Memo

To: Morgan Ness, Marcia Hultman
From: Brendan Stratton, Division of Insurance
CC:
Date: January 5, 2015
Re: DOI Hearing Documents for Sec. Hultman to sign the final decision

Ms. Ness,

Please have Secretary Hultman review and approve by signature the Final Decisions for the hearing concerning Aja Beasley, an insurance licensee. Enclosed are the Proposed Decision, Final Decision, and all evidence presented in the case.

If there are any questions, please contact me at 773-3563. When the Final Decision is made, the documents can be returned to my attention.

Thank you,



Brendan Stratton
Insurance Division Legal Counsel
South Dakota Department of Labor & Regulation