SOUTH DAKOTA
DEPARTMENT OF LABOR AND REGULATION
DIVISION OF INSURANCE

IN THE MATTER OF	)	
MARDY GOULD	)	**FINAL DECISION**
	)	**INS 21-21**

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 November 19, 2021 is adopted in full.

IT IS FURTHER ORDERED that the South Dakota Non-resident Insurance Producer License of the respondent 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 7th day of December, 2021.

M. Hultman

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 **INS 21-21**
MARDY GOULD **PROPOSED DECISION**

This matter came for hearing before the Office of Hearing Examiners on November 18, 2021, pursuant to a Notice of Hearing issued by the South Dakota Division of Insurance ("Division") on October 8, 2021. Clayton Grueb appeared as counsel for the Division. Mardy Gould did not appear, either in person or through counsel. The Division admitted its Exhibits 1 through 9 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 Mardy Gould should be revoked for directly or indirectly, solicitating or negotiating business of insurance prior to receiving licensure; and making, publishing, disseminating, or circulating, directly or indirectly, an advertisement, containing any assertion, representation, or statement, which was untrue, deceptive, or misleading; in violation of SDCL §§ §§ 58-8-1, 58-30-143, 58-30-167(2)&(8), 58-33-6, 58-33A-10, and ARSD 20:06:10:04.

FINDINGS OF FACT

1. Mardy Gould was licensed by the Division as an insurance producer on July 7, 2021. The license is currently active. (Exhibit 1).

2. Prior to Mardy Gould being licensed, he formed and operated Grown with MKG, LLC and Self-Employed Health Insurance, two entities which were issued a cease-and-desist order from the Division. (Exhibit 2).

3. Mardy Gould by operating the two above stated entities prior to obtaining licensure, Mr. Gould did directly or indirectly solicit or negotiate business of insurance without licensure. (Exhibit 3-8).

4. Mardy Gould did directly or indirectly make, publish, disseminate, or circulate advertisements containing assertions, representations, or statements, which were untrue, deceptive, or misleading. (Exhibit 3-4).

5. Mardy Gould received his license only after the above stated violations had occurred. (Exhibit 9).

6. Any additional Findings of Fact 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 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 Mardy Gould. 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 58-8-1 and 58-30-143 both required Mardy Gould to obtain proper licensure before directly or indirectly, transacting any form of insurance business within the state of South Dakota. SDCL 58-33-6, 58-33A-10, and ARSD 20:06:10:04 requires that all advertisements directly or indirectly placed before the public be truthful and not misleading. 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;

The evidence indicates that Mardy Gould violated the insurance laws of South Dakota by not obtaining proper licensure before conducting any form of insurance business in the state and by directly or indirectly using misleading advertisements. The evidence further indicates that Mardy Gould used fraudulent, coercive, or dishonest practices, or demonstrated incompetence or untrustworthiness in the conduct of his or her business. Applying the law to the Findings of Fact, it is clear the Non-Resident Insurance Producer License of Mardy Gould is subject to revocation and should be revoked.

CONCLUSIONS OF LAW

1. The Division has jurisdiction over Mardy Gould 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 Mardy Gould violated SDCL §§ 58-8-1 & 58-30-143 by not obtaining proper licensure before the acts stated in the findings of fact.

4. The Division established by clear and convincing evidence that Mardy Gould violated SDCL §§ 58-33-6, 58-33A-10, and ARSD 20:06:10:04 by using misleading advertisements.

5. The Division established by clear and convincing evidence that the South Dakota Non-Resident Insurance Producer License of Mardy Gould is subject to revocation pursuant to SDCL§ 58-33-167(2) & (8).

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 Mardy Gould should be revoked.

Dated this 19 day of November, 2021.

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

CERTIFICATE OF SERVICE

I certify on November 19, 2021, at Pierre, South Dakota, a true and correct copy of this Proposed Decision was mailed to each of the parties below.

Julie McClellan
Office of Hearing Examiners

Mardy Gould
1033 Larkspur Loop
Jacksonville, FL 32259

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

STATE OF SOUTH DAKOTA
DEPARTMENT OF LABOR AND REGULATION

IN THE MATTER OF
MARDY GOULD

INS 21-21

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 December 7, 2021.

Dated this 16th day of December, 2021.

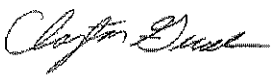
Clayton Grueb
Legal Counsel
South Dakota Division of Insurance
2330 N. Maple Ave. Suite 1
Rapid City, SD 57701
(605) 394-3396

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:

Mardy Gould
1033 Larkspur Loop
Jacksonville, FL 32259

Dated this 16th day of December, 2021 in Rapid City, South Dakota.



Clayton Grueb
Legal Counsel
South Dakota Division of Insurance
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