

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

IN THE MATTER OF)	FINAL DECISION
JUSTIN L BURGEE)	
LICENSEE)	INS 14-22


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 Proposed Order, dated April 3, 2015 is adopted in full.

IT IS FURTHER ORDERED that the South Dakota Resident Bail Bonds Producer License of Justin L Burgee 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 20th day of April, 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
JUSTIN L. BURGEE**

**PROPOSED ORDER
DLR/INSURANCE 14-22**

An administrative hearing in the above matter was held on February 13, 2015. Justin L. Burgee (hereinafter sometimes referred to as "BurgEE" 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 6 were admitted and will be denoted by EX followed by the appropriate number.

ISSUE

Whether the Bail Bonds Producer License of Justin L. Burgee should be revoked due to his failure to respond in a timely manner to the South Dakota Division of Insurance inquiries regarding his termination for cause in violation of South Dakota statute. (§§SDCL 58-33-68, SDCL 58-33-66(1) and SDCL 58-22-21(2), (4), (6) and (8))

FINDINGS OF FACT

I.

Justin L. Burgee is licensed as a bail bonds producer by the State of South Dakota. He has been so licensed since May 21, 2012. His license is scheduled to expire on May 1, 2015. (EX 1) Burgee did business under the name of Bail Out Bonds.

II.

Christina Schilling, a former compliance agent for the South Dakota Division of Insurance was contacted by Paul D. Roth, President of Whitecap Surety Company via e-mail on May 2, 2014 regarding Burgee's termination for cause. (EX 2)

III.

Matthew Ballard, Market Compliance Manager and Sr. Compliance Agent for the South Dakota Division of Insurance obtained the information from Schilling and took over the matter.

IV.

BurgEE's licensure information was procured from the CIRCON database. It listed Burgee's current address as 20320 Hereford Rd., Hereford, SD 57785. (EX 1) Licensees are mandated to keep the Division apprised of any address changes, therefore, all mailings from the Division were sent to Burgee at this address.

V.

Whitecap Surety provided the Division with an in-depth report regarding the actions of Justin L. Burgee which resulted in their termination for cause. (EX 3) Whitecap Surety Company stated the following:

Whitecap Surety Company ("Whitecap") terminated Mr. Burgee's agent appointment upon its findings of Mr. Burgee's actions relative to

1. SDCL §58-30-167(4) involving multiple instances of his withholding monies related to Whitecap bail bonds issued by Mr. Burgee, and
2. SDCL §58-30-167(4) involving financial irresponsibility in the conduct of his business in South Dakota.

VI.

Burgee showed an inability to account for customer collateral posted in support of bail bonds issued. He didn't return customer related collateral on exonerated bonds promptly.

VII.

In Exhibit 3, Paul D. Roth, Whitecap Surety's President, stated the following regarding his personal investigation of Burgee:

- Sheila Buswell in my administrative office was contacted on April 10, 2014 by Meade County South Dakota Clerk's Office indicating that a \$2,000 forfeiture on Whitecap Bond #S5-00001441 posted on October 27, 2013 for Sherry Salas was forfeited on January 2, 2014 and had not been paid by Mr. Burgee. Ms. Buswell contacted Mr. Burgee who assured her that full payment had been made on April 11th to the Clerk's Office. Following up with the Clerk's Office, Ms. Buswell was notified that Mr. Burgee's check payable to the Clerk's Office was returned by the bank for non-sufficient funds. To our knowledge as of April 22, 2014 Mr. Burgee had yet to satisfy the order and Whitecap processed check #2863 to Mead County Clerk's Office. Mr. Burgee subsequently paid the \$2,000 forfeiture to the Clerk, and Whitecap cancelled its check.
- Customer Francisco Cerda Jr of Gladewater, TX posted \$400 of collateral with Mr. Burgee relative to Whitecap Bond #S5-00001371 posted in Meade County, South Dakota on August 25, 2013. Despite Mr. Cerda's bond being discharged, Mr. Burgee did not refund Mr. Fitch's collateral. Upon my discovery of this situation in April and confirming the facts and circumstances, on May 20, 2014 Whitecap issued check #2874 in the amount of \$400 to Mr. Cerda returning his collateral (copy attached). (Reprinted with the spelling and punctuation present in the original.)

VIII.

Matthew Ballard wrote Burgee a letter on June 4, 2014 regarding the Whitecap termination for cause. Ballard requested that Burgee "...provide an explanation regarding why your appointment was terminated. Include in your explanation whether any South Dakota consumers were subject to the acts related to the "for cause" termination." He was given twenty days upon receipt to respond. The letter was mailed June 4, 2014 via first class mail to Burgee at 20320 Hereford Rd., Hereford, SD 57785. (EX 4) This was the mailing address listed on the Individual Information Inquiry for Burgee on file with the Division. (EX 1) The Division received no response.

IX.

Mr. Ballard sent a second letter to Burgee on July 8, 2014 wherein Burgee was given notice that the Division had not received the information that was requested from him in the June 4, 2014 letter. Mr. Ballard requested Burgee provide the information referred to in Finding of Fact VIII regarding the termination for cause. Burgee 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. (EX 5) The July 8, 2014 letter was mailed via first class mail and first class certified mail to Burgee at 20320 Hereford Rd., Hereford, SD 57785. (EX 5) This was the mailing address listed on the Individual Information Inquiry for Burgee on file with the Division. (EX 1) The letter sent via first class certified mail was returned to the Division as "Return to Sender - Unclaimed - Unable to Forward". (EX6)

X.

The original Notice of Hearing was signed and sent to Burgee on November 3, 2014. The Amended Notice of Hearing was signed and sent to Burgee on December 30, 2014. Both notices were sent to Burgee at 20320 Hereford Rd., Hereford, SD 57785.

XI.

No alternate address was supplied by Burgee to the Division.

XII.

Mr. Ballard has not had any response from or contact from Burgee.

XIII.

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

XIV.

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 Bail Bonds Producer License of Justin L. Burgee. 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. Burgee did not appear at the hearing.

The facts are set forth in detail in the Findings of Fact above and therefore do not warrant repeating in this Reasoning section. SDCL 58-22-21 sets forth the causes for revocation of a Bail Bonds Producer License. The Division is asserting in the Amended Notice of Hearing violations of subsections (2), (4), (6) and (8) would apply in this matter. That statute in pertinent part is set forth as follows:

SDCL 58-22-21. Causes for denial, suspension, revocation, or refusal to renew license. The director may deny, suspend, revoke, or refuse to renew any license issued under this chapter for any of the following causes:

- (2) Violation of any laws of this state to bail in the course of dealings under the license issued the licensee by the director;
- (4) Misappropriation, conversion, or unlawful withholding of moneys, belonging to insurers or others and received in the conduct of business under the license;
- (6) Fraudulent or dishonest practices in the conduct of business under the license;

(8) If, in the judgment of the director, the licensee has, in the conduct of affairs under the license, demonstrated incompetency, or untrustworthiness, or conduct or practices rendering the licensee unfit to carry on the bail bond business or making the licensee's continuance in such business detrimental to the public interest, or that the licensee is no longer in good faith carrying on the bail bond business, or that the licensee is guilty of rebating, or offering to rebate, or unlawfully dividing, or offering to divide such licensee's premiums in the case of professional bondsperson, and for such reasons is found by the director to be a source of detriment, injury, or loss to the public.

The Division has shown by clear and convincing evidence that Justin L. Burgee committed violations of subsections (2), (4), (6) and (8) while being licensed as a bail bondsman.

Furthermore, Justin L. Burgee failed to respond in a timely manner to inquiries made by the Division in letters dated June 4, 2014 and July 8, 2014 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 a 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)

Justin L. Burgee received notice from the Division that administrative action would be taken if he did not respond to the requests that he provide information regarding his termination for cause from Whitecap Surety. He failed to contact the Division.

Applying the law to the Findings of Fact it is clear that the South Dakota Bail Bonds Producer License of Justin L. Burgee 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 Amended Notice of Hearing was issued on December 30, 2014 by the South Dakota Division of Insurance.

III.

Neither Justin L. Burgee 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 showed by clear and convincing evidence that the Division provided notice of violation to Justin L. Burgee pursuant to SDCL 58-33-68. The Division showed by clear and convincing evidence that Burgee failed to take corrective action.

VI.

The Division of Insurance established by clear and convincing evidence that Justin L. Burgee violated SDCL 58-22-21 (2), (4), (6) & (8).

VII.

The Division of Insurance established by clear and convincing evidence that Justin L. Burgee committed unfair or deceptive insurance practices by violating SDCL 58-33-66(1).

VIII.

The Division of Insurance established by clear and convincing evidence that the South Dakota Bail Bonds Producer License of Justin L. Burgee is subject to revocation pursuant to SDCL 58-30-167(2).

IX.

The Division of Insurance established by clear and convincing evidence that the South Dakota Bail Bonds Producer License of Justin L. Burgee should be revoked.

X.

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

XI.

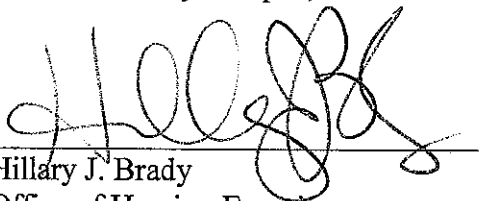
To the extent any of the foregoing are improperly designated and are instead Findings of Fact, they are hereby redesignated and incorporated herein as Findings of Fact.

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

PROPOSED ORDER

The South Dakota Resident Bail Bonds Producer License of Justin L. Burgee should be revoked.

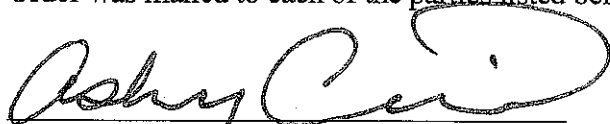
Dated this 3 day of April, 2015



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

CERTIFICATE OF SERVICE

I certify that on April 6, 2015, 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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