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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: **EVERGREEN CEMETERY ASSOCIATION, aka EVERGREEN CEMETERY** **Buck Kamphausen, RMO** **Edward Wilkes, Vice President** **Joshua Voss, Vice President/Secretary** **6450 Camden Street** **Oakland, CA 94605** **Certificate of Authority No. COA 103** **And** **BUCK KAMPHAUSEN** **200 Rollingwood Dr.** **Vallejo, CA 94591** **Cemetery Manager License No. CEM 259** Respondent.	Case No. A1 2014 104 **ACCUSATION**

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.

2. On or about May 1, 1950, the Cemetery and Funeral Bureau issued Certificate of Authority License Number COA 103 to Evergreen Cemetery Association, aka Evergreen

Cemetery (hereinafter "Respondent Evergreen"), Buck Kamphausen, RMO, Edward Wilkes, Vice President, Joshua Voss, Vice President/Secretary . The Certificate of Authority License was in full force and effect at all times relevant to the charges brought herein and will expire on January 1, 2016, unless renewed.

3. On or about January 20, 2005, the Cemetery and Funeral Bureau issued Cemetery Manager License Number CEM 259 to Buck Kamphausen (hereinafter "Respondent Kamphausen"). The Cemetery Manager License was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2016, unless renewed.

JURISDICTION

4. 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 unless otherwise indicated.

5. Section **9725** of the Code states:

Upon grounds provided in this article 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.

STATUTES AND REGULATIONS

6. Section **9560** of the Code states:

(a) Each cemetery authority shall file with the bureau annually, on or before June 1, or within five months after close of their fiscal year provided approval has been granted by the bureau as provided for in Section 9650.1, a written report in a form prescribed by the bureau setting forth the following:

(1) The number of square feet of grave space and the number of crypts and niches sold or disposed of under endowment care by specific periods as set forth in the form prescribed.

(2) The amount collected and deposited in both the general and special endowment care funds segregated as to the amounts for crypts, niches and grave space by specific periods as set forth either on the accrual or cash basis at the option of the cemetery authority.

(3) A statement showing separately the total amount of the general and special endowment

care funds invested in each of the investments authorized by law and the amount of cash on hand not invested, which statement shall actually show the financial condition of the funds.

(4) A statement showing separately the location, description, and character of the investments in which the special endowment care funds are invested. The statement shall show the valuations of any securities held in the endowment care fund as valued pursuant to Section 9659.

(5) A statement showing the transactions entered into between the corporation or any officer, employee or stockholder thereof and the trustees of the endowment care funds with respect to those endowment care funds. The statement shall show the dates, amounts of the transactions, and shall contain a statement of the reasons for those transactions.

(b) The report shall be verified by the president or vice president and one other officer of the cemetery corporation. The information submitted pursuant to paragraphs (2), (3), (4), and (5) shall be accompanied by an annual audit report of the endowment care fund and special care fund signed by a certified public accountant or public accountant. The scope of the audit shall include the inspection, review, and audit of the general purpose financial statements of the endowment care fund and special care fund, which shall include the balance sheet, the statement of revenues, expenditures, and changes in fund balance.

(c) If a cemetery authority files a written request prior to the date the report is due, the bureau may, in its discretion, grant an additional 30 days within which to file the report.

7. Section **9650.4** of the Code states:

(a) Any cemetery authority that does not file its report within the time prescribed by Section 9650 may be assessed a fine by the bureau in an amount not to exceed four hundred dollars ($400) per month for a maximum of five months. The amount of the fine shall be established by regulation in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). Failure to pay the fine within 15 days after receipt of written notification of the assessment or, where a timely request for waiver or reduction of the fine has been filed, within 15 days after receipt of written notification of the bureau's decision in the matter, shall be cause for disciplinary action.

(b) A cemetery authority may request waiver or reduction of a fine by making a written request therefor. The request shall be postmarked within the time specified above for payment of the fine and shall be accompanied by a statement showing good cause for the request.

(c) The bureau may waive or reduce the fine where a timely request is made and where it determines, in its discretion, that the cemetery authority has made a sufficient showing of good cause for the waiver or reduction.

8. Section **9723** of the Code states:

A cemetery licensed under this chapter shall at all times employ a licensed cemetery manager to manage, supervise, and direct its operations. Notwithstanding any other provision of this chapter, licensed cemeteries within close geographical proximity of each other may request the bureau to allow a licensed cemetery manager to manage, supervise, and direct the business or profession of more than one facility.

(a) Every cemetery shall designate a licensed cemetery manager to manage the cemetery, and shall report the designation to the bureau within 10 days of the effective date. Any change in the designated manager shall be reported to the bureau within 10 days.

(b) The designated cemetery manager shall be responsible for exercising direct supervision and control over the operations, employees, and agents of the cemetery as is necessary to ensure full compliance with the applicable provisions of the Business and Professions Code, the Health and Safety Code, and any regulations adopted thereto. Failure of the designated cemetery manager or the licensed cemetery to exercise that supervision or control shall constitute a ground for disciplinary action.

(c) A cemetery may employ, in addition to the designated cemetery manager, additional licensed cemetery managers. However, only one licensed cemetery manager may be appointed as the designated cemetery manager of the cemetery.

9. Section **9725.1** of the Code states:

Unprofessional conduct by any licensee or registrant or by any agent or employee of a licensee or registrant constitutes grounds for disciplinary action. Unprofessional conduct includes, but is not limited to, the following:

(a) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of this chapter and any regulation adopted thereunder, or of any federal or state law or regulation governing the disposition of human remains, operation of cemeteries or crematories, the sale of cemetery property, or the sale of crematory services or commodities.

(b) Negligence in performing any act related to the operation of a cemetery or crematory.

10. California Code of Regulations, Title 16, section **2333**, states:

(a) Every endowment care cemetery shall have cemetery maintenance standards to ensure the property is kept in a condition so as to prevent the cemetery's offensive deterioration. The cemetery maintenance standards shall be in accordance with either subdivision (b) or subdivision (c) of this Section.

(b) Each endowment care cemetery shall perform, at a minimum, the following maintenance on its cemetery property:

(1) Trim or mow grass and prune shrubs and trees in and around the cemetery. Grass shall be trimmed or mowed to a level where flat markers of individual graves can be seen.

(2) Suppress or remove weeds on the developed cemetery property.

(3) Provide a sufficient supply of water to keep cemetery grass and plants as green as seasonally possible in accordance with natural terrain, availability of water, and local or county ordinances regarding water use.

(4) Repair or restore improvements, structures and fences on the property which are owned by the cemetery.

(5) Keep cemetery roads seasonally accessible and repair surfacing which presents a hazard.

(6) Keep all occupied crypts and niches properly sealed or closed.

(7) Refill or reset settled graves and markers annually, or within 120 days of the cemetery office becoming aware of the issue.

(8) Repair any grave marker, monument, or burial vault that is damaged by the negligence of the cemetery or its employees or contractors.

(9) Supply and empty trash receptacles when filled, and keep public areas of the cemetery grounds and water features clear of trash and debris.

(10) Provide clear delineation of undeveloped cemetery property with the use of signage.

(11) Control vermin and insect problems.

(c) An endowment care cemetery may establish written rules and regulations in accordance with Health and Safety Code Section 8300. At a minimum, the rules and regulations addressing maintenance of the cemetery's property shall include its lots, graves, grounds, landscaping, roads, paths, parking lots, fences, mausoleums, columbaria, vaults, crypts, utilities, and other improvements, structures, and embellishments.

(d) Notwithstanding subdivision (b), the care and maintenance of each cemetery may vary depending upon the cemetery size, location, topography and type of interments.

(e) Nothing contained in subdivision (b) shall be construed to require specific topography, structures or other cemetery-related items on the property. Cemeteries, including sections within a cemetery, that are specifically established and intended to be maintained in a natural condition are not subject to the requirements of subdivision (b), with the exception of (4), (5) and (9). Non-endowment care sections of a cemetery are exempt from the requirements of this Section.

(f) The cemetery contract shall include a statement notifying consumers that maintenance standards are available for inspection at the cemetery office. Upon the consumer(s)' request, the cemetery shall provide, for the consumer(s)' retention, a written copy of their maintenance standards.

(g) The amount collected by the cemetery in endowment care fees under Health and Safety Code Section 8738 shall be reconsidered annually by the cemetery based upon current and projected maintenance expenditures, and adjusted as necessary to ensure that sufficient funds are available to perform the maintenance required by their rules and regulations as described in subdivision (a) or subdivision (b) of this Section if subdivision (a) is not applicable.

11. California Code of Regulations, Title 16, section **2382**, states:

(a) The bureau chief is authorized to determine when and against whom a citation will be issued and to issue citations containing orders of abatement and fines for violations by a licensee or registrant of the provisions of law referred to in section 2383 of this article.

(b) A citation shall be issued whenever any fine is levied or any order of abatement is

issued. Each citation shall be in writing and shall describe with particularity the nature and facts of the violation, including a reference to the statute or regulations alleged to have been violated. The citation shall inform the cited person that if he or she desires a hearing to contest the finding of a violation, that hearing shall be requested by written notice to the bureau chief within thirty (30) days of the issuance of the citation. The citation shall be served upon the licensee personally or by certified mail.

(c) The amount of any fine to be levied by the bureau chief shall take into consideration the factors listed in section 2384 of this article and shall be within the range set forth in section 2383 of this article. In no case shall the total exceed two thousand five hundred dollars ($2,500) for each investigation.

12. California Code of Regulations, Title 16, section **2385**, states:

(a) The time allowed for the abatement of a violation shall begin the first day after the order of abatement has been served or received. If a cited person who has been issued an order of abatement is unable to complete the correction within the time set forth in the citation because of conditions beyond his or her control after the exercise of reasonable diligence, the person cited may request an extension of time from the bureau chief in which to complete the correction. Such a request shall be in writing and shall be made within the time set forth for abatement. Any order granting a request for an extension shall be in writing and shall specify the new date for compliance.

(b) An order of abatement shall either be personally served or mailed by certified mail, return receipt requested. When an order of abatement is not contested or if the order is appealed and the person cited does not prevail, failure to abate the violation charged within the time allowed shall constitute a violation and failure to comply with the order of abatement.

13. California Code of Regulations, Title 16, section **2388**, states:

(a) Any cemetery authority that does not file the annual report required by Section 9650 of the Business and Professions Code within the time prescribed by said Code shall be assessed a fine by the bureau chief in the amount of four hundred dollars ($400) per month for a maximum of five (5) months. Failure to pay the fine within fifteen (15) days after receipt of written

notification of the assessment or, where a timely request for waiver or reduction of the fine has been filed with the bureau chief, within fifteen (15) days after receipt of written notification of the bureau chief's decision in the matter, shall be cause for disciplinary action.

(b) A cemetery authority may request waiver or reduction of a fine by making a written request to the bureau chief therefore. The request shall be postmarked within the time specified above for payment of the fine and shall be accompanied by a statement showing good cause for the request.

(c) The bureau chief may waive or reduce the fine where a timely request is made and where he or she determines, in his or her discretion, that the cemetery authority has made a sufficient showing of good cause for the waiver or reduction.

(d) In addition to requesting a hearing to be held pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, the person cited may, within fifteen (15) days after service or receipt of the citation, notify the bureau chief in writing of his or her request for an informal conference regarding the acts charged in the citation. The time allowed for the request shall begin the first day after the citation has been served or received. An informal conference shall be in accordance with the procedures delineated in Section 2386, subdivisions (b) and (c).

COST RECOVERY

14. Section **125.3** of the Code provides, in pertinent part, that the Board may request the administrative law judge to 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.

FAILURE TO MAINTAIN CEMETERY GROUNDS

15. On or about June, 2014, the Bureau received citizen complaints alleging that Respondent Evergreen was not adequately maintaining its grounds.

16. On or about July 22, 2014, Cemetery and Funeral Bureau investigators inspected Respondent Evergreen's grounds. The cemetery grounds were observed to be dried out and brown, with weed growth.

FIRST CAUSE FOR DISCIPLINE

(Failure to Maintain Grounds - COA)

17. Respondent Evergreen is subject to disciplinary action under Code section 9725.1(a) and under California Code of Regulations, Title 16, section 2333(a), in that Respondent Evergreen violated applicable law by failing to perform adequate maintenance, by failing to provide a sufficient supply of water to keep the cemetery's grass and plants green.

SECOND CAUSE FOR DISCIPLINE

(Failure to Maintain Grounds - Manager)

18. Respondent Kamphausen is subject to disciplinary action under Code sections 9723, 9725.1 and 9725.1(a), and under California Code of Regulations, Title 16, section 2333(a), in that Respondent Kamphausen , acting as an agent or employee of Respondent Evergreen, and as a manager of Respondent Evergreen, failed to exercise adequate supervision and control over cemetery operations, in that he allowed the Respondent Evergreen to violate applicable law by failing to perform adequate maintenance, and by failing to provide a sufficient supply of water to keep the cemetery's grass and plants green.

FAILURE TO COMPLY WITH ABATEMENT ORDERS

19. On or about October 2, 2009, the Bureau issued Citation I 2009 190 to Respondent Evergreen based on Respondent Evergreen's failure to timely file its 2008 Endowment Care Fund and Special Care Fund Report. The citation imposed a fine of $1.200.00.

20. On or about October 21, 2011, the Bureau issued Citation IC 2011 192 to Respondent Evergreen based on Respondent Evergreen's failure to timely file its 2010 Endowment Care Fund and Special Care Fund Report. The citation imposed a fine of $2,000.00.

21. On or about November 9, 2012, the Bureau issued Citation IC 2012 218 to Respondent Evergreen based on Respondent Evergreen's failure to file its 2011 Endowment Care Fund and Special Care Fund Report. The citation imposed a fine of $2,000.00, and also imposed an Order of Abatement requiring Respondent Evergreen to immediately file its 2011 report. Respondent Evergreen failed to comply with this Order of Abatement, and never filed its 2011 report.

22. On or about December 13, 2013, the Bureau issued Citation IC 2013 273 to Respondent Evergreen based on Respondent Evergreen's failure to file its 2012 Endowment Care Fund and Special Care Fund Report. The citation imposed a fine of $2,000.00, and also imposed an Order of Abatement requiring Respondent Evergreen to immediately file its 2012 report. Respondent Evergreen failed to comply with this Order of Abatement, and never filed its 2012 report.

23. On or about November 24, 2014, the Bureau issued Citation IC 2014 253 to Respondent Evergreen based on Respondent Evergreen's failure to file its 2013 Endowment Care Fund and Special Care Fund Report. The citation imposed a fine of $2,000.00, and also imposed an Order of Abatement requiring Respondent Evergreen to immediately file its 2013 report. Respondent Evergreen failed to comply with this Order of Abatement, and never filed its 2013 report.

THIRD CAUSE FOR DISCIPLINE

(Failure to Comply with Order of Abatement - COA)

24. Respondent Evergreen is subject to disciplinary action under Code section 9725.1(a) and under California Code of Regulations, Title 16, section 2385, in that Respondent Evergreen violated applicable law by failing to comply with the Bureau's Orders of Abatement, as set forth above.

FOURTH CAUSE FOR DISCIPLINE

(Failure to Comply with Order of Abatement - Manager)

25. Respondent Kamphausen is subject to disciplinary action under Code sections 9723, 9725.1 and 9725.1(a), and under California Code of Regulations, Title 16, section 2385, in that Respondent Kamphausen , acting as an agent or employee of Respondent Evergreen, and as a manager of Respondent Evergreen, failed to exercise adequate supervision and control over cemetery operations, in that he allowed the Respondent Evergreen to violate applicable law by failing to comply with the Bureau's Orders of Abatement, as set forth above.

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 Certificate of Authority License Number COA 103, issued to Evergreen Cemetery Association, aka Evergreen Cemetery;

2. Revoking or suspending Cemetery Manager License Number CEM 259, issued to Buck Kamphausen;

3. Ordering Respondents 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;

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

DATED: Feb. 17, 2015

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