

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

**IN THE MATTER OF
VELIKA BENDER,
LICENSEE**

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)

**FINAL DECISION
INS 20-09**

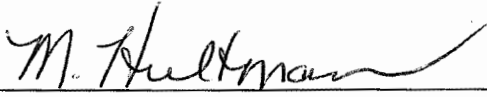
After reviewing the record and the proposed order of the Hearing Examiner in this matter,

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 June 19, 2020, is adopted in full.

IT IS FURTHER ORDERED that the denial of VELIKA BENDER's application by the Division of Insurance on April 23, 2020 was reasonable.

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 2 day of July, 2020.



Marcia Hultman, Secretary
South Dakota Department of Labor and Regulation
123 W. Missouri Ave.
Pierre, SD 57501

**STATE OF SOUTH DAKOTA
DEPARTMENT OF LABOR AND REGULATION**

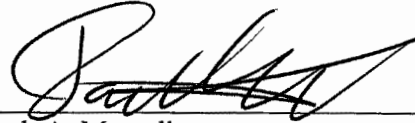
**IN THE MATTER OF
VELIKA BENDER,
LICENSEE**

INS 20-09

**NOTICE OF ENTRY OF PROPOSED
FINDINGS OF FACT, CONCLUSION OF LAW,
AND DECISION AND FINAL DECISION**

NOTICE IS HEREBY GIVEN, that attached hereto, is a true and correct copy of the Proposed Findings of Fact, Conclusions of Law, and Decision, and Final Decision entered by Marcia Hultman, Secretary of the South Dakota Department of Labor and Regulation, on July 2, 2020.

Dated this 7 day of July, 2020.



Frank A. Marnell
Insurance Division Senior Legal Counsel
South Dakota Dept. of Labor and Regulation
124 S. Euclid Ave., 2nd Floor
Pierre, SD 57501
Phone (605) 773-3563
Fax (605) 773-5369

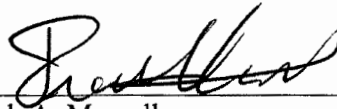
CERTIFICATE OF SERVICE

I, Frank Marnell, the undersigned, do hereby certify that on the date shown below, a true and correct copy of the Final Decision, Proposed Findings of Fact, Conclusions of Law, and Decision with respect to the above-entitled action was sent U.S. First Class Mail thereon, to the following:

VELIKA BENDER
2001 Godby Road, Apt. C4
College Park, GA 30349

VELIKA BENDER
236 Perimeter Center Pkwy NE
Dunwoody, GA 30346-1402

Dated at Pierre, South Dakota this 7 day of July, 2020.



Frank A. Marnell
Insurance Division Senior Legal Counsel
South Dakota Dept. of Labor and Regulation
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**STATE OF SOUTH DAKOTA
OFFICE OF HEARING EXAMINERS**

**IN THE MATTER OF
VELIKA BENDER**

**INS 20-09
PROPOSED DECISION**

This matter came for hearing before the Office of Hearing Examiners on June 11, 2020 pursuant to a Notice of Hearing issued by the South Dakota Division of Insurance (“Division”) on May 8, 2020. The hearing was held telephonically, pursuant to the Notice of Hearing. Frank Marnell appeared telephonically as counsel for the Division with the Division’s witness, Letisha Pederson. Velika Bender did not appear at the hearing. After the Hearing Examiner opened the proceeding, the Division made a motion for default disposition. In support of that motion, the Division offered Exhibits 1 through 7 which were admitted into evidence. The Hearing Examiner granted the Division’s motion and now enters these Proposed Findings of Fact, Conclusions of Law, and Proposed Decision in this contested case.

ISSUE

Whether the Division was reasonable in denying the Respondent’s application for a Non-resident Insurance Producer License due to the Respondent providing incorrect, misleading, incomplete, or materially untrue information on her application, for violating another state’s insurance laws, for attempting to obtain a license through misrepresentation or fraud, for having been convicted of a felony, and for using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere; in violation of SDCL §§ 58-30-167(1), (2), (3), (6) and (8).

FINDINGS OF FACT

1. Velika Bender applied for a South Dakota Non-Resident Insurance Producer License on January 27, 2020. (Exhibit 1)
2. Velika Bender answered “NO” to the application question “Have you ever been named or involved as a party in an administrative proceeding . . .” (Exhibit 1)
3. Velika Bender answered “YES” to the application question, “Have you ever been convicted of a felony . . .” (Exhibit 1)
4. Velika Bender attached documentation of her felony conviction to her application. (Exhibit 2)
5. The Division and Velika Bender corresponded regarding the deficiencies regarding her application. (Exhibits 3 and 4)

6. In response to the Division's investigator, Velika Bender provided a copy of a Georgia administrative action from 2019 for failing to disclose her felony to the Office of the Commissioner of Insurance in Georgia. (Exhibit 4)
7. Velika Bender provided documentation that she was convicted of a felony for Forgery in the First Degree for knowingly defrauding Monumental Life by using fake identification. (Exhibit 2)
8. Velika Bender provided incorrect, misleading, incomplete, or materially untrue information in her license application to the Division as regards the Georgia administrative action. (Exhibits 1 and 4)
9. The Division mailed Velika Bender a denial letter on April 23, 2020. (Exhibit 5)
10. As of the date of the denial letter, Velika Bender had a felony conviction on her record. (Exhibits 2 and 5)
11. Velika Bender requested an appeal of the Division's denial letter on April 24, 2020. (Exhibit 6)
12. The Division issued its Notice of Hearing on May 8, 2020. (Exhibit 7)
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 redesignated and incorporated herein as conclusions of law.

REASONING

This case involves a request by Velika Bender to review the reasonableness of the Division's decision to deny her application for an insurance producer's license. As this matter deals with the issuance of a professional license, the general burden of proof for administrative hearings of preponderance of the evidence, will apply. *In re Setliff*, 645 N.W.2d 601, 605 (2002 S.D.) Pursuant to SDCL § 58-30-168, the Court is to "determine the reasonableness of the director's action." Therefore, it is the Division's burden to show by the preponderance of the evidence that they were reasonable in denying Velika Bender's license.

SDCL § 58-30-167 states that "...The Director may... refuse to issue or renew an insurance producer's license... for any one or more following causes, (shown in pertinent part):

- (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;
- ...
- (6) Having been convicted of a felony;
- (8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere;
- ...

ARSD 20:06:01:03 states that "In determining whether a person is in good standing, the director may consider, but is not limited to, the following factors" (shown in pertinent part):

- (4) False statements, oral or written, to the division, including omissions;
- (6) Conduct which is unlawful, dishonest, deceitful, or fraudulent;

The evidence indicates that Velika Bender did provide incorrect, misleading, incomplete, or materially untrue information in her license application. The evidence further indicates that Velika Bender has been convicted of a felony. The evidence further indicates that the Division was appropriate in finding that Velika Bender lacked good standing. Applying the law to the Findings of Fact, the Division has shown by the preponderance of the evidence that the Division was reasonable in denying Velika Bender's application for a Non-Resident Insurance Producer License.

CONCLUSIONS OF LAW

1. The Division has jurisdiction over Velika Bender 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 by the preponderance of the evidence that it acted reasonably in denying Velika Bender's license.
3. The Division established by the preponderance of the evidence that Velika Bender violated SDCL §§ 58-30-167(1), (2), (3), (6) & (8).

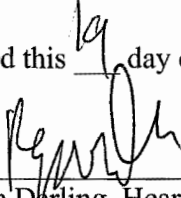
4. The Division established by the preponderance of the evidence that Velika Bender is not in good standing pursuant to ARSD 20:06:01:03.
5. Any additional Conclusions of Law included in the Reasoning section of this decision are incorporated herein by reference.
6. To the extent any of the foregoing 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 Division of Insurance's decision to deny Velika Bender's application for an insurance producer license was reasonable.

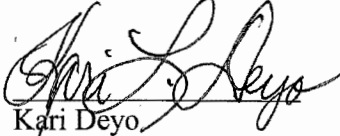
Dated this 19 day of June, 2020.



Ryan Darling, Hearing Examiner
Office of Hearing Examiners
523 East Capitol
Pierre, SD 57501

CERTIFICATE OF SERVICE

I certify on June 19, 2020, at Pierre, South Dakota, a true and correct copy of this Proposed Decision was mailed to each of the parties below.



Kari Deyo
Office of Hearing Examiners

Velika Bender
2001 Godby Road, Apt. C4
College Park, GA 30349

Frank Marnell
Division of Insurance
124 S. Euclid Ave, 2nd Floor
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236 Perimeter Center Pkwy NE
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