

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

IN THE MATTER OF)
JOHN PAUL GUTSCHLAG) **FINAL DECISION**
LICENSEE) **INS 15-01**

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 May 7, 2015 is adopted in full.

IT IS FURTHER ORDERED that the South Dakota Non-resident Insurance Producer License of John Paul Gutschlag 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 13 day of May 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
JOHN PAUL GUTSCHLAG**

**PROPOED ORDER
DLR/INSURANCE 15-01**

An administrative hearing in the above matter was held on February 20, 2015. John Paul Gutschlag (hereinafter sometimes referred to as "Gutschlag" or "Licensee") failed to appear. Mr. 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 6 were admitted and will be denoted by EX followed by the appropriate number.

ISSUE

Whether the Non-Resident Insurance Producer License of John Paul Gutschlag should be revoked due to his violations of insurance laws and/or administrative rules as alleged in the Notice of Hearing dated January 6, 2015. (SDCL 58-30-193; 58-30-194; 58-30-160; 58-30-167(2)(6)(9))

FINDINGS OF FACT

I.

John Paul Gutschlag possessed an active Non-Resident Insurance Producer License from the State of South Dakota. Mr. Gutschlag was originally licensed in the State of South Dakota on May 15, 1992. His license expired on March 31, 2015. (EX 1) Texas is his resident state.

II.

Amy Ondell, Compliance Specialist, for the South Dakota Division of Insurance, was the primary investigator in this matter involving John Paul Gutschlag.

III.

Gutschlag was indicted on April 8, 2013 by the United States District Court for the Western District of Virginia for, among other things, racketeering conspiracy and money laundering. (EX 2)

IV.

Gutschlag did not report the Indictment to the Division.

V.

Gutschlag pled guilty to Count I, Count LIV and Count LV of the second superseding indictment. Count I was for Conspiracy to Violate the Racketeer Influenced and Corrupt Organizations Act, Count LIV was for Engaging in Monetary Transactions in Property Derived From Specified Unlawful Activity and Count LV was for Engaging in Monetary Transactions in Property Derived From Specified Unlawful Activity. (EX 3)

VI.

Gutschlag did not report these convictions to the Division.

VII.

Gutschlag had "...any and all licenses and appointments issued to him" under the Florida Insurance Code revoked. He was given notice of this in the Notice of Revocation from the State of Florida dated June 18, 2014. This was an administrative action. (EX 4)

VIII.

The Florida administrative action was not reported to the Division by Gutschlag.

IX.

Gutschlag received an Order of Default dated September 16, 2014 revoking his non-resident producer license from the state of Idaho. (EX 5) This was an administrative action which resulted in the revocation of his Idaho license.

X.

The Idaho administrative action was not reported to the division by Gutschlag.

XI.

Investigation by Ms. Ondell showed that Mr. Gutschlag was not licensed in his home state of Texas. In South Dakota, non-resident insurance producer licensees are obligated to maintain licensure in their home state. (EX 6)

XII.

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

XIII.

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 Paul Gutschlag. 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. Gutschlag did not appear at the hearing.

Amy Ondell, Compliance Specialist for the South Dakota Division of Insurance, found that Gutschlag had been indicted for, and convicted of, felony crimes. Pursuant to SDCL 58-30-194 these matters must be reported to the Division as follows:

SDCL 58-30-194. Report by insurance producer of any felony criminal prosecution of insurance producer. Within thirty days of the *initial pretrial hearing date*, an insurance producer shall report to the director any felony criminal prosecution of the insurance producer taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal documents. (emphasis added)

Not only did Gutschlag not report any indictment to the Division, he completely failed to report his felony convictions which took place on May 21, 2014. As of the hearing date, some seven months after the convictions were entered; his indictment and conviction remain unreported. Policing of the insurance industry depends heavily on self-reporting. Self-reporting is a necessity in this field where there are so many different agents, companies and states involved. The Division has statutes which require self-reporting. A licensee must agree to abide by these statutes in order to be licensed. In the statutes involved in this case and in many other Division of Insurance cases there are timelines to be followed regarding the reporting. Gutschlag is clearly in violation of SDCL 58-30-194.

Ms. Ondell ascertained that Gutschlag had not reported administrative actions taken in the states of Florida and Idaho. (EX 4 & 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.

Gutschlag clearly violated SDCL 58-30-193.

Ms. Ondell's investigation revealed that Gutschlag was not licensed in his home state of Texas. This is a violation of SDCL 58-30-160 which is set forth below:

58-30-160. Nonresident insurance producer required to hold equivalent license in home state. A licensee as nonresident insurance producer shall at all times be qualified for and hold in the licensee's home state of domicile the license of that home state as a resident insurance producer covering all kinds of insurance covered or to be covered under the South Dakota nonresident license. A hearing is not necessary in order to revoke, suspend, terminate, or non-renew a nonresident insurance producer's license in this state if that insurance producer no longer has a producer license in the insurance producer's home state of domicile. (emphasis added)

Gutschlag clearly violated SDCL 58-30-160.

Even though Gutschlag's license was expired SDCL 58-30-170 applies in this case. SDCL 58-30-170 reads as follows:

58-30-170. Authority of director to impose penalty or remedy. 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.

In a proceeding to revoke a license the Division will consider SDCL 58-30-167. The Division alleges Gutschlag violated subsections (2), (6) and (9) 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;....

(6) Having been convicted of a felony;

(9) Having an insurance producer license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory;

The Division showed by clear and convincing evidence that Gutschlag violated SDCL 58-30-167(2), (6) & (9).

Applying the law to the Findings of Fact set forth above, the Division showed by clear and convincing evidence that it is clear that the Non-Resident Insurance Producer License of John Paul Gutschlag 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 January 6, 2015 by the South Dakota Division of Insurance.

III.

Neither John Paul Gutschlag 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 Paul Gutschlag violated SDCL 58-30-193.

VI.

The Division of Insurance established by clear and convincing evidence that John Paul Gutschlag violated SDCL 58-30-194.

VII.

The Division of Insurance established by clear and convincing evidence that John Paul Gutschlag violated SDCL 58-30-160.

VIII.

The Division of Insurance established by clear and convincing evidence that the South Dakota Non-Resident Insurance Producers License of John Paul Gutschlag is subject to revocation pursuant to SDCL 58-30-167(2), (6) and (9).

IX.

SDCL 58-30-170 is appropriately applied in this matter.

X.

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

XI.

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

XII.

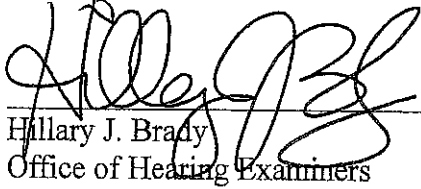
To the extent any of the foregoing are improperly designated and are instead Findings of Fact, they are hereby redesignated and incorporated herein as Findings of Fact.

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 Paul Gutschlag should be revoked.

Dated this 7th day of May, 2015



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

CERTIFICATE OF SERVICE

I certify that on May 7th, 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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