

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

**IN THE MATTER OF
U.S. CONTRACTOR'S TRUST**

)
) **FINAL DECISION**
) **INS 13-20**

After reviewing the record and the proposed decision 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 August 29, 2013, is adopted in full.

IT IS FURTHER ORDERED that the Cease and Desist Order issued June 11, 2013 in the matter of U.S. Contractor's Trust shall become final.

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 5th day of September 2013



Pamela S. Roberts, 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
U.S. CONTRACTOR'S TRUST**

**PROPOSED ORDER
DLR/INSURANCE 13-20**

An administrative hearing in the above matter was held on June 25, 2013. U.S. Contractor's Trust (hereinafter sometimes referred to as "U.S.") failed to appear. Mallori Barnett appeared as counsel for the Division of Insurance (hereinafter sometimes referred to as "Division"). The matter was tape recorded. There is no written transcript of the tape; therefore, no citation to page number can be included. Exhibits 1 through 4 were admitted and will be denoted by EX followed by the appropriate number.

ISSUE

Whether there is cause to not make permanent the Temporary Order to Cease and Desist dated June 11, 2013 issued in the matter of U.S. Contractor's Trust.

FINDINGS OF FACT

I.

Heather Lang, Compliance Agent with the Division of Insurance, learned that the Division was receiving numerous complaints from consumers stating that they had purchased coverage with U.S. Contractor's Trust and have not received any payment on claims. The consumers also indicated they were having issues contacting U.S. Contractor's Trust.

II.

Ms. Lang performed a search in the Division's databases for U.S. Contractor's Trust and there was no information matching the same. If the company had a certificate of authority in South Dakota the company would have appeared in the search Ms. Lang performed. (EX 1)

III.

The Division ascertained that U.S. Contractor's Trust is not licensed in the State of South Dakota. (EX 1)

IV.

The Division sent U.S. Contractor's Trust a Temporary Order to Cease and Desist along with the Notice of Hearing on June 11, 2013.

V.

No representative on behalf of U.S. Contractor's Trust appeared at the hearing.

VI.

On August 6, 2010 the State of Oklahoma issued a Final Order to Cease and Desist in Oklahoma against U.S. Contractor's Trust for providing non-existent or unauthorized insurance to Oklahoma consumers. (EX 2)

VII.

The State of California issued an Order to Cease and Desist; Order to Show Cause; and Notice of Right to Hearing against U.S. Contractor's Trust dated July 14, 2012 for transacting unlicensed insurance business in California. It is unclear from the evidence presented whether the Order became final or not. (EX 3)

VIII.

The State of Florida issued a Cease and Desist Order against U.S. Contractor's Trust on March 20, 2012 for engaging in the unlawful transaction of insurance and unfair or deceptive acts in Florida. It is unclear from the evidence presented whether the Order became final or not. (EX 4)

IX.

Any additional Findings of Fact included in the Reasoning section of this decision are incorporated herein by reference.

X.

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 Temporary Order to Cease and Desist issued on June 11, 2013 by the Division of Insurance against U.S. Contractor's Trust. The facts are set out in the Findings of Fact and will not be repeated here.

In South Dakota, pursuant to SDCL 58-6-1, a certificate of authority is required for the transaction of insurance business, and as such, no person may act as an insurer and no insurer or its insurance producers, attorneys, subscribers, or representatives may directly transact insurance in this state except as authorized by a subsisting certificate of authority issued to the insurer by the director. Investigation by the Division showed U.S. did not possess a Certificate of Authority.

Furthermore, it is a Class II misdemeanor in South Dakota to be an unauthorized insurer. SDCL 58-8-1 states:

No person may in this state, directly or indirectly, act as insurance producer for, or otherwise represent any insurer not then authorized to transact insurance business in this state, in the solicitation, negotiation, or effectuation of insurance or of annuity contracts, inspection of risks, fixing of rates, investigation or adjustment of losses, collection of premiums, or in any other manner in the transaction of insurance business with respect to subjects of insurance resident, located or to be performed in this state. Any violation of this section is a Class 2 misdemeanor.

In addition to the South Dakota action the Division has clearly shown that there has been at least three other states which have taken administrative action against U.S. Contractor's Trust. One of those included a Final Cease and Desist Order. The Division met their burden in showing that U.S. Contractor's Trust has violated the insurance regulatory laws of South Dakota.

It is the Proposed Order of this hearing examiner that the Temporary Cease and Desist Order in the matter of U.S. Contractor's Trust should, in its entirety, be made permanent based on the facts that U.S. Contractor's Trust is operating illegally in the State of South Dakota.

CONCLUSIONS OF LAW

I.

The Division of Insurance has jurisdiction over the parties and subject matter of this hearing pursuant to Title 58 of the South Dakota Codified Laws. The Office of Hearing Examiners is authorized to conduct the hearing and issue a proposed decision pursuant to the provisions of SDCL 1-26D-4.

II.

The Division of Insurance bears the burden of establishing the alleged statutory violations.

III.

The Division of Insurance met their burden in establishing that U.S. Contractor's Trust was transacting business in the State of South Dakota without first receiving licensure in violation of SDCL §§ 58-6-1 and 58-8-1.

IV.

The Division of Insurance met their burden in establishing that U.S. Contractor's Trust is unlawfully negotiating and selling insurance, and collecting premiums in South Dakota in violation of SDCL §§ 58-6-1.

V.

Any additional Conclusions of Law included in the Reasoning section of this decision are incorporated herein by reference.

VI.

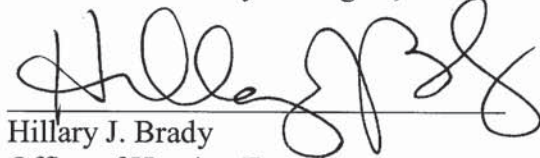
To the extent any of the foregoing are improperly designated and are instead Findings of Fact, they are hereby redesignated and incorporated herein as Findings of Fact.

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

PROPOSED DECISION

The Temporary Cease and Desist Order regarding U.S. Contractor's Trust signed and dated June 11, 2013 by Merle Scheiber, Director of the South Dakota Division of Insurance should, in its entirety, be made permanent.

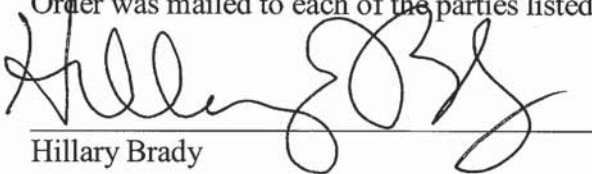
Dated this 29th day of August, 2013



Hillary J. Brady
Office of Hearing Examiners
523 E. Capitol
Pierre, South Dakota 57501

CERTIFICATE OF SERVICE

I certify that on August 29, 2013, at Pierre, South Dakota, a true and correct copy of this Proposed Order was mailed to each of the parties listed below.



Hillary Brady

U.S. CONTRACTORS TRUST
PO BOX 74
BASKINGS RIDGE NJ 07920

MALLORI BARNETT
ATTORNEY FOR THE DEPARTMENT
445 E CAPITOL AVE
PIERRE, SD 57501

BEFORE THE DIVISION OF INSURANCE
DEPARTMENT OF LABOR AND REGULATION
STATE OF SOUTH DAKOTA

IN THE MATTER OF	)	TEMPORARY ORDER TO CEASE
U.S. CONTRACTOR'S TRUST	)	AND DESIST AND NOTICE
	)	OF HEARING

The Director of the South Dakota Division of Insurance ("Division"), pursuant to the authority of SDCL §§ 58-1-1 *et seq.*, 58-4-5, and 58-4-7, issues this Temporary Order to Cease and Desist and Notice of Hearing.

ASSERTION OF FACTS

- 1) The Division has received evidence that U.S. CONTRACTOR'S TRUST (USCT), formerly known as National Association of Business Leadership (NABL) has transacted the business of insurance in South Dakota;
- 2) USCT has sold, solicited, or negotiated the business of insurance without receiving licensure from the Division;
- 3) USCT's purported address is PO Box 74, Baskings Ridge, NJ 07936;
- 4) USCT has been the subject of at least three cease and desist orders, from the states of Oklahoma, California, and Florida;
- 5) The above action is in violation of SDCL §58-6-1.

CONCLUSIONS OF LAW

- 1) The Director and the Division have jurisdiction over USCT and the subject matter of this proceeding pursuant to SDCL §§ 58-1-1 *et seq.*, 58-4-5 and 58-4-7;
- 2) The Director and the Division have authority pursuant to SDCL §§ 58-4-5 and 58-4-7 to initiate legal proceedings for the enforcement of any provision in SDCL Title 58;
- 3) USCT has transacted business in South Dakota without first receiving licensure in violation of SDCL § 58-6-1;

TEMPORARY ORDER TO CEASE AND DESIST

Therefore, it is hereby ORDERED, pursuant to SDCL § 58-4-7, that USCT temporarily cease and desist from further selling, soliciting, or marketing insurance or from advertising the availability of insurance in the State of South Dakota, or from effecting any further contracts of

insurance as of the date of this Order or otherwise act in the manner of an unauthorized insurer until the hearing as noticed below, and it is further

ORDERED that USCT shall continue to remain responsible for any and all claims made by current insureds; and it is further

ORDERED that USCT is to refrain from doing or proposing to do any insurance business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of the statutes or other laws of the State of South Dakota; and it is further

ORDERED that this Order is binding on USCT, its agents, affiliates, employees, and/or representatives, both current and successor, whether named or unnamed herein; and it is further

ORDERED that this Order is effective immediately upon the date of the Director's signature below and shall continue in full force and effect until a hearing can be held to determine if this Temporary Order to Cease and Desist should become a Permanent Order to Cease and Desist.

NOTICE OF HEARING

It is hereby ORDERED that a contested case hearing before the Office of Hearing Examiners is set for 8:30 a.m. CST, on June 25, 2013, at 523 E. Capitol Avenue, Pierre, South Dakota, 57501, to show cause why this Temporary Order to Cease and Desist should not be made permanent; and it is further

This is an adversary proceeding and any interested party has a right to be present at the hearing, to be represented by an attorney, and that these and other due process rights will be forfeited if they are not exercised at the hearing. A default order will be issued against any party not appearing at the hearing. Any action taken at the hearing may be appealed to the Circuit Court and the Supreme Court pursuant to SDCL Ch. 1-26.

Handicapped persons who wish to attend should contact the Division so the hearing can be held in a place readily accessible to them.

If the amount in controversy exceeds \$2,500 or if a property right may be terminated, any party to a contested case may request the use of the Office of Hearing Examiners by giving notice.

A person who is not an original party to this contested case and whose pecuniary interests would be directly affected by the Division's Order made upon the hearing may become a party to the hearing by intervention if timely application therefore is made to the Division, pursuant to SDCL § 1-26-17.1.

Dated at Pierre, South Dakota this 11th day of June, 2013.



Merle Scheiber, Director
South Dakota Division of Insurance