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8
9 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
FOR THE CEMETERY AND FUNERAL BUREAU
10 **STATE OF CALIFORNIA**

11
12 In the Matter of the Accusation Against:

Case No. A1 2015 7

13 **SUNRISE MEMORIAL CEMETERY**
ASSOCIATION, INC.
14 **2201 Sacramento Street**
Vallejo, CA 94590

OAH No. 2015070674

15 **Certificate of Authority No. COA 39**

FIRST AMENDED ACCUSATION

16 **and**

17 **BUCK KAMPHAUSEN**
18 **200 Rollingwood Drive**
Vallejo, CA 94591

19 **Cemetery Manager License No. CEM 259**

20 Respondent.
21

22 Complainant alleges:

23 PARTIES

24 1. Lisa M. Moore ("Complainant") brings this First Amended Accusation solely in her
25 official capacity as the Bureau Chief of the Cemetery and Funeral Bureau, Department of
26 Consumer Affairs.¹

27 ¹ Effective January 1, 1996, the Department of Consumer Affairs succeeded to, and was vested
28 with, all the duties, powers, purpose, responsibilities and jurisdiction of the Cemetery Board and
(continued...)

1 10. Section 9725.1 states:

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

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

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

10 11. Section 9726 states, in part:

11 “The bureau may, upon its own motion, and shall, upon the verified complaint in writing of
12 any person, investigate the actions of any person engaged in the business or acting in the capacity
13 of a cemetery licensee, and may temporarily suspend or permanently revoke a license at any time
14 where the licensee, within the immediately preceding three years, while a cemetery licensee in
15 performing or attempting to perform any of the acts specified in this act, has been guilty of any of
16 the following:

17 “(a) Making any substantial misrepresentation.

18 “(b) Making any false statement of a character likely to influence or persuade.

19 “(c) A continued and flagrant course of misrepresentation or making of false promises
20 through cemetery agents or salespersons.

21 ...

22 “(i) Any other conduct, whether of the same or a different character than specified in this
23 section, which constitutes fraud or dishonest dealing.

24 ...”

25 ////

26 ////

27 ////

28 ////

1 12. Code of Regulations, title 16, section 2326.5, subdivision (a) states:

2 "Licensed cemeteries, upon approval by the Bureau, may designate a licensed cemetery
3 manager to manage more than one licensed cemetery under the following conditions:

4 "(a) The license cemeteries are under common ownership;
5"

6 13. Code of Regulations, title 16, section 2333 states, in part:

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

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

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

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

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

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

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

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

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

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

28

FIRST CAUSE FOR DISCIPLINE
(Failure to Maintain Cemetery Property)
(Cal. Code Regs., title 16, § 2333, subd. (b))

16. Respondent Sunrise Memorial and Respondent Kamphausen, acting as Respondent Sunrise Memorial's officer, agent, employee, and/or manager, have subjected their Certificate of Authority and Cemetery Manager License, respectively, to discipline by failing to maintain the cemetery property in accordance with the law. (Cal. Code Regs., title 16, § 2333, subd. (b)). In particular, an inspection of the cemetery grounds revealed that the grounds were in a state of poor maintenance and repair, including:

(a) Many upright monuments were broken or lying in pieces.

(b) There were missing faceplates on several of the crypt fronts on the outside mausoleum and one crypt was completely open.

(c) The sharing posts holding up the awning over the outside mausoleums were unsecured, moved when touched, with one post completely unattached and lying on the walkway.

(d) The grass was not mowed and many of the flat markers were all or partially not visible because of overgrowth and debris.

(e) The grass was not watered and, in some areas, had turned completely brown.

(f) The roadways were cracked and in a progressed state of disrepair and littered with fallen tree branches and landscape debris.

(g) The ceiling stripping on the inside mausoleum was hanging down and the floor carpet showed water leak spots with green mold.

(h) Complete sections in the back of the cemetery were completely unmaintained and many of the markers were visible amongst the overgrowth.

(i) The burial grounds were uneven and there were several areas of uneven and sunken grounds.

(j) Public areas were not cleared of trash and debris. For example, a stained and dirty mattress, approximately the size of a queen-sized mattress, was found in the breezeway of a mausoleum.

1 ownership with Respondent Sunrise Corporation. Nevertheless, Respondent Kamphausen is
2 acting as Respondent Sunrise Corporation's de facto manager without prior approval, as required
3 by Code of Regulations, title 16, section 2326.5, subdivision (a).

4
5 FIFTH CAUSE FOR DISCIPLINE

(Misrepresentations)

6 (Bus. & Prof. Code § 9726, subds. (a), (b), (c) and (i); and
7 Cal. Code Regs., title 16, § 2381)

8 21. Respondent Sunrise Memorial and Respondent Kamphausen, acting as Respondent
9 Sunrise Memorial's officer, agent, employee, and/or manager, have subjected their Certificate of
10 Authority and Cemetery Manager License, respectively, to discipline by failing to designate
11 Respondent Kamphausen as Respondent Sunrise Memorial's cemetery manager. Respondents
12 had a duty to disclose that Respondent Kamphausen is Respondent Sunrise Memorial's cemetery
13 manager, pursuant to Business and Professions Code section 9723, subdivision (a). Respondents'
14 failure to designate Respondent Kamphausen as Respondent Sunrise Memorial's cemetery
15 manager, therefore, constitutes repeated false statements and misrepresentations. Respondents
16 made and continue to make these misrepresentations, by omission, to avoid the consequences of
17 violating California Code of Regulations, title 16, section 2326.5, subdivision (a), as well as
18 risking discipline to Respondent Kamphausen's Cemetery Manager License. (Bus. & Prof. Code
19 § 9726, subds. (a), (b), (c) and (i); and Cal. Code Regs., title 16, § 2381).

20 SIXTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct – Violating the Law)

21 (Bus. & Prof. Code § 9725.1, subd. (a))

22 22. Respondent Sunrise Memorial and Respondent Kamphausen, acting as Respondent
23 Sunrise Memorial's officer, agent, employee, and/or manager, have subjected their Certificate of
24 Authority and Cemetery Manager License, respectively, to discipline for unprofessional conduct
25 by violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation
26 of the Cemetery Act (Business and Professions Code section 9600 *et seq.*) and any regulation
27 adopted thereunder. (Bus. & Prof. Code § 9725.1, subd. (a)). The circumstances are set forth in
28 further detail in paragraphs 16 through 21, above.

1 SEVENTH CAUSE FOR DISCIPLINE
2 (Unprofessional Conduct – Negligence)
3 (Bus. & Prof. Code § 9725.1, subd. (b))

4 23. Respondents have subjected their Certificate of Authority and Cemetery Manager
5 License, respectively, to discipline for unprofessional conduct by acting negligently in performing
6 acts related to the operation of a cemetery. (Bus. & Prof. Code § 9725.1, subd. (b)). The
7 circumstances are set forth in further detail in paragraphs 16 through 18, above.

8 DISCIPLINE CONSIDERATIONS

9 24. To determine the degree of discipline, if any, to be imposed on Respondent Sunrise
10 Memorial's Certificate of Authority Number COA 39. Complainant alleges the following prior
11 discipline by the Bureau:

12 a. On December 23, 2005, the Bureau issued Citation Number 1 2005 292 against
13 Respondent Sunrise Memorial's Certificate of Authority for violating Section 9650. The citation
14 carried a \$2,000 fine. Respondent Sunrise Memorial paid the fine on January 27, 2006.

15 b. On September 21, 2007, the Bureau issued Citation Number 1 2007 256 against
16 Respondent Sunrise Memorial's Certificate of Authority for violating Section 9650. The citation
17 carried a \$1,200 fine. Respondent Sunrise Memorial paid the fine on September 26, 2007.

18 c. On November 18, 2011, the Bureau issued Citation Number 1C 2011 211
19 against Respondent Sunrise Memorial's Certificate of Authority for violating Section 9650. The
20 citation carried a \$2,000 fine. Respondent Sunrise Memorial paid the fine on December 12, 2011.

21 d. On November 9, 2012, the Bureau issued Citation Number 1C 2012 220 against
22 Respondent Sunrise Memorial's Certificate of Authority for violating Section 9650. The citation
23 carried a \$2,000 fine. Respondent Sunrise Memorial paid the fine on November 29, 2012.

24 e. On December 13, 2013, the Bureau issued Citation Number 1C 2013 274
25 against Respondent Sunrise Memorial's Certificate of Authority for violating Code of
26 Regulations, title 16, section 2388. The citation carried a \$2,000 fine. Respondent Sunrise
27 Memorial paid the fine on May 12, 2014.

28 f. On November 24, 2014, the Bureau issued Citation Number 1C 2014 254
against Respondent Sunrise Memorial's Certificate of Authority for violating Code of

1 Regulations, title 16, section 2388. The citation carried a \$2,000 fine. Respondent Sunrise
2 Memorial paid the fine on January 23, 2015.

3 P R A Y E R

4 WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this
5 First Amended Accusation and, following the hearing, the Director of Consumer Affairs issue a
6 decision:

7 1. Revoking or suspending Certificate of Authority Number COA 39, issued to
8 Respondent Sunrise Memorial Cemetery Association, Inc.;

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

11 3. Ordering Respondents to pay the Cemetery and Funeral Bureau the reasonable costs
12 of the investigation and enforcement of this case, pursuant to Business and Professions Code
13 section 125.3; and

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

15
16
17 DATED: October 27, 2015 Lisa M. Moore

18 LISA M. MOORE
19 Bureau Chief
20 Cemetery and Funeral Bureau
21 Department of Consumer Affairs
22 State of California
23 Complainant

24 SF2015900359