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BEFORE THE
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE CEMETERY AND FUNERAL BUREAU
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **DANIEL PAUL GALLIGAN** Singing Hills Memorial Park 2800 Dehesa Road El Cajon, CA 92019 <u>Mailing Address:</u> Singing Hills Memorial Park 858 3rd Avenue Chula Vista, CA 91911 Cemetery Broker License No. CEB 1270 Singing Hills Memorial Park 858 3rd Avenue, #115 Chula Vista, CA 91911 Cemetery Manager License No. CEM 210 Glen Abbey Memorial Park 3838 Bonita Road Bonita, CA 91902 Funeral Director License No. FDR 8 Respondent.	Case Nos. A1 2012 184 A1 2012 388 **A C C U S A T I O N**

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Complainant alleges:

PARTIES

1. Lisa M. Moore (Complainant) brings this Accusation solely in her official capacity as the Bureau Chief of the Cemetery and Funeral Bureau, Department of Consumer Affairs.[1]

2. On or about February 6, 1997, the Cemetery and Funeral Bureau (Bureau) issued Funeral Director License Number FDR 8 to Daniel Paul Galligan (Respondent). The Funeral Director License expired on February 28, 2010, and has not been renewed.

3. On or about September 17, 2004, the Bureau issued Cemetery Manager License Number CEM 210 to Respondent. The Cemetery Manager License was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2013, unless renewed.

4. On or about May 19, 2011, the Bureau issued Cemetery Broker License Number CEB 1270 to Respondent. The Cemetery Broker License was in full force and effect at all times relevant to the charges brought herein and will expire on June 30, 2013, unless renewed.

JURISDICTION

5. This Accusation is brought before the Director of Consumer Affairs (Director) for the Cemetery and Funeral Bureau, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

6. Section 118 of the Code states:

". . . .

"(b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its

[1] Effective January 1, 1996, the Department of Consumer Affairs succeeded to, and was vested with, all the duties, powers, purpose, responsibilities and jurisdiction of the Cemetery Board and the Board of Funeral Directors and Embalmers, and consolidated the functions into the Cemetery and Funeral Programs. Effective January 1, 2001, the regulatory agency is designated as the Cemetery and Funeral Bureau.

authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.

"(c) As used in this section, 'board' includes an individual who is authorized by any provision of this code to issue, suspend, or revoke a license, and 'license' includes 'certificate,' 'registration,' and 'permit.'"

7. Section 7725.2 of the Code states:

"Except as otherwise provided in this article, a license that has expired may be renewed at any time within five years after its expiration on filing of an application for renewal on a form prescribed by the bureau and payment of all accrued and unpaid renewal fees. If the license is not renewed within 30 days after its expiration the licensee, as a condition precedent to renewal, shall also pay the delinquency fee prescribed by this chapter. Renewal under this section shall be effective on the date on which the application is filed, on the date on which all renewal fees are paid, or on the date on which the delinquency fee, if any, is paid, whichever last occurs. If so renewed, the license shall continue in effect through the date provided in Section 7725 that next occurs after the effective date of the renewal, when it shall expire if it is not again renewed.

"If a license is not renewed within one year following its expiration, the bureau may require as a condition of renewal that the holder of the license pass an examination on the appropriate subjects provided by this chapter."

STATUTORY PROVISIONS

8. Code section 9725 states:

"Upon grounds provided in this article [Article 6 (commencing with section 9725)], and the other articles of this act, the license of any cemetery licensee and the certificate of authority of any cemetery corporation may be revoked or suspended in accordance with the provisions of this article."

9. Code section 9727 states:

"The bureau may suspend or revoke the license of any cemetery licensee who, within the immediately preceding three years, has done any of the following:

"(a) Been convicted of a crime substantially related to the qualifications, functions and duties of such licensee. The record of conviction, or a certified copy thereof, shall be conclusive evidence of such conviction.

". . . ."

10. Code section 9727.2 states:

"A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this article. The bureau may order the license suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment."

11. Code section 7686 states:

"The bureau may suspend or revoke licenses, after proper notice and hearing to the licensee, if the licensee has been found guilty by the bureau of any of the acts or omissions constituting grounds for disciplinary action. The proceedings under this article shall be conducted in accordance with Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code, and the bureau shall have all the powers granted therein."

12. Code section 7691 states:

"Conviction of a crime substantially related to the qualifications, functions and duties of the license holder in question constitutes a ground for disciplinary action. The record of conviction, or a certified copy thereof, shall be conclusive evidence of such conviction."

13. Code section 7709 states:

"A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this article. The bureau may order the license suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made

suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment."

14. Section 482 of the Code states:

"Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

". . . .

"(b) Considering suspension or revocation of a license under Section 490.

"Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee."

15. Section 490 of the Code states:

"(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

"(b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.

"(c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

"(d) The Legislature hereby finds and declares that the application of this section has been made unclear by the holding in *Petropoulos* v. *Department of Real Estate* (2006) 142 Cal.App.4th

554, and that the holding in that case has placed a significant number of statutes and regulations in question, resulting in potential harm to the consumers of California from licensees who have been convicted of crimes. Therefore, the Legislature finds and declares that this section establishes an independent basis for a board to impose discipline upon a licensee, and that the amendments to this section made by Senate Bill 797 of the 2007 -08 Regular Session do not constitute a change to, but rather are declaratory of, existing law."

16. Section 493 of the Code states:

"Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

"As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'"

REGULATORY PROVISIONS

17. California Code of Regulations, Title 16, Section 2330, states:

"For the purposes of denial, suspension or revocation of a license pursuant to Division 1.5 (commencing with Section 475) of the Code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a cemetery broker or salesperson if to a substantial degree it evidences present or potential unfitness of a cemetery broker or salesperson to perform the functions authorized by his or her license in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

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"(a) Conviction of a crime involving fiscal dishonesty.

"(b) Any violation of the provisions of Chapter 19, Division 3 of the Code."

18. California Code of Regulations, Title 16, Section 2331, subdivision (b), states:

"(b) When considering the suspension or revocation of a license on the ground that a cemetery broker or salesperson has been convicted of a crime, the bureau, in evaluating the rehabilitation of such person and his or her eligibility for a license, will consider the following criteria:

"(1) Nature and severity of the act(s) or offense(s).

"(2) Total criminal record.

"(3) The time that has elapsed since commission of the act(s) or offense(s).

"(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

"(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

"(6) Evidence, if any, of rehabilitation submitted by the licensee."

19. California Code of Regulations, Title 16, Section 1252, states:

"For the purposes of denial, suspension, or revocation of a license pursuant to Division 1.5 (commencing with Section 475) of the Business and Professions Code, a crime or act shall be considered to be substantially related to the qualifications, functions or duties of a licensed funeral establishment, licensed funeral director, or licensed embalmer if to a substantial degree it evidences present or potential unfitness of a licensed funeral establishment, licensed funeral director, or licensed embalmer to perform the functions authorized by his license in a manner consistent with the public health, safety, or welfare. Such crimes or acts shall include but not be limited to those involving the following:

"(a) Conviction of a crime involving fiscal dishonesty.

"(b) Any violation of the provisions of Chapter 12, Division 3 of the Business and Professions Code."

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20. California Code of Regulations, Title 16, Section 1253.5, subdivision (a), states:

"(a) When considering the suspension or revocation of a license on the ground that a licensed funeral establishment, licensed funeral director, or licensed embalmer has been convicted of a crime, the bureau, in evaluating the rehabilitation of such person and his or her eligibility for a license, will consider the following criteria:

"(1) Nature and severity of the act(s) or offense(s).

"(2) Total criminal record.

"(3) The time that has elapsed since commission of the act(s) or offense(s).

"(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

"(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

"(6) Evidence, if any, of rehabilitation submitted by the licensee."

COST RECOVERY

21. Code section 125.3, subdivision (a), states, in pertinent part:

"Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department . . . . upon request of the entity bringing the proceedings may request the administrative law judge may direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case."

CAUSE FOR DISCIPLINE

(June 7, 2011, Criminal Conviction for Grand Theft)

22. Respondent is subject to disciplinary action under sections 9727, subdivision (a), 7691 and 490 of the Code, in that he was convicted of a crime substantially related to the qualifications, functions or duties of a licensed funeral director, cemetery broker and cemetery manager. The circumstances are as follows:

A. On or about June 7, 2011, in a criminal proceeding entitled *People of the State of California v. Daniel Paul Galligan*, in the Superior Court of California, County of San Diego,

Case No. SCS245175, Respondent was convicted on his plea of guilty of violating Penal Code section 487, subdivision (a) (Grand Theft of Personal Property), a felony.

B. As a result of the conviction, on or about November 10, 2011, Respondent was sentenced to jail for one year, to formal probation for 3 years, and was ordered to pay restitution, as well as fines and fees.

C. The facts that led to the conviction are that on or about and between June 28, 2007, and July 1, 2009, Respondent stole money from Glen Abbey Memorial Park and Mortuary, located in San Diego, California, while acting as its Funeral Director and Cemetery Broker. Respondent stole approximately $21,328 from Glen Abbey Memorial Park and Mortuary.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Director of Consumer Affairs issue a decision:

1. Revoking or suspending Cemetery Broker License Number CEB 1270, issued to Daniel Paul Galligan;

2. Revoking or suspending Cemetery Manager License Number CEM 210, issued to Daniel Paul Galligan;

3. Revoking or suspending Funeral Director License Number FDR 8, issued to Daniel Paul Galligan;

4. Ordering Daniel Paul Galligan to pay the Cemetery and Funeral Bureau the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

5. Taking such other and further action as deemed necessary and proper.

DATED: May 10, 2013

Lisa M. Moore

LISA M. MOORE
Bureau Chief
Cemetery and Funeral Bureau
Department of Consumer Affairs
State of California
Complainant

SD2012704651