

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

**IN THE MATTER OF  
RODOLFO JIMENEZ  
LICENSEE**

)      **FINAL DECISION**  
)  
)      **INS 14-13**

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 non-resident Insurance Producer License of Rodolfo Jimenez 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.



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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  
RODOLFO JIMENEZ**

**PROPOSED DECISION  
DLR/INSURANCE 14-13**

An administrative hearing in the above matter was held on September 17, 2014. Rodolfo Jimenez (hereinafter sometimes referred to as "Jimenez" or "Licensee") failed to appear. 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 7 were admitted and will be denoted by EX followed by the appropriate number.

**ISSUE**

Whether the Non-Resident Insurance Producer License of Rodolfo Jimenez should be revoked due to his failure to respond in a timely manner to the South Dakota Division of Insurance inquiries dated January 17, 2014 and February 18, 2014. (SDCL 58-33-66(1) and SDCL 58-30-167(2) & (8))

**FINDINGS OF FACT**

I.

Mr. Jimenez became licensed in the State of South Dakota on December 27, 2013. (EX 1) His license expired on May 31, 2014, prior to this hearing being scheduled. (EX 1)

II.

Matthew Ballard, current Market Coordinator, prior Compliance Agent, for the South Dakota Division of Insurance, obtained information from Metlife, an insurance company, that Jimenez's appointment to Metlife was involuntarily terminated for failure to disclose information regarding misdemeanors on the NAIC license application. Jimenez failed to disclose two misdemeanor convictions, a 1997 Possession of Marijuana charge and a 2003 Annoyance to Another charge. (EX 2, 3, 4)

III.

Mr. Ballard wrote Jimenez a letter dated January 17, 2014 requesting he provide the Division, among other things, an explanation regarding why his appointments were terminated. He was also asked to include in his explanation whether any South Dakota consumers were subject to the acts related to the "for cause" terminations. (EX 5) Jimenez was given twenty days upon receipt to respond. (EX 5) The January 17, 2014 letter was mailed via first class mail to Jimenez at 11441 Hollow Oak, Miamisburg, OH, 45342. This was the address Mr. Ballard obtained from Jimenez's individual information inquiry. (EX 5) Mr. Ballard did not receive a response.

IV.

Mr. Ballard sent a second letter to Jimenez on February 18, 2014 wherein Jimenez was given notice that he failed to respond to Ballard's January 17, 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 6) 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 6) The letter was sent via first class mail and certified mail to Jimenez at 11441 Hollow Oak, Miamisburg, OH, 45342. (EX 1 & 6) The letter sent via certified mail was delivered on February 21, 2014 at 5:05 pm. (EX 7)

V.

Mr. Ballard received no response to his attempts to contact Jimenez in January or February of 2014.

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 Nonresident Insurance Producer's License of Rodolfo Jimenez. 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. Jimenez did not appear at the hearing.

Any administrative action taken by the director shall be pursuant to the provisions of chapter 1-26. (emphasis added)

Jimenez was notified of the violation and refused to respond to the Division's letter of inquiry.

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:...

- (1) Providing incorrect, misleading, incomplete, or materially untrue information in the license application;
- (2) Violating any insurance laws or rules, subpoena, or order of the director or of another state's insurance director, commissioner, or superintendent;
- (3) Obtaining or attempting to obtain a license through misrepresentation or fraud;
- (8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere;...

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The Division proved by clear and convincing evidence that Jimenez violated SDCL 58-30-167(1),(2),(3) & (8) and 58-33-66(1).

Applying the law to the Findings of Fact it is clear that the Non-Resident Insurance Producer License of Rodolfo Jimenez 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 Rodolfo Jimenez violated SDCL 58-30-167 (1), (2), (3) & (8).

### IV.

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

### V.

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

### VI.

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

### VII.

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

### VIII.

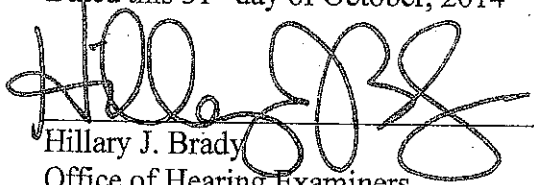
To the extent any of the foregoing are improperly designated and are instead Findings of Fact, they are hereby redesignated and incorporated herein as Findings of Fact.

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 Rodolfo Jimenez should be revoked.

Dated this 31<sup>st</sup> day of October, 2014



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

**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

RODOLFO JIMENEZ  
11441 HOLLOW OAK  
MIAMISBURG OH 45341

FRANK MARNELL  
ATTORNEY FOR THE DIVISION  
124 S EUCLID AVE 2<sup>ND</sup> FLOOR  
PIERRE, SD 57501