

STATE OF SOUTH DAKOTA  
DEPARTMENT OF LABOR AND REGULATION

IN THE MATTER OF  
CARLOS HOFER

INS 24-51

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 January 2, 2025.

Dated this 7th day of January, 2025.



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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:

CARLOS HOFER  
4601 S GALWAY AVE  
SIOUX FALLS, SD 57106

CARLOS HOFER  
105 E 5TH ST  
PO BOX 190  
FREEMAN, SD 57029

And via first class mail to the following interested parties"

Dakota Farm Mutual Insurance Company  
402 1st Street South  
Brandt, SD 57218-4012

Grinnell Mutual Reinsurance Company  
4215 Highway 146  
Grinnell, IA 50112-0790

GuideOne Specialty Insurance Company  
1111 Ashworth Rd  
W Des Moines, IA 50265-3538

GuideOne Insurance Company  
1111 Ashworth Rd  
W Des Moines, IA 50265-3538

GuideOne Elite Insurance Company  
1111 Ashworth Road  
W Des Moines, IA 50265-3538

Dated this 7th day of January, 2025 in Rapid City, South Dakota.



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

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

**IN THE MATTER OF  
CARLOS HOFER**

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**FINAL DECISION  
INS 24-51**

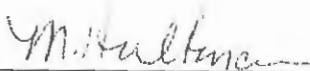
After reviewing the record and the proposed order of the Hearing Examiner in this matter,

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 December 19, 2024 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 27 day of January, 2025.

  
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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  
CARLOS HOFER**

**INS 24-51  
PROPOSED DECISION**

This matter came for hearing before the Office of Hearing Examiners on December 12, 2024, pursuant to an Amended Notice of Hearing issued by the South Dakota Division of Insurance ("Division") on November 14, 2024. Clayton Grueb appeared as counsel for the Division. CARLOS HOFER did not appear, either in person or through counsel. The Division called one witness, Haelly Pease, admitted its Exhibits 1 through 6 into evidence. After hearing the testimony and reviewing the exhibits, the Hearing Examiner now makes her proposed decision.

**ISSUE**

Whether the Resident Insurance Producer License of CARLOS HOFER should be revoked due to failing to timely respond to the Division; for withholding, misappropriating, or converting any monies or properties received in the course of doing insurance business; and for demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere, in violation of SDCL §§ 58-30-167(2), (4), and (8), 58-33-66, and 58-33-68.

**FINDINGS OF FACT**

1. CARLOS HOFER was licensed by the Division as an insurance producer and the license is currently active. (Exhibit 1).
2. On August 22, 2023, the Shawnee County, Kansas District Court entered a Final Order and Judgment of Liquidation of MutualAid eXchange in Kansas Case No. 2023 CV 494 (the "Liquidation Order"). The Liquidation Order appointed the Commissioner of Insurance for the State of Kansas as Liquidator of MutualAid eXchange ("MAX"). Pursuant to the Liquidation Order, the Kansas Department of Insurance took action to recover unearned premiums, including payments previously made to CARLOS HOFFER. (Exhibit 2).
3. CARLOS HOFER initially failed to return advanced unearned premiums to that Liquidator. (Exhibit 2).
4. The Division sent inquiries to CARLOS HOFER at the address of record regarding the funds owed. (Exhibit 3-5).
5. CARLOS HOFER did not timely respond to the Division's inquiries nor did he supply the documents requested by the Division. More than twenty (20) days after



the Division's initial written inquiry and several days after the Division's second written inquiry, CARLOS HOFER did call the Division and spoke to the compliance agent assigned to his file. (Exhibit 3-5).

6. After this matter was scheduled for a hearing, CARLOS HOFER did respond and did return the unearned premium to the Kansas liquidator for the MutualAid Exchange estate. (Exhibit 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 CARLOS HOFER. 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 CARLOS HOFER 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;
- (4) Withholding, misappropriating, or converting any monies or properties received in the course of doing insurance business;
- (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 prior to May 6, 2024, pursuant to the Liquidation Order, the Kansas Department of Insurance contacted CARLOS HOFER in an attempt to recover unearned premiums paid by MAX. CARLOS HOFFER initially withheld monies received in the course of doing insurance business but he did return those funds in October 2024, prior to the hearing in this matter.

The evidence further indicates that CARLOS HOFER used fraudulent, coercive, or dishonest practices, or demonstrated incompetence or untrustworthiness in the conduct of his business and that he failed to timely and fully respond to the Division.

Applying the law to the Findings of Fact it is clear the Resident Insurance Producer License of CARLOS HOFER is subject to revocation and should be revoked.

### **CONCLUSIONS OF LAW**

1. The Division has jurisdiction over CARLOS HOFER 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 CARLOS HOFER violated SDCL § 58-33-66.
4. The Division did not establish by clear and convincing evidence that CARLOS HOFER violated SDCL § 58-33-167(4) since the monies that were in question in this matter were returned prior to the hearing.
5. The Division established by clear and convincing evidence that the South Dakota Resident Insurance Producer License of CARLOS HOFER is subject to revocation pursuant to SDCL § 58-33-167(2) and (8).
6. Any additional Conclusions of Law included in the Reasoning section of this decision are incorporated herein by reference.

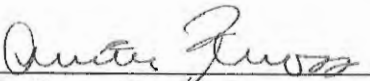
7. To the extent any of the foregoing are improperly designated and are instead findings of fact, they are hereby redesignated and incorporated herein as Findings of Fact.

Based on the above Findings of Fact, Reasoning, and Conclusions of Law, the Hearing Examiner enters the following:

### PROPOSED DECISION

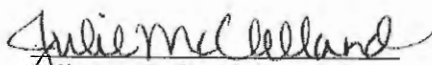
The South Dakota Resident Insurance Producer License of CARLOS HOFER should be revoked.

Dated this 19<sup>th</sup> day of December, 2024.

  
Anita Fuoss, Hearing Examiner  
Office of Hearing Examiners  
523 East Capitol  
Pierre, SD 57501

### CERTIFICATE OF SERVICE

I certify on December 19, 2024, at Pierre, South Dakota, a true and correct copy of this Proposed Decision was mailed to each of the parties below.

  
Julie McClelland, Legal Secretary  
Office of Hearing Examiners

CARLOS HOFER  
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SIOUX FALLS, SD 57106

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