

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

**IN THE MATTER OF
NOEL THOMAS,
LICENSEE**

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**FINAL DECISION
INS 13-32**

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 Order, dated September 29, 2016, is adopted.

IT IS FURTHER ORDERED that the South Dakota Nonresident Insurance Producer License of Noel Thomas 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 4 day of October, 2016.



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
NOEL THOMAS**

**DLR 16-08
PROPOSED DECISION**

v.

DIVISION OF INSURANCE

An administrative hearing was held in this matter on September 1, 2016. Licensee, Noel Thomas (Thomas), did not appear or testify at the hearing. The Division of Insurance (Division) was represented by Frank Marnell. The Division had a witness, Tony Dorschner. Based on the evidence, the arguments of the parties, and the law, the Hearing Examiner enters the following Findings of Fact, Conclusions of Law, and Proposed Order.

ISSUES

Whether Thomas failed to report to the Division an administrative action against him by the State of New York?

Whether Thomas failed to report the administrative action to the Division within 30 days?

Whether Thomas failed to respond to inquiries from the Division?

Whether the Division may revoke Thomas's license as an insurance producer?

FINDINGS OF FACT

1. Thomas was licensed by the Division as an insurance producer on October 23, 2013. His license number is 40345050.
2. Thomas's license expired on March 31, 2016 because he failed to renew the license.
3. At the time of the hearing, Thomas did not have a South Dakota Insurance Producer License.
4. On or about March 12, 2015, the State of New York entered into a stipulation with Thomas whereby he voluntarily surrendered his insurance license. Thomas could have been charged with violating insurance laws and regulations because he failed to notify the New York State Department of Financial Services about an administrative action in Wisconsin.

5. Thomas did not report the New York (or Wisconsin) administrative action to the Division.
6. On June 19, 2015, the Division sent letter of inquiry to Thomas regarding the New York administrative action.
7. The Division sent that letter to Thomas at his address of record, 1371 Nolan Street Northeast, Palm Bay, Florida.
8. Thomas did not respond to the Division's June 19, 2015 letter.
9. On July 21, 2015, the Division sent another inquiry about the New York administrative action to Thomas at the Palm Bay, Florida address. This letter was sent via first class and certified mail.
10. United States Postal Service records indicate the Division's letter was not delivered because it was undeliverable and they were unable to forward the letter.
11. Thomas did not respond to either of the Division's letters.
12. The Division seeks to revoke Thomas's insurance producer license and a hearing was set up on the matter.
13. Any additional findings included in the Reasoning section of this decision are incorporated herein by this reference. 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

SDCL 58-30-193 states that 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. In this case, Thomas did not report an administrative action from the State of New York. Additionally, it looks like there was also an administrative action in Wisconsin.

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 violating any insurance laws or rules, subpoena, or order of the director or of another state's insurance director, commissioner, or superintendent or 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. SDCL 58-30-167(2)&(9).

Thomas also committed an unfair or deceptive insurance practice when he failed to answer letters from the Division. Unfair or deceptive acts or practices in the business of insurance include 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. SDCL 58-33-66(1).

The evidence shows that the Division may revoke Thomas's insurance producer's license. There were unreported administrative actions and he failed to respond to letters from the Division. I have no authority to make exceptions to the law.

CONCLUSIONS OF LAW

1. The Division has jurisdiction over Thomas and the subject matter of this contested case. The Office of Hearing Examiners has authority to conduct the appeal pursuant to the provisions of SDCL 1-26D.
2. Thomas violated the requirements of SDCL 58-30-193 in failing to advise the Division within thirty days of the State of New York's administrative action against his insurance license.
3. The failure of Thomas to report the state of New York's administrative action against his insurance producer license is grounds for sanction by the Division pursuant to SDCL 58-30-167(2)&(9).
4. Thomas committed an unfair or deceptive act in the business of insurance by failing to respond to an inquiry from the Division within twenty days as required by SDCL 58-33-66(1).
5. These violations of the statutes permit the Director of the Division of Insurance to revoke Thomas's insurance producer license and/or impose other sanctions as set forth in SDCL 58-30-167.
6. Any Conclusions of Law in the reasoning section of this decision are incorporated herein by reference. 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.

PROPOSED ORDER

It is the Proposed Order of the Hearing Examiner that the Division of Insurance be affirmed and the license of Noel Thomas be revoked.

Dated September 29, 2016.



Ryan P. Darling
Office of Hearing Examiners
523 East Capitol
Pierre SD 57522

CERTIFICATE OF SERVICE

I certify that on September 29, 2016, at Pierre, South Dakota, a true and correct copy of this Decision was mailed to each of the parties listed below.



Jean Person

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