

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

**IN THE MATTER OF
NICHOLAS ANDREW**

)
)
)

**FINAL DECISION
INS 23-017**

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 May 3, 2023, 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 22 day of May, 2023.



Marcia Hultman, Secretary
South Dakota Department of Labor and Regulation
700 Governors Drive
Pierre, SD 57501

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

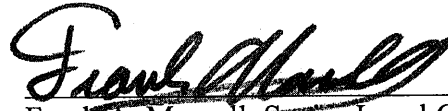
IN THE MATTER OF
NICHOLAS ANDREW

INS 22-017

**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 May 22, 2023.

Dated May 26, 2023 in Pierre, SD.



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

CERTIFICATE OF SERVICE

The undersigned does 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:

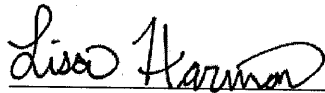
NICHOLAS ANDREW
660 Beachland Blvd Ste. 308
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NICHOLAS ANDREW
4580 PGA Blvd, Ste 209
Palm Beach Gardens, FL 33418-3920

NICHOLAS ANDREW
1010 Easter Lily Ln, Unit 201
Vero Beach, Florida 32963

NICHOLAS ANDREW
1100 Brickle Bay Drive, 55A
Miami, FL 33131

Dated May 26, 2023 in Pierre, SD.



Lisa M. Harmon, Legal Counsel
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**STATE OF SOUTH DAKOTA
OFFICE OF HEARING EXAMINERS**

**IN THE MATTER OF
NICHOLAS ANDREW**

**INS 23-017
PROPOSED DECISION**

This matter came for hearing before the Office of Hearing Examiners on May 1st, 2023 pursuant to a Notice of Hearing issued by the South Dakota Division of Insurance (“Division”) on March 17th, 2023. Frank Marnell appeared as counsel for the Division with a witness, Gavin Munson. NICHOLAS ANDREW did not appear, either in person or through counsel. The Division made a motion for summary disposition of this case, admitting its Exhibits 1 through 6 into evidence, and asking that the Hearing Examiner enter these Proposed Findings of Fact, Conclusions of Law, and Proposed Decision as a default disposition to this contested case. That motion granted, the Hearing Examiner enters this Proposed Decision.

ISSUE

Whether the Non-Resident Insurance Producer License of NICHOLAS ANDREW should be revoked due to failing to timely respond to the Division; failing to timely report administrative actions to the Division; for demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere; and for having administrative actions in other states resulting in license revocations in violation of SDCL 58-30-167(2), (8), and (9), 58-30-193, 58-33-66, 58-33-68 and 58-30-193.

FINDINGS OF FACT

1. NICHOLAS ANDREW was licensed by the Division as an insurance producer on May 28th, 2019. The license is currently active. (Exhibit 1).
2. NICHOLAS ANDREW was the subject of administrative actions in other jurisdictions:
 - a. State of Washington, June 6th, 2022, revoked NICHOLAS ANDREW’s due to failing to report other state actions. (Exhibit 2);
 - b. State of California, July 30th, 2022, revoked NICHOLAS ANDREW’s license due to failing to report other state actions. (Exhibit 3);
 - c. State of Louisiana, December 5th, 2022, revoked NICHOLAS ANDREW’s license due to failing to report other state actions. (Exhibit 4);
3. NICHOLAS ANDREW did not report the administrative actions to the Division.
4. The Division sent inquiries to NICHOLAS ANDREW at the address of record regarding licensure matters. (Exhibits 5-6).
5. NICHOLAS ANDREW did not respond to the Division’s inquiries. (Exhibits 5-6).

6. USAA responded stating that NICHOLAS ANDREW does not work there anymore. (Exhibit 5).
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 Insurance Producer's License of NICHOLAS ANDREW. 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 58-30-193 states that "[A]n insurance producer shall report to the director any administrative action taken against the insurance producer in another jurisdiction... within thirty days of the final disposition of the matter. This report shall include a copy of the order, consent order, or other relevant legal documents." SDCL 58-33-66(1) requires NICHOLAS ANDREW 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;

- (9) Having an insurance producer license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory;

...

The evidence indicates that NICHOLAS ANDREW violated the insurance laws of other jurisdictions and failed to report those actions revoking their licenses in those jurisdictions. During the Division's investigation, NICHOLAS ANDREW failed to respond to Division inquiries regarding the action. The evidence further indicates that NICHOLAS ANDREW used fraudulent, coercive, or dishonest practices, or demonstrated incompetence or untrustworthiness in the conduct of business. Applying the law to the Findings of Fact it is clear the Insurance Producer License of NICHOLAS ANDREW is subject to revocation and should be revoked.

CONCLUSIONS OF LAW

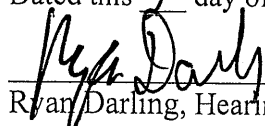
1. The Division has jurisdiction over NICHOLAS ANDREW and the subject matter of this contested case. The Office of Hearing Examiners is authorized to conduct the hearing and issue a proposed decision pursuant to SDCL 1-26D-4.
2. The Division bears the burden of establishing the alleged statutory violations by clear and convincing evidence.
3. The Division established by clear and convincing evidence that NICHOLAS ANDREW violated SDCL 58-30-193.
4. The Division established by clear and convincing evidence that NICHOLAS ANDREW violated SDCL 58-33-66.
5. The Division established by clear and convincing evidence that the South Dakota Non-Resident Insurance Producer License of NICHOLAS ANDREW is subject to revocation pursuant to SDCL 58-33-167(2), (8) and (9).
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 NICHOLAS ANDREW should be revoked.

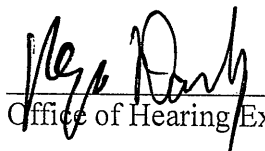
Dated this 3 day of May, 2023.



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

CERTIFICATE OF SERVICE

I certify on May 3, 2023, 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

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