

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

In the Matter of Petition for Reinstatement of:

JAPANESE BENEVOLENT SOCIETY OF  
CALIFORNIA, aka JAPANESE  
CEMETERY OF COLMA  
1765 Sutter Street, 2<sup>nd</sup> Floor  
San Francisco, CA 94115

Case No. A1 2006 307

Certificate of Authority No. COA 213

Petitioner.

**DECISION AND ORDER**

On or about June 28, 2012, Eddie Moriguchi, President of the Japanese Benevolent Society of California, requested the reinstatement of Certificate of Authority (COA) No.213 to operate a cemetery. The COA was revoked on January 30, 2008, due to the fact the cemetery did not employ a licensed cemetery manager as required under Business and Profession Code section 9715.1.

Pursuant to Title 16, California Code of Regulations section 2331 (a) and (c), the factors the Director of the Department of Consumer Affairs must consider in reviewing the Petition are:

- (1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
- (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the Code.
- (3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivisions (1) and (2).
- (4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.
- (5) Evidence, if any, of rehabilitation submitted by the applicant.

Having considered all the pertinent parts of the record, the Director now makes and enters her Decision as follows:

## FINDINGS OF FACT

Respondent's predecessor was a nonprofit organization that established the Japanese Cemetery of Colma in 1901. Respondent currently has a caretaker for the cemetery, and Japanese religious groups take turns providing maintenance. On or about January 2, 1963 issued COA No. 213 to respondent Japanese Benevolent Society of California, also known as the Japanese Cemetery of Colma, to operate a cemetery.

On or about November 24, 2003, the Cemetery and Funeral Bureau (Bureau) sent notice to all licensed cemeteries informing them of the implementation of legislation enacted in 2002 that required all licensed cemeteries to employ a licensed cemetery manager. The notice stated in relevant part:

All Cemeteries...must submit an application to designate a [licensed] manager no later than March 1, 2004, in order to comply with the enacted legislation [Stats. 2002, ch.825 § 10].

Subsequently, the Bureau provided several additional notices to Petitioner the it had not met the legislative mandate to designate and employ a licensed cemetery manager. Petitioner's executive officer had been employed in 1987 and acted as the cemetery manager. The executive officer submitted an application for a cemetery manager's license. However, the executive officer failed the licensing examination three times. On or about December 7, 2006, the Bureau filed an Accusation in this matter, alleging Petitioner's failure to employ a licensed cemetery manager as cause to suspend or revoke its cemetery license. Despite several hearings on this matter, as of September, 27, 2007, the date of final hearing on this matter, Petitioner had still not hired licensed cemetery manager. Respondent's COA to operate a cemetery was revoked, effective January 30, 2008. Additionally, Petitioner has ordered to reimburse the Bureau \$1,570.25 for the reasonable costs of investigation and prosecution.

After receiving Petitioner's June 28, 2012, request for reinstatement, received on July 3, 2012, the Bureau assisted Petitioner by informing it of what additional documents were needed and what other requirements that needed to be met in order for the Petitioner to operate this cemetery. Petitioner has been very cooperative with the Bureau's staff. The \$1,570.25 that was ordered for cost recovery was paid on July 3, 2012 and was included in Petitioner's request for reinstatement. Subsequently, Petitioner hired Daphne A. Daphne, a licensed cemetery manager to manage the Japanese Cemetery of Colma. The cemetery's board of trustees for the Cemetery's Endowment Care Fund been identified and have undergone criminal background checks. Despite having a revoked COA, Petitioner has submitted Endowment Care Fund and Special Care Fund Reports for all the applicable time periods that licensed COA was required to report. Petitioner's reports are current and have been reviewed by the Bureau's auditors who determined that the reports are in compliance with the Bureau's regulatory requirements for all licensed cemeteries.

In considering the grounds for rehabilitation set forth in Title 16, California Code of Regulations section 2331, the Petitioner has met the criteria. It has been nearly five years since Petitioner had its license revoked. Petitioner has been in substantial compliance with the law as set forth in the previous above paragraph.

## DETERMINATION OF ISSUES

Given the Findings of Fact above, Petitioner has proven that it has rehabilitated itself and that Petitioner's Certificate of Authority should be reinstated.

### ORDER

The Petition is hereby granted. Pursuant to Government Code section 11522, the Certificate of Authority No. 213 is reinstated subject to the following standard probationary terms and conditions for a period of two years:

**1. Obey All Laws**

Respondent shall comply with all conditions of probation and obey all federal, state, and local laws, and all rules and regulations governing the programs regulated by the Bureau.

**2. Quarterly Reports**

Respondent shall submit quarterly declarations under penalty of perjury, in a format designated by the Bureau, stating whether or not respondent has been in compliance with all the conditions of probation. Respondent shall also submit such additional written reports and verifications of actions requested by the Bureau. Should the final probation report not be made as directed, the period of probation shall be extended until such time as the final report is made.

**3. Interview with Bureau Representative**

As necessary, respondent shall appear in person for scheduled interviews with the Bureau Chief or other designated representative for the purpose of monitoring compliance with the terms of this decision.

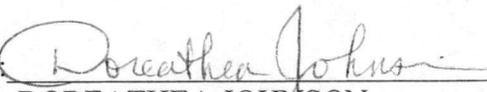
**4. Completion of Probation**

Upon successful completion of probation, respondent's license will be fully restored.

**5. License Issued During Probation**

Any license or registration issued to respondent by the Bureau during the period of probation shall be issued as a probationary license or registration and is subject to all the terms and conditions set forth herein. Respondent must comply with terms and conditions herein and demonstrate no cause for disciplinary action or denial of an application.

IT IS SO ORDERED on this 19th day of November, 2012

By:   
DOREATHEA JOHNSON  
Deputy Director, Legal Affairs  
Department of Consumer Affairs

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

In the Matter of the Accusation Against:

JAPANESE BENEVOLENT SOCIETY OF  
CALIFORNIA, aka JAPANESE  
CEMETERY OF COLMA

San Francisco, CA

Certificate of Authority No. COA 213

Respondent.

No. A1 2006 307

OAH No. 2007010382

**PROPOSED DECISION**

Administrative Law Judge Nancy L. Rasmussen, Office of Administrative Hearings, State of California, heard this matter on September 27, 2007, in Oakland, California.

Deputy Attorney General Jonathan D. Cooper represented complainant Sherrie Moffet-Bell, Chief, Cemetery and Funeral Bureau, Department of Consumer Affairs.

Seiko Fujimoto, executive director of respondent Japanese Benevolent Society of California, represented respondent without legal counsel.

The matter was submitted for decision on September 27, 2007.

**FACTUAL FINDINGS**

1. On January 2, 1963, the Cemetery and Funeral Bureau (or its predecessor agency) issued certificate of authority number COA 213 to respondent Japanese Benevolent Society of California, also known as the Japanese Cemetery of Colma, to operate a cemetery. The current expiration date of the certificate is January 1, 2008.

2. On or about November 24, 2003, the bureau sent a notice to all licensed cemeteries informing them of the implementation of legislation enacted in 2002. This legislation included licensing requirements for cemetery managers, and it required each

licensed cemetery to employ a licensed cemetery manager. The notice stated, in relevant part:

All Cemeteries . . . must submit an application to designate a manager no later than March 1, 2004, in order to comply with the enacted legislation. This legislation became effective July 1, 2003, however the Bureau will not penalize a cemetery . . . that has complied with these requirements by March 1, 2004.

3. On or about July 19, 2005, the bureau sent a letter to respondent stating that a review of bureau records reflected that respondent had not designated a licensed cemetery manager. After setting forth the statutory language requiring cemeteries to employ a licensed cemetery manager, the letter stated: "A licensed cemetery manager must be designated by August 19, 2005 or your cemetery and manager will be referred to our enforcement unit, and subject to disciplinary action."

4. On or about August 10, 2005, the bureau sent a letter to respondent stating that respondent had not designated a licensed cemetery manager. After reiterating the statutory language requiring cemeteries to employ a licensed cemetery manager, the letter stated: "A licensed cemetery manager must be designated by September 10, 2005 or the cemetery and manager will be subject to disciplinary action."

5. Seiko Fujimoto, who has also been known as Seiko Chiyo, has been respondent's executive director since 1987. Fujimoto filed with the bureau respondent's application, dated August 9, 2005, to designate herself as respondent's cemetery manager. She listed her license number as "pending."

6. Sometime between August 9, 2005, and December 7, 2006, Seiko Fujimoto took and failed the licensing examination for cemetery manager.

7. On December 7, 2006, complainant filed the accusation in this matter, alleging respondent's failure to employ a licensed cemetery manager as cause to suspend or revoke its cemetery license. A hearing was set for March 1, 2007.

8. The hearing was continued to May 22, 2007, to allow Fujimoto to retake the licensing examination. Fujimoto failed the examination for the second time.

9. The hearing was continued to August 28, 2007, to allow Fujimoto to again take the licensing examination. Fujimoto failed the examination for the third time.

10. The hearing was again continued, to September 27, 2007, to allow respondent time to hire a licensed cemetery manager.

11. As of the hearing on September 27, 2007, respondent had not hired a licensed cemetery manager.

12. Respondent is a nonprofit organization that established the Japanese Cemetery of Colma in 1901. Respondent has a caretaker for the cemetery, and Japanese religious groups take turns providing maintenance. Seiko Fujimoto speaks Japanese as well as English, and she goes to the cemetery if there is a need for a translator. Because respondent's funds are limited,<sup>1</sup> Fujimoto wanted to become a licensed cemetery manager herself rather than having to hire an outside licensee. (She does not know why she failed the licensing examination, and she would like to know if there are any books she should study to prepare for the examination.) Fujimoto has made some attempts to find a licensed manager, through inquiries to other cemeteries and a monument company, but her efforts have not been successful. She understands that respondent cannot keep its license to operate a cemetery without having a licensed cemetery manager.

13. In a previous action, the bureau issued citation number CB 2000 202 against respondent on November 14, 2000. A fine was assessed for respondent's violation of Business and Professions Code section 9650 (failure to file timely annual endowment care fund report). Respondent paid the fine on January 26, 2001.

14. In connection with the investigation and prosecution of this accusation, the bureau incurred the following costs from the office of the Attorney General:

<u>Deputy Attorney General:</u>	
2006/2007 – 6.50 hrs. @ \$158/hr.	\$1,027.00
2007/2008 – 1.00 hr. @ \$158/hr.	\$ 158.00
<u>Supervising Deputy Attorney General:</u>	
2006/2007 – 1.00 hr. @ \$158/hr.	\$ 158.00
<u>Legal Assistant:</u>	
2006/2007 – 2.25 hr. @ \$101/hr.	\$ <u>227.25</u>
TOTAL:	\$1,570.25

#### LEGAL CONCLUSIONS

1. Business and Professions Code section 9715.1, subdivision (a), provides as follows:

Each cemetery for which a certificate of authority is required shall be operated under the supervision of a manager who is qualified in accordance with the regulations adopted by the

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<sup>1</sup> Respondent's 1995 purchase of additional land for the cemetery, at a cost of \$1,000,000, depleted its funds. The \$80,000 cost of refurbishing the columbarium in 2006 apparently was largely raised from outside sources.

bureau. Each cemetery manager shall be required to successfully pass a written examination evidencing an understanding of the applicable provisions of this code and of the Health and Safety Code. No person shall engage in the business of, act in the capacity of, or advertise or assume to act as, a cemetery manager without first obtaining a license from the bureau.

Business and Professions Code section 9723 provides, in relevant part, as follows:

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.

Business and Professions Code section 9725 provides as follows:

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.

Business and Professions Code section 9725.1 provides, in relevant part, as follows:

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.

2. Respondent violated Business and Professions Code section 9715.1, subdivision (a), and section 9723 by failing to employ a licensed cemetery manager to manage, supervise and direct its operations. These violations constitute unprofessional conduct under Business and Professions Code section 9725.1. Cause for disciplinary action exists under Business and Professions Code section 9725 and section 9725.1.

3. Complainant has requested that respondent be ordered to pay the bureau the costs of investigating and enforcing the case. Business and Professions Code section 125.3 provides that respondent may be ordered to pay the bureau "a sum not to exceed the reasonable costs of the investigation and enforcement of the case." The actual costs of investigation and enforcement have been found to be \$1,570.25. This amount is determined to be reasonable.

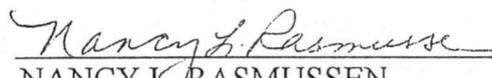
4. A licensed cemetery must employ a licensed cemetery manager to manage, supervise and direct its operations, and respondent has been aware of this requirement for several years. Complainant apparently delayed filing an accusation in the hope that respondent would comply with this requirement. After the accusation was filed, the hearing was postponed several times to give respondent additional time to comply and avoid disciplinary action. At this point, the bureau has no choice but to revoke respondent's certificate of authority to operate a cemetery.

ORDER

1. Certificate of authority number COA 213 issued to respondent Japanese Benevolent Society of California, also known as the Japanese Cemetery of Colma, is revoked.

2. Respondent shall reimburse the bureau in the amount of \$1,570.25 for the reasonable costs of investigation and prosecution. This amount is due within 60 days of the effective date of this decision, unless the bureau agrees to an installment payment plan.

DATED: October 25, 2007

  
\_\_\_\_\_  
NANCY L. RASMUSSEN  
Administrative Law Judge  
Office of Administrative Hearings

1 BILL LOCKYER, Attorney General  
of the State of California  
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7 Attorneys for Complainant

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

11 In the Matter of the Accusation Against:

Case No. A1 2006 307

12 **JAPANESE BENEVOLENT SOCIETY OF**  
13 **CALIFORNIA, aka JAPANESE**  
**CEMETARY OF COLMA**

OAH No.

**A C C U S A T I O N**

14 1765 Sutter Street, Second Floor  
15 San Francisco, CA 94115

16 Certificate of Authority (COA) No. 213

17 Respondent.

18 Complainant alleges:

19 **PARTIES**

20 1. Sherrie Moffet-Bell (Complainant) brings this Accusation solely in her  
21 official capacity as the Bureau Chief of the Cemetery and Funeral Bureau, Department of  
22 Consumer Affairs.<sup>1</sup>

23 2. On or about January 2, 1963, the Cemetery and Funeral Bureau issued  
24

25 \_\_\_\_\_  
26 1. Effective January 1, 1996, the Department of Consumer Affairs succeeded to, and was  
27 vested with, all the duties, powers, purpose, responsibilities and jurisdiction of the Cemetery  
28 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.

1 Certificate of Authority (COA) Number 213 to the Japanese Benevolent Society of California,  
2 aka the Japanese Cemetary of Colma (Respondent). The Certificate of Authority (COA) was in  
3 full force and effect at all times relevant to the charges brought herein and will expire on January  
4 1, 2007, unless renewed.

5 **JURISDICTION**

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

9 **STATUTORY AND REGULATORY PROVISIONS**

10 4. Section 9715.1 of the Code states, in pertinent part:

11 “(a) Each cemetery for which a certificate of authority is required shall be  
12 operated under the supervision of a manager who is qualified in accordance with the regulations  
13 adopted by the bureau. Each cemetery manager shall be required to successfully pass a written  
14 examination evidencing an understanding of the applicable provisions of this code and of the  
15 Health and Safety Code. No person shall engage in the business of, act in the capacity of, or  
16 advertise or assume to act as, a cemetery manager without first obtaining a license from the  
17 bureau.”

18 “...”

19 5. Section 9723 of the Code provides, in pertinent part:

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

25 “...”

26 6. Section 9723.2 of the Code provides, in pertinent part:

27 “(a) No person shall engage in or conduct, or hold himself or herself out as  
28 engaging in or conducting, the activities of a cemetery manager without holding a valid,

1 unexpired cemetery manager license issued by the bureau.”

2 “ . . . ”

3 7. Section 9725 of the Code states:

4 "Upon grounds provided in this article [Article 6 (commencing with section  
5 9725)], and the other articles of this act, the license of any cemetery licensee and the certificate of  
6 authority of any cemetery corporation may be revoked or suspended in accordance with the  
7 provisions of this article."

8 8. Section 9725.1 of the Code states, in pertinent part:

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

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

16 “ . . . ”

17 9. California Code of Regulations, Title 16, section 2326.1, states:

18 "(a) Each cemetery for which a new certificate of authority is required shall be  
19 operated under the supervision of a managing officer qualified as such by the board."

20 "(1) The applicant for a new certificate of authority, in addition to the  
21 requirements of Section 2326, will designate the managing officer. There shall be submitted with  
22 the application the written statement of such officer demonstrating that he has two years'  
23 experience in the cemetery business, or equivalent experience, which experience shall be  
24 commensurate with the size, type, and scope of the proposed activities of the cemetery authority.  
25 Additional managing officers who have been qualified and examined by the board may be  
26 designated by the applicant and can succeed the managing officer in the event of death,  
27 resignation, disability, or other inability to perform the required duties."

28 “ . . . ”

1 COSTS

2 10. Section 125.3, subdivision (a) of the Code states, in pertinent part:

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

8 FIRST CAUSE FOR DISCIPLINE

9 (Failure to Employ Licensed Manager)

10 11. Respondent is subject to disciplinary action under sections 2725 and  
11 2725.1 of the Code and under California Code of Regulations, Title 16, section 2326.1, in that it  
12 has failed to employ a licensed cemetery manager to manage, supervise, and direct its operations,  
13 in violation of sections 9715.1, 9723 and 9723.2 of the Code.

14 DISCIPLINE CONSIDERATIONS

15 12. To determine the degree of discipline, if any, to be imposed on  
16 Respondent, Complainant alleges that on or about November 14, 2000, in a prior action, the  
17 Cemetery and Funeral Bureau issued Citation Number CB 2000 202 and ordered Respondent to  
18 pay a fine for failure to file an annual endowment care fund report, in violation of sections  
19 9650(a) and 9650.4(a) of the Code. That Citation is now final and is incorporated by reference as  
20 if fully set forth.

21 PRAYER

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

24 1. Revoking or suspending Certificate of Authority (COA) Number 213,  
25 issued to the Japanese Benevolent Society of California, aka the Japanese Cemetary of Colma;

26 2. Ordering Respondent to pay the Cemetery and Funeral Bureau the  
27 reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
28 Professions Code section 125.3;

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

DATED: 12/7/00

  
SHERRIE MOFFET-BELL  
Bureau Chief  
Cemetery and Funeral Bureau  
Department of Consumer Affairs  
State of California  
Complainant

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