

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

IN THE MATTER OF)	FINAL DECISION
JORGE SOTO)	
LICENSEE)	INS 14-16

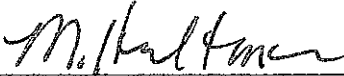
After reviewing the record and the proposed order of the Hearing Examiner in this matter,

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 November 13, 2014 is adopted in full.

IT IS FURTHER ORDERED that the South Dakota non-resident Insurance Producer License of Jorge Soto 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 25 day of November, 2014.



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
JORGE SOTO**

**PROPOSED ORDER
DLR/INSURANCE 14-16**

An administrative hearing in the above matter was held on October 1, 2014. Jorge Soto (hereinafter sometimes referred to as "Soto" 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 7 were admitted and will be denoted by EX followed by the appropriate number.

ISSUE

Whether the Non-Resident Insurance Producer License of Jorge Soto should be revoked due to his failure to respond in a timely manner to the South Dakota Division of Insurance inquiries (dated October 10, 2013 and November 13, 2013) regarding Kansas and Virginia administrative actions. (SDCL 58-33-66, SDCL 58-30-167(1), (2), (3), (8) and (9), 58-33-68, 58-30-193)

FINDINGS OF FACT

I.

Jorge Soto possesses an active Non-Resident Insurance Producer License from the State of South Dakota. Mr. Soto became licensed in the State of South Dakota on February 21, 2014. His license is scheduled to expire on January 31, 2015. (EX 1)

II.

Matthew Ballard, a compliance agent for the South Dakota Division of Insurance, obtained information from Christy Schilling, a former compliance agent with the South Dakota Division of Insurance, that Mr. Soto had not reported Kansas and Virginia administrative actions. At the time of the hearing Ms. Schilling was no longer employed with the Division of Insurance, however, Mr. Ballard took over the case in her absence.

III.

Ms. Schilling wrote Mr. Soto a letter on October 10, 2013 inquiring why he had not reported the Kansas and Virginia administrative actions. (EX 2) He was given twenty days upon receipt to respond. He was also told to provide the Division with a written explanation regarding why he failed to report the administrative actions and a complete written explanation as to the facts and circumstances of each action and a copy of the order, consent order or other relevant legal documents. The October 10, 2013 letter was mailed via first class mail to Soto at Allstate Insurance, 2775 Sanders Road, Suite E1W, Northbrook, IL 60062-6110. (EX 2) This was the

mailing address listed on the Individual Information Inquiry for Soto on file with the Division. (EX 1) The Division received no response.

IV.

Ms. Schilling sent a second letter to Mr. Soto on November 13, 2013 wherein Soto was given notice that the Division had not received a response from the October 10, 2013 letter. Ms. Schilling again requested Soto's information regarding the Kansas and Virginia administrative actions. Mr. Soto 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 which may include a revocation of his license. (EX 3) The November 13, 2014 letter was mailed via first class mail and first class certified mail to Soto at Allstate Insurance, 2775 Sanders Road, Suite E1W, Northbrook, IL 60062-6110. (EX 3) The letter sent via First Class Mail and First Class Certified Mail. The First Class Certified Mail letter was delivered on November 18, 2013. (EX 4) No response has been received by the Division.

V.

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

VI.

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 Jorge Soto. 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. Soto did not appear at the hearing.

Christy Schilling, at the time of the investigation, Compliance Specialist for the South Dakota Division of Insurance, found that Soto had not reported administrative actions taken in the states of Kansas and Virginia. Furthermore, Mr. Soto failed to respond in a timely manner to inquiries made by the Division (dated October 10, 2013 and November 13, 2013) regarding the Kansas and Virginia administrative actions in violation of SDCL 58-33-66. That statute 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;...
- (2) Knowingly supplying the Division of Insurance with false, misleading, or incomplete information.

Furthermore, it is a violation of the insurance laws not to report an administrative action against the licensee. SDCL 58-30-193 is as follows:

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.

It is clear from the record that Mr. Soto did not report the Kansas or Virginia administrative actions to the Division. The administrative action in Kansas involved Soto indicating that he had never been convicted of a crime, never had a judgment withheld or deferred, or didn't currently have a criminal charge against himself when indeed he had been convicted of battery and assault of a police officer in January of 2007 and placed on supervised probation for one year. In addition he had his license to transact the business of insurance in Virginia revoked because he had provided materially incorrect, misleading, incomplete or untrue information in his license application.

The Division also presented evidence that Mr. Soto indicated "No" in response to the questions "Have you ever been convicted of a crime, had a judgment withheld or deferred, or are you currently charged with committing a crime?" on his South Dakota Producer Application information received by the Division on February 21, 2012. Pursuant to the Kansas administrative action Mr. Soto had already been convicted of battery and assault in 2007 and served a year of probation.

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)

Soto was given notice of the violation and he refused to take corrective action in that he failed to respond to the Division of Insurance within twenty days of receiving the letters dated October 10, 2013 and November 13, 2013 from Ms. Schilling.

Also considered in the decision to revoke an insurance producer's license the Division will consider SDCL 58-30-167. Mr. Soto violated subsections (1), (2), (3), (8) 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:...

- (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;

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

Applying the law to the Findings of Fact set forth above, it is clear that the Non-Resident Insurance Producer License of Jorge Soto 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 August 19, 2014 by the South Dakota Division of Insurance.

III.

Neither Jorge Soto 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 Jorge Soto committed unfair or deceptive insurance practices by violating SDCL 58-33-66(1) in that he

failed to respond to an inquiry from the Division.

VI.

The Division of Insurance established by clear and convincing evidence that Jorge Soto committed unfair or deceptive insurance practices by violating SDCL 58-33-66(2) in that he knowingly supplying the Division of Insurance with false, misleading, or incomplete information.

VII.

The Division of Insurance established by clear and convincing evidence that the South Dakota Non-Resident Insurance Producers License of Jorge Soto is subject to revocation pursuant to SDCL 58-30-167(1), (2), (3), (8) and (9).

VII.

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

VIII.

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

IX.

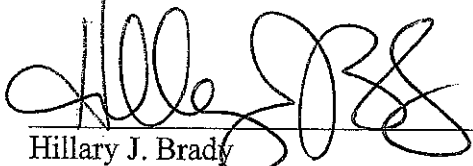
To the extent any of the foregoing are improperly designated and are instead Findings of Fact, they are hereby redesignated and incorporated herein as Findings of Fact.

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

PROPOSED ORDER

The South Dakota Non-Resident Insurance Producers License of Jorge Soto should be revoked.

Dated this 13th day of November 2014



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

CERTIFICATE OF SERVICE

I certify that on November 13, 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
Legal Assistant
Office of Hearing Examiners

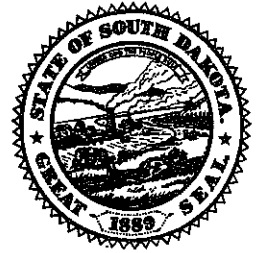
JORGE SOTO
ALLSTATE INSURANCE
2775 SANDERS ROAD STE E1W
NORTHBROOK IL 60062-6110

FRANK MARNELL
SENIOR LEGAL COUNSEL
DIVISION OF INSURANCE
124 SOUTH EUCLID AVE., 2ND FLOOR
PIERRE, SD 57501



**BUREAU OF ADMINISTRATION
OFFICE OF HEARING EXAMINERS**

PMB 01261
523 EAST CAPITOL AVENUE
FOSS BUILDING
PIERRE, SD 57501
(605) 773-6811
FAX (605) 773-6818



November 14, 2014

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

Re: In the Matter of Jorge Soto v Department of Insurance (14-16)

Dear Ms. Hultman:

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

Sincerely,

Ashley Couillard
Office of Hearing Examiners