

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

IN THE MATTER OF)
CHASE HUNTER) **FINAL DECISION**
LICENSEE)

After reviewing the record and the Proposed Decision of the Hearing Examiner in this matter, the South Dakota Department of Labor and Regulation (“Department”) makes the following decision restating the Hearing Examiner’s June 7, 2016 Proposed Decision with material modifications noted pursuant to SDCL § 1-26D-8:

An administrative hearing in the above matter was held on June 2, 2016. Chase Hunter (Hunter) failed to appear. She did not request a telephonic hearing. Frank Marnell appeared as counsel for the Division of Insurance (Division). Gretchen Brodkorb appeared as witness for the Division.

ISSUE

Whether the nonresident insurance producer license renewal application of Chase Hunter was reasonably denied pursuant to SDCL § 58-30-168 for her failure to provide a complete and correct renewal application, and for her failure to timely report an administrative action in another jurisdiction (Illinois and/or Virginia) in violation of SDCL §§ 58-30-193, and 58-30-167(1), (2), and (9).¹

FINDINGS OF FACT

1. Chase C. Hunter possesses an active Non-Resident Insurance Producer License from the State of South Dakota. Hunter became licensed in the State of South Dakota on March 18, 2003.
2. Hunter’s license was to expire on October 31, 2015. On October 31, 2015,² Hunter made an on-line renewal application.
3. During the online renewal application, an applicant is prompted to respond “yes” or “no” to a number of questions. Hunter responded “yes” to the question that reads:

Have you been named or involved as a party in an administrative proceeding, including a FINRA sanction or arbitration proceeding regarding any professional or occupational license or registration, which has not been previously reported to this insurance department?

¹ The Issue was modified. The February 25, 2016 Notice of Hearing states the hearing’s purpose was to determine the reasonableness of the Division’s decision to deny Hunter’s renewal application and all evidence presented at hearing was presented to demonstrate reasonableness. See also Findings of Fact numbers 2, 3, and 12. Findings of Fact numbers 3 and 12 are verbatim from the Hearing Examiner’s Proposed Decision.

² Date error regarding the renewal application. See Exhibit 2, Hunter’s renewal application, admitted at hearing.

“Involved” means having a license censured, suspended, revoked, canceled, terminated; or, being assessed a fine, placed on probation, sanctioned or surrendering a license to resolve an administrative action. “Involved” also means being named as a party to an administrative or arbitration proceeding, which is related to a professional or occupational license, or registration. “Involved” also means having a license, or registration, application denied or the act of withdrawing an application to avoid a denial. INCLUDE any business so named because of your actions in your capacity as an owner, partner, officer or director, member or manager of Limited Liability Company. You may exclude terminations due solely to noncompliance with continuing education requirements or failure to pay a renewal fee.

If you answer yes, you must attach to this application:

- a) A written statement identifying the type of license and explaining the circumstances of each incident;
 - b) A copy of the Notice of Hearing or other document that states the charges and allegations, and
 - c) A copy of the official document which demonstrates the resolution of the charges or any final judgment.
4. On November 10, 2015, Hunter sent an e-mail to the Division with an explanation for the “yes” answer to the background question. The explanation consisted of a copy of a Petition for Declaratory Judgment and a subsequent Motion she had made in the U.S. District Court, Boston, Massachusetts in a case against Daniel Judson, etc. et al. [sic] (the Insurance Commissioner for the Commonwealth of Massachusetts). This Petition was filed on October 16, 2015.
 5. Hunter’s Petition against Mr. Judson gives some information regarding administrative and criminal actions being taken against Hunter in a number of different states including: Virginia, Florida, Texas, California, Indiana, Ohio, Illinois, Wyoming, and North Carolina.
 6. Gretchen Brodkorb, Compliance Specialist for the South Dakota Division of Insurance, in the normal and regular course of her duties, obtained information that Hunter had an administrative action taken against her in the State of Illinois in February, 2015, and in Kentucky in July of 2015. The Division’s records indicated that Hunter had not reported the Illinois’ or Kentucky’s actions to the South Dakota Division of Insurance.
 7. On December 5, 2015, Ms. Brodkorb wrote to Hunter asking for an explanation of the administrative matters in Illinois and Kentucky. Brodkorb sent this letter to Hunter at the most recent address of “340 S. Lemon Ave. Ste. 9039, Walnut, CA 91789-2706” and to Hunter’s e-mail addresses: chaseh@chaseagency.com and chase_hunter@yahoo.com.
 8. On December 14, 2015, Brodkorb received from the Illinois Department of Insurance the Order revoking Hunter’s Illinois producer license as of February 25, 2015. The Kentucky Department of Insurance revoked Hunter’s license by administrative action on May 13, 2015.

9. Hunter wrote to Brodkorb stating in part that she has “absolutely no knowledge of any action taken against me by Kentucky.” She did not send to the Division the full information requested regarding Illinois.
10. Brodkorb sent copies of the Illinois and Kentucky Orders to Hunter on December 16, 2015.
11. On January 14, 2016, the Division sent a Letter of Nonrenewal to Hunter.
12. Hunter requested a Hearing on the reasonableness of the decision to non-renew her license, pursuant to SDCL 58-30-168. She was sent a Notice of Hearing on February 25, 2016. She was present telephonically at a pre-hearing conference that was held on March 23, 2016 by “special appearance” to challenge jurisdiction.
13. Any additional Findings of Fact included in the Reasoning section of this decision are incorporated herein by reference.
14. To the extent any of the foregoing are improperly designated and are, instead, Conclusions of Law, they are hereby incorporated herein as Conclusions of Law.

REASONING

This case involves a request by Chase Hunter to determine the reasonableness of the Division’s January 14, 2016 decision to deny Hunter’s renewal application.³ 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).

SDCL 58-30-193 states that “[A]n 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.”

³ Modified to reflect the Issue and Finding of Fact number 12. The result of the Division’s denial is Hunter’s loss of licensure.

Gretchen Brodkorb, Compliance Specialist⁴ for the South Dakota Division of Insurance found that Hunter had not timely reported an administrative action from Illinois that was dated February 25, 2015 or Virginia from January 2015. In addition, Hunter was the subject of several other administrative actions.⁵

Hunter's submissions to the Division were not complete and contained false and misleading information.

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.

In deciding to nonrenew⁶ 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.

In addition, the Division considers SDCL 58-30-167 (shown in pertinent part) as follows:

⁴ Gretchen Brodkorb was correctly referenced as a "Compliance Specialist" in Finding of Fact number 6.

⁵ The Division presented evidence that Ms. Hunter was subject to several administrative actions by other states and failed to report two administrative actions to the Division.

⁶ Modified to match the modified Issue, evidence admitted at hearing, and Notice of Hearing.

SDCL 58-30-167. Causes for suspension, revocation, refusal to issue or renew license, or monetary penalty--Notice--Hearing--Final determination.

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;
- (7) Having admitted or been found to have committed any insurance unfair trade practice or fraud;
- (9) Having an insurance producer license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory;

At the conclusion of the matter, the director shall send a letter to the licensee, the insurers represented by such licensee, and the appointing agent of a producer, stating the final determination of the matter.

The information supplied by Hunter to the Division in support of her application for license renewal was knowingly incomplete and misleading. Evidence indicates that Hunter violated insurance laws in a number of states including, but not limited to: Texas, Florida, Virginia, and Illinois. With the attempt to renew the license in South Dakota without fully disclosing the administrative files or orders from other states, Hunter attempted to obtain a license through misrepresentation.

Applying the law to the Findings of Fact it is clear the Division's decision to deny Hunter's nonresident insurance producer renewal application was reasonable.⁷

CONCLUSIONS OF LAW

1. 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.
2. The Division of Insurance bears the burden of establishing the alleged statutory violations by clear and convincing evidence.

⁷ *Id.*

3. The Division of Insurance established by clear and convincing evidence that Chase Hunter violated SDCL 58-30-193.
4. The Division of Insurance established by clear and convincing evidence that Chase Hunter violated SDCL 58-33-66(1) and (2).
5. The Division of Insurance established by clear and convincing evidence that the South Dakota nonresident insurance producer license renewal application of Chase Hunter is subject to denial pursuant to SDCL 58-30-167 (1), (2), (3), (7), and (9).⁸
6. The Division of Insurance established by clear and convincing evidence that the Division's denial of Chase Hunter's nonresident insurance producer license renewal was reasonable.⁹
7. Any additional Conclusions of Law included in the Reasoning section of this decision are incorporated herein by reference.
8. 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 Secretary of the Department of Labor and Regulation enters the following:

FINAL DECISION

The South Dakota nonresident insurance producer renewal application submitted by Chase Hunter should be denied. The decision by the Director of the Division of Insurance to nonrenew Chase Hunter's license is found by clear and convincing evidence to be reasonable.¹⁰

THEREFORE IT IS HEREBY ORDERED that Chase Hunter's nonresident insurance producer license is nonrenewed.

Parties are hereby advised of the right to further appeal this Final Decision to Circuit Court within 30 days of receiving such decision, pursuant to the authority of SDCL 1-26.

Dated this 5TH day of July, 2016.



Marcia Hultman, Secretary
South Dakota Department of Labor and Regulation
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⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*