SOUTH DAKOTA
DEPARTMENT OF LABOR AND REGULATION
DIVISION OF INSURANCE

IN THE MATTER OF	)	
THE INSURANCE PRODUCER	)	**FINAL DECISION**
LICENSE APPLICATION OF	)	**INS 22-20**
GERALD LYNCH	)	
	)	

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 August 24, 2023, is adopted in full.

IT IS FURTHER ORDERED that GERALD LYNCH's application to the Division of Insurance is denied.

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 25 day of September, 2023.

M. Hultman

Marcia Hultman, Secretary
South Dakota Department of Labor and Regulation
123 W. Missouri Ave.
Pierre, SD 57501

STATE OF SOUTH DAKOTA
DEPARTMENT OF LABOR AND REGULATION

IN THE MATTER OF
GERALD LYNCH

INS 22-20

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 September 25, 2023.

Dated this 28th day of September, 2023.

Lisa M. Harmon
Legal Counsel
South Dakota Division of Insurance
124 S. Euclid Ave., 2nd Floor
Pierre, SD 57501
(605) 773-3563

CERTIFICATE OF SERVICE

I, Lisa Harmon, 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, U.S. First Class Mail, and electronic mail thereon, to the following:

GERALD LYNCH
1917 Belgium Drive
Plano, TX 75025
glynch@amerisaveinsuranceagency.com

Dated this 28th day of September, 2023 in Pierre, South Dakota.

Lisa M. Harmon
Legal Counsel
South Dakota Division of Insurance
124 S. Euclid Ave., 2nd Floor
Pierre, SD 57501
(605) 773-3563

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

IN THE MATTER OF	)	
THE INSURANCE PRODUCER	)	**INS 22-20**
LICENSE APPLICATION OF	)	**PROPOSED DECISION**
GERALD LYNCH	)	

An administrative hearing was held in person at the Foss Building in Pierre, SD on this matter on May 24, 2023, pursuant to a Notice of Hearing issued by the South Dakota Division of Insurance ("Division") on April 6, 2023. Attorney Frank A. Marnell appeared as a representative for the Division. The Division had a witness, Haelly Pease. Gerald Lynch ("Lynch") did not appear at the hearing. Based on Lynch's failure to appear, the Division made a motion for summary disposition. The Division admitted its Exhibits 1 through 20 into the record and supplied this Proposed Decision for the Hearing Examiner's consideration.

ISSUE

Whether the decision by the Division to deny Lynch's non-resident insurance producer license application was reasonable pursuant to SDCL 58-30-168?

FINDINGS OF FACT

1. On or about May 9, 2022, Lynch applied for an insurance producer license in South Dakota. (Exhibit 1).

2. Lynch answer "yes" to questions 1B and 1B1 on his application, stating that he has a felony conviction and an 18 U.S.C. 1033 waiver on his record. (Exhibits 1 and 2).

3. Lynch does not have a valid 18 U.S.C 1033 waiver on record, he received a letter from Texas Department of Insurance stating he is not required to obtain a 18 U.S.C 1033 in the State of Texas. (Exhibits 3 through 5).

4. Lynch was indicted on two counts of "Fraudulent Use Possession of Identifying Information" on May 28, 2008. (Exhibit 4).

5. Lynch plead Guilty and received an Order of Deferred Adjudication which included: Probation for 2 years, 80 hours of community service, payment of fines and costs, and more. Lynch was discharged from Community Supervision in 2017. (Exhibit 4).

6. On November 13, 2018 denied Lynch's application for licensure as a nonresident insurance producer in South Dakota. (Exhibit 6)

7. On the application, Lynch answered "no" to question 2 on his application, indicating he did not have administrative actions taken against him. (Exhibit 1).

8. Lynch has had administrative actions taken against him in multiple states in the past, including:

    a. 2019 Louisiana license revocation (Exhibit 7);
    b. 2020 California license denial (Exhibit 8);
    c. 2021 Illinois license denial (Exhibit 9);
    d. 2021 Wisconsin monetary penalty (Exhibit 10);
    e. 2021 Wisconsin license denial (Exhibit 11); and
    f. 2022 California license denial (Exhibit 12).

9. Since the time of application, Lynch has been the subject of administrative actions as follows:

    a. 2022 New York license revocation (Exhibit 16); and
    b. 2023 Indiana license denial (Exhibit 17).

10. Lynch was previously denied a South Dakota insurance producer license in 2018 for failing to provide information, failing to respond to inquiries, for providing an incomplete application, and for not being in good standing pursuant to ARSD 20:06:01:03(4) and (6). The 2018 denial was not appealed. (Exhibit 6)

11. Lynch supplied information regarding child support obligations. (Exhibit 18)

12. Because the 2022 application had no supporting documentation, the Division wrote to Lynch twice regarding his South Dakota license application. (Exhibit 13 and 14)

13. As with the 2018 application, Lynch never responded to the Division's questions regarding his 2022 application.

14. The Division denied Lynch's 2022 application on February 24, 2023. (Exhibit 19)

15. Despite failing to respond to concerns on his 2018 and 2022 applications prior to denial, Lynch filed a timely appeal of the Division's determination to deny his 2022 application. (Exhibit 20)

16. A hearing on this matter was scheduled for May 24, 2023.

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

18. 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 Lynch to determine the reasonableness of the Division's decision to deny his application for an insurance producer license. As this matter deals with the denial of a professional license, rather than revocation of an existing license, the general burden of proof for administrative hearings, preponderance of the evidence, will apply. *In re Jarman*, 2015 S.D. 8, ¶ 15, 860 N.W.2d 1, 7-8; *In re Setliff*, 2002 S.D. 58, ¶ 13, 645 N.W.2d 601, 605 (other citations omitted). "'Preponderance of the evidence' is defined as 'the greater weight of evidence.'" *Pieper v. Pieper*, 2013 S.D. 98, ¶ 22, 841 N.W.2d 781, 787 (quoting *L.S. v. C.T.*, 2009 S.D. 2, ¶ 23, 760 N.W.2d 145, 151). Pursuant to SDCL 58-30-168, the review is to "determine the reasonableness of the director's action." Therefore, it is the Division's burden to show by the preponderance of the evidence that the agency was reasonable in its decision to deny Lynch's license application. *Id.*; *Jarman*, 2015 S.D. at ¶ 15, 860 N.W.2d at 7-8 (other citations omitted).

In deciding to deny a license, the Division looks to SDCL 58-30-167, providing in pertinent part:

> ...The director may... refuse to issue or renew an insurance producer's license or may accept a monetary penalty in accordance with § 58-4-28.1 or any combination thereof, for any one or more of the following causes:
>
> (1) Providing incorrect, misleading, incomplete, or materially untrue information in the license application;
>
> (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 Division has shown that Lynch did not follow the instructions on the application in order to provide correct responses. When the Division attempted to contact Lynch about his responses, no response was received. Lynch has numerous actions taken against him by other states which were not disclosed on the application or explained. Those actions deny or revoke licenses held in those jurisdictions for failing to respond, failing to report actions, and failing to disclose information on license applications. These violations matches Lynch's South Dakota 2018 and 2022 applications. His record demonstrates the use of fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the

conduct of business in this state or elsewhere. Only after denying the license application did Lynch communicate with the Division, and then only to appeal the denial decision, rather than answer the Division's questions about the application.

Consequently, there are four provisions of the law that indicate Lynch request for a license may be denied. Applying the law to the Findings of Fact, it is not unreasonable for the Division to deny Lynch's resident insurance producer application based on the evidence and testimony presented.

CONCLUSIONS OF LAW

1. The Division has jurisdiction over Lynch 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 that its denial of Lynch insurance application was reasonable by a preponderance of the evidence.

3. The Division established by a preponderance of the evidence that SDCL 58-30-167(1),(2), (8) and (9) provide grounds for the denial of Lynch's license application.

4. These violations permit the Director of the Division of Insurance to refuse to issue an insurance producer license pursuant to the provisions of SDCL 58-30-167(1), (2), (8), and (9).

5. The Division established by a preponderance of the evidence that its denial of Lynch's insurance producer license application was reasonable.

6. Any Conclusions of Law 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 Secretary of the Department of Labor and Regulation enters the following:

PROPOSED DECISION

The decision by the Division of Insurance to deny Lynch's insurance producer license application was reasonable, supported by the preponderance of the evidence, and should be upheld.

Dated this 24 day of August, 2023.

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

CERTIFICATE OF SERVICE

I certify that on this 24 day of Aug, 2023, 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

Gerald Lynch
1917 Belgium Drive
Plano, TX 75025

Frank Marnell, Senior Legal Counsel
South Dakota Division of Insurance
124 S. Euclid Ave., 2nd Floor
Pierre, SD 57501