

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

IN THE MATTER OF)	FINAL DECISION
REGINALD ROSS)	INS 20-19
)	

An administrative hearing via teleconference was held on this matter on September 2, 2020. Reginald Ross appeared and testified at the hearing. The Division of Insurance ("Division") was represented by Clayton Grueb. The Division had a witness, Letisha Pederson, who testified at the hearing.

The Office of Hearing Examiners, through Hearing Examiner Ryan Darling, entered and served a Proposed Decision regarding the parties on October 9, 2020. After reviewing the record and the Proposed Decision, this Final Decision follows and includes Findings of Fact, Reasoning, Conclusions of Law, and the Order. I adopt the Hearing Examiner's Proposed Decision with modifications, the reasons for which are noted in footnotes relating to those areas pursuant to SDCL § 1-26D-8. Documentary evidence will be cited as "(Exhibit ___)".

ISSUE

Whether the Division's denial of a non-resident insurance producer license for Reginald Ross was reasonable.

FINDINGS OF FACT

1. On or about January 15, 2020, Reginald Ross ("Ross") applied for a non-resident insurance producer license in South Dakota. Ross currently lives in California. (Exhibit 1)
2. On the application, Ross indicated "yes" when asked if he had ever been convicted of a misdemeanor or felony.¹ (Exhibit 1)
3. The felony was for possession of cocaine and happened in 2008. The charge was later reduced to a misdemeanor because of a change in the law. Ross is not currently considered a felon in California. (Exhibit 3)

¹ Ross did provide a letter of explanation that was addressed "to whom it may concern". However, the letter was dated 12/03/2019 and it is unknown when the Division received the letter. Ross also provided a copy of the court documents.

4. On February 14, 2020, the Division sent a letter to Ross asking for an explanation of his criminal history. The letter was sent to the address Ross provided on his application. (Exhibit 4)
5. On March 19, 2020, the Division sent a certified letter to Ross asking for an explanation on the criminal history within 20 days. (Exhibit 5).
6. On June 9, 2020, the Division sent a certified letter to Ross denying his application for a producer license. The reasons for denial were for providing incomplete, misleading, or incorrect information in his application and demonstrating incompetence, untrustworthiness, or financial irresponsibility. (Exhibit 6)
7. Ross filed a timely appeal of the determination.
8. A hearing on this matter was scheduled for September 2, 2020.
9. Any additional Findings of Fact included in the Reasoning section of this decision are incorporated herein by reference.
10. 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.

REASONING²

This case involves a request by Reginald Ross to determine the reasonableness of the Division's decision to deny his application for an insurance producer license. As this matter deals with the denial of a professional license, rather than revocation of an existing license, the general burden of proof for administrative hearings, preponderance of the evidence, will apply. See *In re Jarman*, 860 N.W.2d 1 (S.D. 2015) and *In re Setliff*, 645 N.W.2d 601, 605 (S.D. 2002). "Preponderance of the evidence" is defined as the greater weight of evidence." *Pieper v. Pieper*, 841 N.W.2d 781, 787 (S.D. 2013) quoting *L.S. v. C.T.*, 760 N.W.2d 145, 151 (S.D. 2009). Pursuant to SDCL § 58-30-168, the review 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 the agency was reasonable in its decision to deny Reginald Ross's license application.

In deciding to deny a license, the Division must look to SDCL § 58-30-167, providing, in pertinent part:

The director may... refuse to issue or renew an insurance producer's license... for any one or more of the following causes:

...
(6) Having been convicted of a felony;

² The Reasoning section was modified to include applicable legal standards for reviewing the denial of an insurance producer license.

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

The Director may suspend, revoke, or refuse to issue or renew an insurance producer license or may accept a monetary penalty in accordance with § 58-4-28.1 or any combination thereof, for having been convicted of a felony or for using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.

Here, Ross was convicted of a felony which is grounds to deny a license. The felony was later reduced to a misdemeanor.

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).

Ross failed to provide timely responses to inquiries from the Division. This is deemed an unfair or deceptive act by statute. When added to a past felony conviction, it is not unreasonable for the Division to deny a license application for Ross.

Applying the law to the Findings of Fact, the Division has shown that the it was reasonable in denying Reginald Ross' non-resident insurance producer application.

CONCLUSIONS OF LAW³

1. The Division has jurisdiction over the parties and subject matter of this contested case. The Office of Hearing Examiners has authority to conduct the appeal and issue a Proposed Decision pursuant to the provisions of SDCL Chapter 1-26D.
2. The Division may modify the Hearing Examiner's Proposed Decision by giving reasons for doing so in writing pursuant to SDCL §§ 1-26D-6 and 1-26D-8.
3. The Division bears the burden of establishing that its denial of Reginald Ross' insurance application was reasonable by a preponderance of the evidence.⁴
4. The Division established by a preponderance of the evidence that SDCL § 58-30-167(6) and (8) provide grounds for the denial of Reginald Ross's license application.

³ The Conclusions of Law section was updated to match the additional law and correct legal standard listed in the Reasoning section.

⁴ The hearing officer also determined that the denial was reasonable applying the more stringent clear and convincing evidence standard.

5. These violations permit the Director of the Division of Insurance to refuse to issue an insurance producer license pursuant to the provisions of SDCL § 58-30-167(6) and (8).
6. The Division established by a preponderance of the evidence that its denial of Reginald Ross' non-resident insurance producer license renewal was reasonable.
7. Any Conclusions of Law 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:

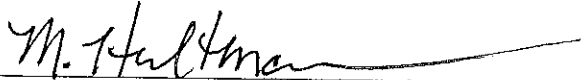
FINAL DECISION

The decision by the Director of the Division of Insurance to deny Reginald Ross' insurance producer license application was reasonable by a preponderance of the evidence. Reginald Ross' non-resident insurance producer application should be denied.

THEREFORE IT IS HEREBY ORDERED that Reginald Ross' non-resident insurance producer license application is denied.

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

Dated this 21st day of October, 2020.



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
REGINALD ROSS**

**INS 20-19
PROPOSED DECISION**

This matter came for hearing before the Office of Hearing Examiners on September 2, 2020 pursuant to a Notice of Hearing issued by the South Dakota Division of Insurance (Division). Attorney, Clayton Grueb, appeared as a representative for the Division. The Division had a witness, Letisha Pederson. Reginald Ross (Ross) appeared and testified at the hearing. The Hearing Examiner enters these Proposed Findings of Fact, Conclusions of Law, and Proposed Decision.

ISSUE

Whether the decision by the Division to deny Ross a non-resident insurance producer license was reasonable?

FINDINGS OF FACT

1. On or about January 15, 2020, Ross applied for a non-resident insurance producer license in South Dakota. Ross currently lives in California.
2. On the application, Ross indicated "yes" when asked if he had ever been convicted of a misdemeanor or felony¹.
3. The felony was for possession of cocaine and happened in 2008. The charge was later reduced to a misdemeanor because of a change in the law. Ross is not currently considered a felon in California.
4. On February 14, 2020, the Division sent a letter to Ross asking for an explanation of his criminal history. The letter was sent to the address Ross provided on his application.
5. On March 19, 2020, the Division sent a certified letter to Ross asking for an explanation on the criminal history within 20 days.

¹ Ross did provide a letter of explanation that was addressed "to whom it may concern". However, the letter was dated 12/03/2019 and it is unknown when the Division received the letter. Ross also provided a copy of the court documents.

6. On June 9, 2020, the Division sent a certified letter to Ross denying his application for a producer license. The reasons for denial were for providing incomplete, misleading, or incorrect information in his application and demonstrating incompetence, untrustworthiness, or financial irresponsibility.
7. Ross filed a timely appeal of the determination.
8. A hearing on this matter was scheduled for September 2, 2020.
9. Any additional Findings of Fact included in the Reasoning section of this decision are incorporated herein by reference.
10. 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 deny a South Dakota Non-Resident Insurance Producer's License for Reginald Ross. 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 58-30-167(6) provides that 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 having been convicted of a felony.

Here, Ross was convicted of a felony which is grounds to deny a license. The felony was later reduced to a misdemeanor.

SDCL 58-30-167(8) provides that 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 using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.

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).

Ross failed to provide timely responses to inquiries from the Division. This is deemed an unfair or deceptive act by statute. When added to a past felony conviction, it is not unreasonable for the Division to deny a license application for Ross.

CONCLUSIONS OF LAW

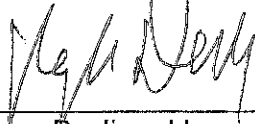
1. The Division has jurisdiction over Ross and the subject matter of this contested case. The Office of Hearing Examiners is authorized to conduct the hearing and issue a proposed decision pursuant to SDCL 1-26D-4.
2. The Division bears the burden of establishing the alleged statutory violations by clear and convincing evidence.
3. The Division established by clear and convincing evidence to deny a South Dakota Nonresident Insurance Producer License for Ross. SDCL§ 58-33-167(6) and (8).
4. Any additional Conclusions of Law included in the Reasoning section of this decision are incorporated herein by reference.
5. 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 application of Reginald Ross should be denied.

Dated October 9, 2020.



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

CERTIFICATE OF SERVICE

I certify that on October 9, 2020, at Pierre, South Dakota, a true and correct copy of the Findings of Fact, Conclusions of Law and Order in the above-entitled matter was sent via U.S. Mail or Inter-Office Mail to each party listed below.



Ryan Darling

REGINALD ROSS
8082 FAIRVIEW AVE
LA MESA CA 91941

CLAYTON GRUEB
2330 N MAPLE STE 1
RAPID CITY SD 57701

STATE OF SOUTH DAKOTA
DEPARTMENT OF LABOR AND REGULATION

IN THE MATTER OF
REGINALD ROSS

INS 20-19

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 October 21, 2020.

Dated this 22nd day of October, 2020.



Clayton Grueb
Legal Counsel
South Dakota Division of Insurance
2330 N. Maple Ave. Suite 1
Rapid City, SD 57701
(605) 394-3396

CERTIFICATE OF SERVICE

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

Reginald Ross
8082 Fairview Ave
La Mesa, CA 91941

Dated this 22nd day of October, 2020 in Rapid City, South Dakota.



Clayton Grueb
Legal Counsel
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