

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

**IN THE MATTER OF
BRADLEY MERRIMAN
LICENSEE**

)
)
)

**FINAL DECISION
INS 22-23**

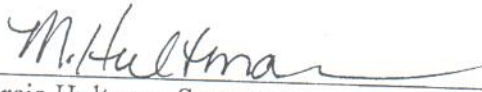
After reviewing the record and the proposed order of the Hearing Examiner in this matter,

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 October 27, 2022, is adopted in full.

IT IS FURTHER ORDERED that the South Dakota Resident Insurance Producer License of Bradley Merriman 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 16 day of November, 2022.



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
BRADLEY MERRIMAN**

**INS 22-23
PROPOSED DECISION**

This matter came for hearing before the Office of Hearing Examiners on October 27, 2022 pursuant to a Notice of Hearing issued by the South Dakota Division of Insurance ("Division") on August 19, 2022. Clayton Grueb appeared as counsel for the Division. Bradley Merriman did not appear, either in person or through counsel. The Division admitted its Exhibits 1 through 6 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 Resident Insurance Producer License of Bradley Merriman should be revoked due to failing to timely respond to the Division and 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), 58-33-66, and 58-33-68.

FINDINGS OF FACT

1. BRADLEY MERRIMAN submitted his first application for a South Dakota resident insurance producers license on November 5, 2021 (Exhibit 1);
2. BRADLEY MERRIMAN in his first application answered "yes" to questions 1A and 1B regarding criminal history. (Exhibit 1);
3. BRADLEY MERRIMAN submitted a second application for a South Dakota resident insurance producers license on November 15, 2021. (Exhibit 2);
4. BRADLEY MERRIMAN in his second application answered "no" to all questions, and due to his responses, his second application was auto approved. (Exhibit 2);
5. BRADLEY MERRIMAN's license is currently active. (Exhibit 3);
6. BRADLEY MERRIMAN initially responded to the Division, and stated that he did not need his insurance license, but failed to respond to additional Division inquiries and failed to follow the necessary steps to surrender his license. (Exhibits 4-6).

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 Resident Insurance Producer's License of BRADLEY MERRIMAN. 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 58-33-66(1) requires BRADLEY MERRIMAN 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;

The evidence indicates that BRADLEY MERRIMAN used fraudulent, coercive, or dishonest practices, or demonstrated incompetence or untrustworthiness in the conduct of his business and that he has failed to respond to the Division. Applying the law to the Findings of

Fact it is clear the Non-Resident Insurance Producer License of BRADLEY MERRIMAN is subject to revocation and should be revoked.

CONCLUSIONS OF LAW

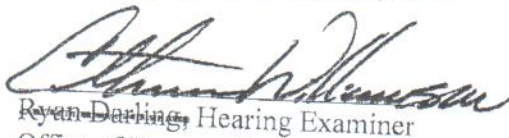
1. The Division has jurisdiction over BRADLEY MERRIMAN and the subject matter of this contested case. The Office of Hearing Examiners is authorized to conduct the hearing and issue a proposed decision pursuant to SDCL 1-26D-4.
2. The Division bears the burden of establishing the alleged statutory violations by clear and convincing evidence.
3. The Division established by clear and convincing evidence that BRADLEY MERRIMAN violated SDCL § 58-33-66.
4. The Division established by clear and convincing evidence that the South Dakota Resident Insurance Producer License of BRADLEY MERRIMAN is subject to revocation pursuant to SDCL § 58-33-167(2) and (8).
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 Non-Resident Insurance Producer License of BRADLEY MERRIMAN should be revoked.

Dated this 27th day of October, 2022.



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

CERTIFICATE OF SERVICE

I certify on October 28, 2022, at Pierre, South Dakota, a true and correct copy of this Proposed Decision was mailed to each of the parties below.


Office of Hearing Examiners

BRADLEY MERRIMAN
2105 Fox Run Trail
Brookings, SD 57006

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
BRADLEY MERRIMAN

INS 22-23

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 November 16, 2022.

Dated this 1st day of December, 2022.



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:

BRADLEY MERRIMAN
2105 Fox Run Trail
Brookings, SD 57006

Dated this 1st day of December, 2022 in Rapid City, South Dakota.



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