

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

**IN THE MATTER OF
MATTHEW SENGSOUVANNA
LICENSEE**

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**FINAL DECISION
INS 20-01**

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 10, 2020, is adopted in full.

IT IS FURTHER ORDERED that the South Dakota Resident Insurance Producer License of Matthew Sengsouvanna 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 17 day of June, 2020.



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

**STATE OF SOUTH DAKOTA
OFFICE OF HEARING EXAMINERS**

**IN THE MATTER OF
MATTHEW SENGSOUVANNA**

**INS 20-01
PROPOSED DECISION**

This matter came for hearing before the Office of Hearing Examiners on April 27, 2020 pursuant to a Notice of Hearing issued by the South Dakota Division of Insurance ("Division") on January 31, 2020. Clayton Grueb appeared as counsel for the Division. Matthew Sengsouvanna (Sengsouvanna) appeared pro se and presented his testimony and argument. The Division admitted its Exhibits 1 through 17 into evidence. Appearing as witness for the Division was Compliance Agent Letisha Pederson.

ISSUE

Whether the Resident Insurance Producer License of Matthew Sengsouvanna should be revoked due to failing to timely respond to the Division (SDCL §58-33-66(1)); supplying the Division with false, misleading, or incomplete information in relation to an application that was submitted after there was a fire at the property (SDCL §58-33-66(2)); knowingly made a false or fraudulent statement or representation with reference to any application for insurance (SDCL §58-33-37); forging another's name to an application for insurance or to any document related to an insurance transaction (SDCL §58-30-167(10)); or by using fraudulent, coercive, or dishonest practices or demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of business, (SDCL §58-30-167(8)).

FINDINGS OF FACT

1. Matthew Sengsouvanna was licensed by the Division as a resident insurance producer sometime in 2006. He obtained his license for property and casualty insurance in 2011. The license is currently active.
2. Sengsouvanna sells insurance for more than eight (8) companies including State Automobile Insurance Company.
3. Sengsouvanna sells property and casualty insurance to his brother-in-law, John Sweets, who owns or manages several apartments in Sioux Falls, South Dakota.
4. Sengsouvanna typically is contacted by Sweets when policy changes need to be made on the Sweets' properties. According to Sengsouvanna, Sweets is not a believer in property insurance and many of his properties are not insured.
5. A week or so prior to March 31, 2018, testimony indicates that Sweets contacted Sengsouvanna to purchase property insurance on an apartment building located at 325 N. Blauvelt Avenue, in Sioux Falls.

6. The Blauvelt Ave Apartment at 325 N. Blauvelt Avenue, is owned by the "Jesus Only Apostolic Temple Church." Sengsouvanha is a member of that church and is listed as Treasurer. Sweets is the pastor.
7. Sengsouvanha drove by the apartment building to check if it was occupied and the condition of the building. He did not enter the building.
8. The two-story, four-plex, apartment building did not have any working appliances or power sources. There was no heat in the building.
9. In August 2015, the City inspector filed notice that the building needed to be brought to code or else condemned. This matter went to small claims court and adjudicated on March 26, 2018 in favor of the City. Presumably, Sweets was notified of the adjudication of this matter.
10. Sengsouvanha indicated on the insurance application that the apartment building was occupied.
11. According to the State Automobile Ins. Co. investigation documents provided to the Division, the insurance policy would not have been issued had the building been vacant. The insurance company denied the claim.
12. On March 31, at about 9:15, the fire department responded to a call to 325 N. Blauvelt Avenue. At the time of the fire, the building did not have anyone inside and there was not a working sprinkler system or any working smoke detectors.
13. The fire inspection revealed the source of the structure fire to be small fires lit in a pile of clothes located on the main level foyer and a phone book at the top of the stair landing. The fire department determined this was incendiary or arson. There were no arrests made on this fire.
14. On 9:53 pm on March 31, Sengsouvanha received a call from Sweets asking him if the Blauvelt property had been insured. Sengsouvanha informed Sweets that the policy would be put into place that evening. Sengsouvanha testified that Sweets gave him permission to sign the insurance policy for Sweets.
15. Typically, a policy would be sent to the Insured for an e-signature. The Insured would create an account with the Company using their personal e-mail. This account would have to be validated by clicking on a link in an e-mail that was sent to e-mail address on record. The Insured would then sign into their account and provide a signature based upon their account and password.
16. Sengsouvanha set up an account for this policy on his own computer using Sweets e-mail address. Sweets did not log into his e-mail and "validate" the account that evening. Sengsouvanha then logged in as Sweets and e-signed Sweets name to the policy.
17. On March 31, 2018, at 11:35 pm, Sengsouvanha completed the paperwork and sold an insurance policy to Sweets for the Blauvelt apartment. The policy went into effect at 12:01 am the day the policy was completed, or 23 hours 25 minutes prior to the time the policy was final.
18. On April 2, 2018, Sweets filed a fire damage, property claim with the State Auto Insurance Company.

19. On November 8, 2019, the Division sent inquiries to Sengsouvananna at the address of record regarding the fire investigation. The letter from Compliance Agent Pederson instructed Sengsouvananna to respond to the inquiry within 20 days, pursuant to SDCL §58-33-66(1).
20. Sengsouvananna did not respond with the statutory 20-days, to the Division's initial inquiries or provide the required documentation.
21. Ms. Pederson sent another letter to Sengsouvananna on December 12, 2019 asking for the same information.
22. Sengsouvananna responded on December 16, 2019 to Ms. Pederson by e-mail. He indicated to Ms. Pederson that he wrote the policy after inspecting the property and finished up the application that evening. He indicated that he was unaware of the timing of the fire.
23. Any additional Findings of Fact included in the Reasoning section of this decision are incorporated herein by reference.
24. 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 Insurance Producer's License of Matthew Sengsouvananna. 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).

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.

SDCL §58-33-66

SDCL 58-33-66(1) required Matthew Sengsouvananna to respond to the Division and supply requested documents within twenty days from the receipt of a request. The evidence proves that he failed to comply with the initial request for information within 20 days. He did respond to the Division a few days after receiving the certified letter that was sent on December 12,

SDCL §58-33-66(2) requires honesty in dealing with the Division. The Division alleges Sengsouvananna supplied false, misleading, or incomplete information to the Division when he responded. In his e-mail to the Division, Sengsouvananna wrote, "Before the receipt of this letter I was unaware of the time of the fire loss." The evidence shows that Sengsouvananna was aware of the timing of the fire and the loss. Sweets later testified under oath that Sweets found out about the fire at about 9:28 pm and informed Sengsouvananna at or about 9:53 pm. Sengsouvananna testified in this hearing, under oath, that he found out about the fire Monday or Tuesday after the Friday night fire.

The initial insurance application submitted by Sengsouvananna indicated that the property was occupied. Sengsouvananna only drove by the apartment and saw a car in the parking lot. He testified that this is how he presumed the apartment was occupied. The owner of the property, the Jesus Only Apostolic Temple Church, of which Sengsouvananna is listed as the Treasurer, was in small claims court because the City wanted to condemn the property. Just four days prior to the fire, the Court decided that the property either had to be brought up to code or condemned and torn down. It is a stretch of credulity to believe that the Sengsouvananna did not know about the condemnation proceedings against this property. I find his testimony and the written transcript of Sweets to not be completely honest.

The signature on the application was made by Sengsouvananna using Sweets' name. This was e-forgery, in that Sengsouvananna used Sweets' e-mail address to sign up for an insurance account and then signed Sweets' name to the application. It does not matter that Sweets gave permission to Sengsouvananna to sign the document. The insurance law forbids forgery on applications.

The insurance application that was submitted contained false or fraudulent information. It is my determination that in relation to the application that was submitted, Sengsouvananna knowingly made a false or fraudulent statement or representation with reference to any application for insurance (SDCL §58-33-37); he forged another's name to an application for insurance or to any document related to an insurance transaction (SDCL §58-30-167(10)); and used fraudulent, coercive, or dishonest practices or demonstrated incompetence, untrustworthiness, or financial irresponsibility in the conduct of business, (SDCL §58-30-167(8)).

The Division has revoked Sengsouvananna's license pursuant to SDCL 58-30-167 (shown in pertinent part) as follows:

The director may ... may revoke or refuse to continue, any license issued under this chapter, ... after a 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:

(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;

(10) Forging another's name to an application for insurance or to any document related to an insurance transaction;

The evidence indicates that Matthew Sengsouvananna violated the insurance laws of South Dakota, by failing to respond to Division inquiries; by dishonesty in his practice by purposefully providing wrong or incomplete information in the property insurance application for the Blauvent Street apartment, or by being wholly incompetent in his due diligence; and by forging Sweets name to the application. The Division has proven by clear and convincing evidence that Mr. Sengsouvananna committed the acts they allege to have occurred.

It is by clear and convincing evidence that I find the Insurance Producer License of Matthew Sengsouvananna is subject to revocation and should be revoked.

CONCLUSIONS OF LAW

1. The Division has jurisdiction over Matthew Sengsouvananna 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 Matthew Sengsouvananna violated SDCL §58-33-37.
4. The Division established by clear and convincing evidence that Matthew Sengsouvananna violated §58-30-167 (10).
5. The Division established by clear and convincing evidence that Matthew Sengsouvananna violated SDCL §58-33-66.
6. The Division Director has the authority under §58-30-167 to revoke the resident insurance producer license of Matthew Sengsouvananna.
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 Hearing Examiner enters the following:

PROPOSED DECISION

The Division has proven by clear and convincing evidence that Matthew Sengsouvananna violated the insurance laws of South Dakota. He is found to have purposefully provided false information on an insurance application, as well as forging a signature on an application, in violation of state law. He also provided misleading or false information to the Division of Insurance in response to inquiries. For those reasons, my proposed decision is that the South Dakota Non-Resident Insurance Producer License of Matthew Sengsouvananna should be revoked by the Division of Insurance.

Dated this 10th day of June, 2020.



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

CERTIFICATE OF SERVICE

I certify on June 10, 2020 at Pierre, South Dakota, a true and correct copy of this Proposed Decision was mailed to each of the parties below.



Karl L. Deyo
Office of Hearing Examiners

Matthew Sengsouvananna
6800 Pine Lakes Drive
Sioux Falls SD 57110

Clayton Grueb
Division of Insurance
2330 N. Maple Ave, Suite 1
Rapid City, SD 57701

Larry Deiter, Director
Division of Insurance
SD Dept of Labor & Regulation
124 South Euclid Avenue, 2nd Floor
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STATE OF SOUTH DAKOTA
DEPARTMENT OF LABOR AND REGULATION

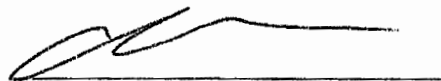
IN THE MATTER OF
MATTHEW SENGSOUVANNA

INS 20-01

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 June 17, 2020.

Dated this 17th day of June, 2020.



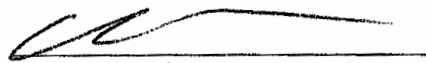
Clayton Grueb
Legal Counsel
South Dakota Division of Insurance
2330 N. Maple Ave. Suite 1
Rapid City, SD 57701
(605) 394-3396

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:

Matthew Sengsouvanha
6800 Pine Lakes Drive
Sioux Falls, SD 57110

Dated this 17th day of June, 2020 in Rapid City, South Dakota.


Clayton Grueb
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