

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

**IN THE MATTER OF
MYLES COSTON
LICENSEE**

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**FINAL DECISION
INS 15-09**

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 July 13, 2015 is adopted in full.

IT IS FURTHER ORDERED that the South Dakota Non-resident Insurance Producer License of Myles Coston 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 July, 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
MYLES COSTON**

**AMENDED PROPOSED DECISION
DLR/INSURANCE 15-09**

An administrative hearing in the above matter was held on June 11, 2015. Myles Coston (hereinafter sometimes referred to as "Coston" or "Licensee") failed to appear. Benjamin Eirikson 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 4 were admitted and will be denoted by EX followed by the appropriate number.

ISSUE

Whether the Non-Resident Insurance Producer License of Myles Coston should be revoked due to his failure to respond in a timely manner to the South Dakota Division of Insurance inquiries dated September 19, 2014 and October 21, 2014 and for failing to notify the Division of his change of address within 30 days. (SDCL 58-33-66, SDCL 58-33-68, SDCL 58-30-167(2) & (8), 58-30-157)

FINDINGS OF FACT

I.

Mr. Coston originally became licensed in the State of South Dakota on September 18, 2013. (EX 1) His license expires on December 31, 2015. (EX 1)

II.

Gretchen Brodkorb, a compliance agent for the South Dakota Division of Insurance, received a letter from HomeInsurance.com, LLC, dated August 1, 2014. Therein, HomeInsurance.com, LLC provided information that Coston had been terminated in July 2014 when "...it was discovered that Myles Coston had provided inaccurate or false information to prospective customers and has submitted insurance applications containing inaccurate or false information to insurers. The inaccurate or false information of which we are aware included information concerning coverage limits and scope, discounts for customer referrals (which are neither offered nor available), and information either not provided by the customers or different from information provided by the customers (such as number of vehicles to be insured and motor vehicle report information)." (EX 2)

III.

Ms. Brodkorb wrote Coston a letter dated September 19, 2014 requesting he provide the Division, among other things, an explanation regarding why his appointment with HomeInsurance.com, LLC was terminated. Mr. Coston was also asked to include in his

explanation whether any South Dakota consumers were subject to the acts related to the termination. (EX 3) Coston was given twenty days upon receipt to respond. (EX 3) This letter was mailed September 22, 2015 per postmark on returned envelope. It was mailed to Coston at 10025 Pineshadow Dr., Apt. 102, Charlotte, NC 28262-1144. This was the address Ms. Brodkorb obtained from Coston's individual information inquiry. (EX 1 & 3)

IV.

The letter dated September 19, 2014 was returned to the Division with notification that the letter was "NOT DELIVERABLE AS ADDRESSED" and that the post office was "UNABLE TO FORWARD". (EX 3)

V.

Ms. Brodkorb sent a second letter to Coston on October 21, 2014 wherein Coston was given notice that he failed to respond to Brodkorb's September 19, 2014 letter and that he was in violation of SDCL 58-33-66(1) (failing to respond to the Division within twenty days of receipt). He once again was given twenty days to respond. (EX 4) He was also given notice that if he failed to provide the requested information an administrative action would be pursued which may include the revocation of his license. (EX 4) The letter was sent via first class mail and certified mail to Coston at the address listed on his Individual Information Inquiry on file with the Division. (EX 1) That address is 10025 Pineshadow Dr., Apt. 102, Charlotte, NC 28262-1144. (EX 1 & 4)

VI.

Both letters were returned to the Division by the postal service with notification that the letter was "NOT DELIVERABLE AS ADDRESSED" and that the post office was "UNABLE TO FORWARD". (EX 4)

VII.

Ms. Brodkorb received no response to the attempts to contact Coston in the letters of September 19, 2014 or October 21, 2014.

VIII.

Any additional Findings of Fact 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, 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 Myles Coston. 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). Coston did not appear at the hearing.

Gretchen Brodkorb, a compliance agent for the South Dakota Division of Insurance, received a letter from HomeInsurance.com, LLC, dated August 1, 2014. Therein, HomeInsurance.com, LLC provided information that Coston had been terminated in July 2014 when "...it was discovered that Myles Coston had provided inaccurate or false information to prospective customers and has submitted insurance applications containing inaccurate or false information to insurers. The inaccurate or false information of which we are aware included information concerning coverage limits and scope, discounts for customer referrals (which are neither offered nor available), and information either not provided by the customers or different from information provided by the customers (such as number of vehicles to be insured and motor vehicle report information)." (EX 2)

In addition to the termination for cause, Coston then failed to respond in a timely fashion to inquiries made by the Division (letters dated September 19, 2014 and October 21, 2014) regarding the termination from HomeInsurance.com, LLC. 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 addition, Coston did not inform the Division of his address change. SDCL 58-30-157 states that "[A] licensee shall inform the director in a form or format prescribed by the director of a change of address within thirty days of the change."

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. (emphasis added)

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 Coston violated SDCL 58-30-167(2) & (8), 58-33-66(1) and 58-30-157.

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

IV.

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

V.

The Division of Insurance established by clear and convincing evidence that Myles Coston violated SDCL 58-30-157.

VI.

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

VII.

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

VIII.

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

IX.

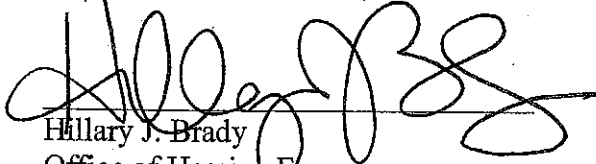
To the extent any of the foregoing are improperly designated and are instead Findings of Fact, they are hereby redesignated and incorporated herein as Findings of Fact.

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

PROPOSED ORDER

The South Dakota Nonresident Insurance Producers License of Myles Coston should be revoked.

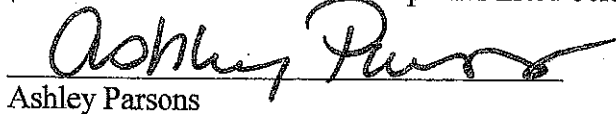
Dated this 13th day of July 2015



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

CERTIFICATE OF SERVICE

I certify that on July 13, 2015, at Pierre, South Dakota, a true and correct copy of this Proposed Order was mailed to each of the parties listed below.


Ashley Parsons

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