

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

In the Matter of the Accusation Against:

Case No. A1 2011 242

SOQUEL CEMETERY, INC.  
P.O. BOX 655  
SOQUEL, CA 95073  
Certificate of Authority License No. COA  
357  
Gregory Irvin Smith, RMO (CEM 219)

OAH No. 2012060316

GREGORY IRVIN SMITH  
P.O. Box 655  
Soquel, CA 95073  
Cemetery Manager License No. CEM 219  
Certificate of Authority License No. COA  
357

Respondent.

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order are hereby adopted by the Director of Consumer Affairs and the Cemetery and Funeral Bureau as the Decision and Order in the above entitled matter.

This Decision shall become effective on Dec. 18, 2012.

It is so ORDERED NOV 19 2012.

  
\_\_\_\_\_  
DORÉATHEA JOHNSON  
Deputy Director, Legal Affairs  
Department of Consumer Affairs

1 KAMALA D. HARRIS  
Attorney General of California  
2 DIANN SOKOLOFF  
Supervising Deputy Attorney General  
3 KIM M. SETTLES  
Deputy Attorney General  
4 State Bar No. 116945  
1515 Clay Street, 20th Floor  
5 P.O. Box 70550  
Oakland, CA 94612-0550  
6 Telephone: (510) 622-2138  
Facsimile: (510) 622-2270  
7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:

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14 **Certificate of Authority License No. COA**  
**357**  
15 **Gregory Irvin Smith, RMO (CEM 219)**

OAH No. 2012060316

**STIPULATED SETTLEMENT AND**  
**DISCIPLINARY ORDER**

16 **GREGORY IRVIN SMITH**  
**P.O. Box 655**  
17 **Soquel, CA 95073**  
**Cemetery Manager License No. CEM 219**  
18 **Certificate of Authority License No. COA**  
**357**

19  
20 Respondent.

21 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
22 entitled proceedings that the following matters are true:

23 **PARTIES**

24 1. Lisa M. Moore (Complainant) is the Bureau Chief of the Cemetery and Funeral  
25 Bureau. She brought this action solely in her official capacity and is represented in this matter by  
26 Kamala D. Harris, Attorney General of the State of California, by Kim M. Settles, Deputy  
27 Attorney General.



1 the attendance of witnesses and the production of documents; the right to reconsideration and  
2 court review of an adverse decision; and all other rights accorded by the California  
3 Administrative Procedure Act and other applicable laws.

4 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and  
5 every right set forth above.

6 **CULPABILITY**

7 9. Respondent admits the truth of each and every charge and allegation in Accusation  
8 No. A1 2011 242.

9 10. Respondent agrees that his Cemetery Manager License and Certificate of Authority are  
10 subject to discipline and agrees to be bound by the Director's imposition of discipline as set forth  
11 in the Disciplinary Order below.

12 **CONTINGENCY**

13 11. This stipulation shall be subject to approval by the Director of Consumer Affairs or  
14 his designee. Respondent understands and agrees that counsel for Complainant and the staff of  
15 the Cemetery and Funeral Bureau may communicate directly with the Director and staff of the  
16 Department of Consumer Affairs regarding this stipulation and settlement, without notice to or  
17 participation by Respondent or his counsel. By signing the stipulation, Respondent understands  
18 and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the  
19 time the Director considers and acts upon it. If the Director fails to adopt this stipulation as the  
20 Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or  
21 effect, except for this paragraph, it shall be inadmissible in any legal action between the parties,  
22 and the Director shall not be disqualified from further action by having considered this matter.

23 12. The parties understand and agree that facsimile copies of this Stipulated Settlement  
24 and Disciplinary Order, including facsimile signatures thereto, shall have the same force and  
25 effect as the originals.

26 13. This Stipulated Settlement and Disciplinary Order are intended by the parties to be an  
27 integrated writing representing the complete, final, and exclusive embodiment of their agreement.  
28 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,

1 negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary  
2 Order may not be altered, amended, modified, supplemented, or otherwise changed except by a  
3 writing executed by an authorized representative of each of the parties.

4 14. In consideration of the foregoing admissions and stipulations, the parties agree that  
5 the Director may, without further notice or formal proceeding, issue and enter the following  
6 Disciplinary Order:

7 **DISCIPLINARY ORDER**

8 IT IS HEREBY ORDERED that Cemetery Manager License No. CEM 219 and Certificate  
9 of Authority License No. COA 357 issue to Respondent Gregory Irvin Smith (Respondent) are  
10 revoked.

11 1. Respondent shall lose all rights and privileges as a Cemetery Manager in California  
12 as of the effective date of the Director's Decision and Order.

13 2. Respondent shall lose all rights and privileges to operate a cemetery in California as  
14 of the effective date of the Director's Decision and Order.

15 3. Respondent shall cause to be delivered to the Bureau his wall certificate on or before  
16 the effective date of the Decision and Order.

17 4. If Respondent ever files an application for licensure or a petition for reinstatement in  
18 the State of California, the Bureau shall treat it as a petition for reinstatement. Respondent must  
19 comply with all the laws, regulations and procedures for reinstatement of a revoked license in  
20 effect at the time the petition is filed, and all of the charges and allegations contained in  
21 Accusation No. A1 2011 242 shall be deemed to be true, correct and admitted by Respondent  
22 when the Director determines whether to grant or deny the petition.

23 5. If and when Respondent's license is reinstated, he shall pay to the Director costs  
24 associated with its investigation and enforcement pursuant to Business and Professions Code  
25 section 125.3 in the amount of \$4,000.00. Respondent shall be permitted to pay these costs in a  
26 payment plan approved by the Director. Nothing in this provision shall be construed to prohibit  
27 the Director from reducing the amount of cost recovery upon reinstatement of the license.  
28



**ENDORSEMENT**

The foregoing Stipulated Settlement and Disciplinary Order are hereby respectfully submitted for consideration by the Director of Consumer Affairs.

Dated: 10/25/12

Respectfully submitted,  
KAMALA D. HARRIS  
Attorney General of California  
DIANN SOKOLOFF  
Supervising Deputy Attorney General

*Kim M. Settles*

KIM M. SETTLES  
Deputy Attorney General  
*Attorneys for Complainant*

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**Exhibit A**

**Accusation No. A1 2011 242**

1 KAMALA D. HARRIS  
Attorney General of California  
2 DIANN SOKOLOFF  
Supervising Deputy Attorney General  
3 CAROL ROMEO  
Deputy Attorney General  
4 State Bar No. 124910  
1515 Clay Street, 20th Floor  
5 P.O. Box 70550  
Oakland, CA 94612-0550  
6 Telephone: (510) 622-2141  
Facsimile: (510) 622-2270  
7 *Attorneys for Complainant*

8 **BEFORE THE**  
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10 **FOR THE CEMETERY AND FUNERAL BUREAU**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. A1 2011 242

13 SOQUEL CEMETERY, INC.  
14 P.O. Box 655  
Soquel, CA 95073

**ACCUSATION**

15 Certificate of Authority License No. COA 357  
Gregory Irvin Smith-RMO (CEM 219)

16 GREGORY IRVIN SMITH  
17 116 Magnolia  
Santa Cruz, CA 95062

18 Cemetery Manager License No. CEM 219

19 Respondents.  
20

21 Complainant alleges:

22 PARTIES

23 1. Lisa M. Moore (Complainant) brings this Accusation solely in her official capacity as  
24 the Deputy Bureau Chief of the Cemetery and Funeral Bureau, Department of Consumer Affairs.<sup>1</sup>

25 \_\_\_\_\_  
26 <sup>1</sup> 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 regulation governing the disposition of human remains, operation of cemeteries or crematories,  
2 the sale of cemetery property, or the sale of crematory services or commodities."

3 8. Section 9650, subdivision (a), of the Code states:

4 "Each cemetery authority shall file with the bureau annually, on or before June 1, or within  
5 five months after close of their fiscal year provided approval has been granted by the bureau as  
6 provided for in Section 9650.1, a written report in a form prescribed by the bureau . . ."

7 9. Health and Safety Code section 8300 states, in pertinent part:

8 "(b) The cemetery authority's power includes, but is not limited to, the following:

9 "(8) Making and enforcing rules and regulations for all other purposes deemed necessary by  
10 the cemetery authority for the proper conduct of the business of the cemetery, for the transfer of  
11 any plot or the right of interment, and the protection and safeguarding of the premises, and the  
12 principles, plans, and ideals on which the cemetery is conducted."

13 10. Health and Safety Code section 8725 states:

14 "Every cemetery authority which now or hereafter maintains a cemetery may place its  
15 cemetery under endowment care and establish, maintain, and operate an endowment care fund.  
16 Endowment care and special care funds consisting of trust funds created by irrevocable trust  
17 agreements may be commingled for investment and the income therefrom shall be divided  
18 between the endowment care and special care funds in the proportion that each fund contributed  
19 to the principal sum invested. Special care funds derived from trusts created by a revocable  
20 agreement shall not be commingled for investment and shall be accounted for separately from all  
21 other funds. The funds may be held in the name of the cemetery authority or its directors or in the  
22 name of the trustees appointed by the cemetery authority."

23 11. Health and Safety Code section 8726 states:

24 "The principal of all funds for endowment care shall be invested and the income only may  
25 be used for the care, maintenance, and embellishment of the cemetery in accordance with the  
26 provisions of law and the resolutions, bylaws, rules and regulations or other actions or  
27 instruments of the cemetery authority and for no other purpose. Endowment and special care  
28

1 funds shall be maintained separate and distinct from all other funds and the trustees shall keep  
2 separate records thereof."

3 12. Health and Safety Code section 8731 states, in pertinent part:

4 "(c)(1) Each member of the board of trustees shall provide signatory acknowledgment of  
5 understanding of the role of a trustee in managing trust funds in the following areas:

6 "(A) Trustee duties, powers, and liabilities as contained in Part 4 (commencing with Section  
7 16000) of Division 9 of the Probate Code.

8 "(2) The signatory acknowledgment shall be retained by the cemetery authority during the  
9 duration of the trustee's term of office."

10 13. Health and Safety Code section 8734 states, in pertinent part:

11 "(a) Except as provided in subdivisions (b), (c), and (d), the board of trustees or corporate  
12 trustee of an endowment care fund or one or more special care funds shall file a fidelity bond  
13 executed by an admitted surety insurer with the Cemetery and Funeral Bureau in the amount of  
14 fifty thousand dollars (\$50,000), guaranteeing payment to each such fund of any monetary loss  
15 incurred by the fund occasioned by acts of fraud or dishonesty by the trustees or trustee. The  
16 board of trustees or corporate trustee of both an endowment care fund and one or more special  
17 care funds need file only one such bond."

18 14. Health and Safety Code section 8738 provides that an endowment care cemetery is on  
19 which has deposited in its endowment care fund the minimum amounts heretofore required by  
20 law and shall deposit in its endowment care fund at the time of, or not later than completion of the  
21 initial site, not less than the following amounts for plots sold or disposed of: \$4.50 a square foot  
22 for each grave, \$75 for each niche, and \$220 for each crypt.

23 15. Health and Safety Code section 8777 states:

24 "All money or property received by a cemetery authority for deposit in a special care fund  
25 shall be placed in the custody of the trustee or trustees thereof within 30 days after receipt by the  
26 cemetery authority. The corpus of special care trusts shall be invested and reinvested and kept  
27 invested as authorized by Section 8778."

28 ///

1 16. California Code of Regulations, title 16, section 2326 states, in pertinent part:

2 "(a) Certificate of Authority. Applications for a certificate of authority to operate a  
3 cemetery shall be filed on the form furnished by the bureau at the principal office of the bureau.  
4 In addition to the payment of the fees required by Section 2311 of these rules, each application  
5 shall be accompanied by the following:

6 "(1) A certified copy of:

7 "(H) Endowment care trust agreement executed by the board of directors of the cemetery  
8 authority."

9 COST RECOVERY

10 17. Section 125.3 of the Code provides, in pertinent part, that the Director may request  
11 the administrative law judge to direct a licentiate found to have committed a violation or  
12 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
13 and enforcement of the case.

14 FIRST CAUSE FOR DISCIPLINARY ACTION

15 Unprofessional Conduct  
(Bus. & Prof. Code §9725.1(a))

16 18. Respondents have subjected their licenses to disciplinary action under Code section  
17 9725 .1, subdivision (a), in that they failed to comply with Code section 9650, subdivision (a), for  
18 the following because on December 8, 2011, a final audit of Respondent Soquel Cemetery  
19 performed by the Bureau showed that no Endowment Care Fund (ECF) and Special Care Fund  
20 (SCF) Reports (Annual Reports) were submitted for the years 2006, 2007, 2008, 2009, and 2010.

21 SECOND CAUSE FOR DISCIPLINARY ACTION

22 Unprofessional Conduct  
(Bus. & Prof. Code §9725.1(a))

23 19. Respondents have subjected their licenses to disciplinary action under Code section  
24 9725 .1, subdivision (a), in that they failed to comply with Health and Safety Code section 8276  
25 in the following respects:

26 a. The charges made by the cemetery authority for ECF contributions were not  
27 consistent with its published price lists. The Cemetery charged variable amounts of ECF  
28 contributions to its clients.



1 d. There was no evidence of an irrevocable trust agreement being set by a welfare  
2 authority, as reported in the 2005 annual ECF and SCF Annual Report as the reason for  
3 commingling.

4 FIFTH CAUSE FOR DISCIPLINARY ACTION

5 Unprofessional Conduct  
6 (Bus. & Prof. Code § 9725.1(a))

7 22. Respondents have subjected their licenses to disciplinary action under Code  
8 section 9725 .1, subdivision (a), in that Respondents failed to comply with Health and Safety  
9 Code sections 8731, subdivision (c)(1), and (2), and 8734 and California Code of Regulations,  
10 title 16, section 2326, subdivision (a)(1)(H), as follows:

11 a. The Cemetery Management did not deposit ECF monies upon the completion of  
12 the final sales.

13 b. The Cemetery Management borrowed a large sum of ECF monies that were not  
14 settled during the same fiscal year.

15 c. The Cemetery Management showed no evidence of collecting ECF contributions  
16 on the sale of 302 graves to the Jewish congregation.

17 d. An amount of \$95,381.50 was not deposited and entrusted in an ECF trust account.

18 e. An amount of \$18,420.00 representing pre-need sales executed by the  
19 cemetery was not entrusted in a Special Care Trust account.

20 PRAYER

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

23 1. Revoking or suspending Cemetery Manager License Number CEM 219, issued to  
24 Gregory Irvin Smith;

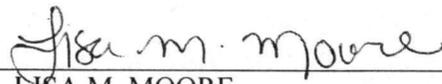
25 2. Revoking or suspending Certificate of Authority License Number COA 357, issued to  
26 Soquel Cemetery, Inc.;

27 3. Ordering Gregory Irvin Smith to pay the Cemetery and Funeral Bureau the reasonable  
28 costs of the investigation and enforcement of this case, pursuant to Business and Professions  
Code section 125.3; and

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

DATED: February 21, 2012



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

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accusation.rtf



## DECLARATION OF SERVICE BY MAIL

RE: Soquel Cemetery, Inc. & Gregory I. Smith No. A1 2011 242

I, Ellis M. Kjer declare that I am over 18 years of age, and not a party to the within cause; my business address is 1625 North Market Blvd., Suite S-208, Sacramento, California, 95834. I served a true copy of the attached

Decision and Order  
Stipulated Settlement and Disciplinary Order  
Accusations A1 2011 242

on each of the following, by placing the same in an envelope (or envelopes) addressed (respectively) as follows:

### First Class U.S. Mail & Certified U.S. Mail to:

Soquel Cemetery, Inc.  
Gregory I. Smith  
P.O. Box 655  
Soquel, CA 95073

### First Class Mail to:

Kim M. Settles, DAG  
Office of the Attorney General  
California Department of Justice  
P.O. Box 70550  
Oakland, CA 94612-0550

Jenille A. Smith  
Attorney at Law  
SMITH & ZIMMERMAN  
1300 Clay St., Ste 600  
Oakland, CA 94612-1427

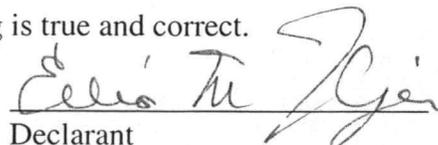
Cemetery and Funeral Bureau  
Attn: Richard Fisher  
1625 North Market Blvd., Suite S-208  
Sacramento, California, 95834

Cemetery and Funeral Bureau  
Attn: Jeff Brown  
1625 North Market Blvd., Suite S-208  
Sacramento, California, 95834

Each said envelope was then, on November 29, 2012, sealed and deposited in the United States mail at Sacramento, the county in which I am employed, with the postage thereon fully prepaid.

Executed on November 29, 2012, at Sacramento, California.

I declare under penalty of perjury that the foregoing is true and correct.

  
Declarant