

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

**IN THE MATTER OF  
MICHAEL VESTAL,  
LICENSEE**

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**FINAL DECISION  
INS 17-12**


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 March 23, 2017, is adopted in full.

IT IS FURTHER ORDERED that the South Dakota Non-resident Insurance Producer License of Michael Vestal 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 19<sup>th</sup> day of June, 2017.



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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  
MICHAEL VESTAL**

**INS 17- 12  
PROPOSED DECISION**

This matter came for hearing before the Office of Hearing Examiners on June 1, 2017 pursuant to a Notice of Hearing issued by the South Dakota Division of Insurance (“Division”) on May 8, 2017. Clayton Grueb appeared as counsel for the Division. Michael Vestal did not appear, either in person or through counsel. The Division admitted its Exhibits 1 through 5 into evidence and moved that the Hearing Examiner enter these Proposed Findings of Fact, Conclusions of Law, and Proposed Decision as a default disposition to this contested case.

**ISSUE**

Whether the Non-Resident Insurance Producer License of Michael Vestal should be revoked due to failing to timely respond to the Division; failing to timely report an administrative action(s) to the Division; for demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere; and for having a revocation or suspension action(s) in another state(s) in violation of SDCL §§ 58-30-167(2), (8), and (9), 58-30-193, 58-33-66, and 58-33-68.

**FINDINGS OF FACT**

1. Michael Vestal was licensed by the Division as a non-resident insurance producer on May 1, 2013. The license is currently active. (Exhibit 1).
2. Michael Vestal was the subject of an administrative action in another jurisdiction. (Exhibit 5).
3. Michael Vestal did not report the administrative action to the Division.
4. Michael Vestal insurance producer license was revoked on April 26, 2016 by the State of California. (Exhibit 5).
5. The Division sent an inquiry to Michael Vestal at the address of record regarding the administrative action. (Exhibit 2-4).
6. Michael Vestal did not respond to the Division’s inquiry. (Exhibit 2-4).
7. Any additional Findings of Fact 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 conclusions of law, they are hereby redesignated and incorporated herein as conclusions of law.

## REASONING

This case involves a request by the Division to revoke the South Dakota Non-Resident Insurance Producer's License of Michael Vestal. As a consequence of the potential loss of Respondent'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... 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." SDCL 58-33-66(1) requires Jessie Bible to respond to the Division and supply requested documents within twenty days from the receipt of a request. In addition, the Division considers SDCL 58-30-167 (shown in pertinent part) as follows:

The director may... revoke or refuse to continue, any license issued under this chapter... after a hearing... The director may... revoke... an insurance producer's... 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;
- (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;

The evidence indicates that Michael Vestal violated the insurance laws of another jurisdiction, failed to report that action, and failed to respond to Division inquiries regarding the action. Applying the law to the Findings of Fact it is clear the Non-Resident Insurance Producer License of Michael Vestal is subject to revocation and should be revoked.

## CONCLUSIONS OF LAW

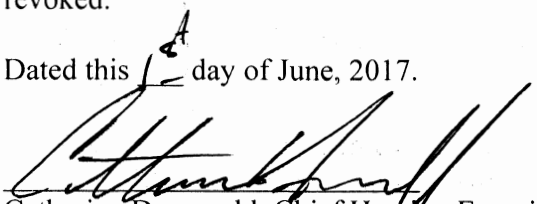
1. The Division has jurisdiction over Michael Vestal and the subject matter of this contested case. The Office of Hearing Examiners is authorized to conduct the hearing and issue a proposed decision pursuant to SDCL 1-26D-4.
2. The Division bears the burden of establishing the alleged statutory violations by clear and convincing evidence.
3. The Division established by clear and convincing evidence that Michael Vestal violated SDCL § 58-30-193.
4. The Division established by clear and convincing evidence that Michael Vestal violated SDCL § 58-33-66.
5. The Division established by clear and convincing evidence that the South Dakota Non-Resident Insurance Producer License of Michael Vestal is subject to revocation.
6. Any additional Conclusions of Law included in the Reasoning section of this decision are incorporated herein by reference.
7. 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 DECISION

The South Dakota Non-Resident Insurance Producer License of Michael Vestal should be revoked.

Dated this <sup>14</sup> day of June, 2017.

  
Catherine Duenwald, Chief Hearing Examiner  
Office of Hearing Examiners  
523 East Capitol  
Pierre, SD 57501

**CERTIFICATE OF SERVICE**

I certify on June 1<sup>st</sup>, 2017, at Pierre, South Dakota, a true and correct copy of this Proposed Decision was mailed to each of the parties below.



Ashley Couillard  
Office of Hearing Examiners

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