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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: **NEPTUNE SOCIETY OF CENTRAL CALIFORNIA-BAKERSFIELD and GERALD ALDEN BROWN, Manager and Licensed Funeral Director** **201 'H' Street** **Bakersfield, CA 93304** **Funeral Establishment License No. FD 1406** **Funeral Director License No. FDR 1731** Respondents.	Case No. A1 2009 369 **A C C U S A T I O N**

Complainant alleges:

PARTIES

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

2. On or about May 13, 1983, the Bureau issued Funeral Establishment License Number FD 1406 to Neptune Society of Central California-Bakersfield (Respondent Neptune). The

[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.

Funeral Establishment License was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2011, unless renewed.

3. On or about July 14, 1999, the Bureau issued Funeral Director License Number FDR 1731 to Gerald Alden Brown (Respondent Brown). The Funeral Director License was in full force and effect at all times relevant to the charges brought herein and will expire on July 31, 2010, unless renewed.

JURISDICTION

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

5. Section 118, subdivision (b) of the Code provides that the suspension/expiration/surrender/cancellation of a license shall not deprive the Director of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

STATUTORY AND REGULATORY PROVISIONS

6. Section 7685 of the Code states, in pertinent part:

"(a) Every funeral director shall provide to any person, upon beginning discussion of prices or of the funeral goods and services offered, a written or printed list containing, but not necessarily limited to, the price for professional services offered, which may include the funeral director's services, the preparation of the body, the use of facilities, and the use of automotive equipment. All services included in this price or prices shall be enumerated."

7. Section 7686 of the Code states, in pertinent part, that 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."

8. Section 7692 of the Code states: "Misrepresentation or fraud in the conduct of the business or the profession of a funeral director or embalmer constitutes a ground for disciplinary action."

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9. Section 7735 of the Code states, in pertinent part:

"No funeral establishment licensed under the laws of the State of California, or the agents or employees of a funeral establishment, shall enter into or solicit any preneed arrangement, contract, or plan, hereinafter referred to as 'contract,' requiring the payment to the licensee of money . . . to pay for the final disposition of human remains or for funeral services or for the furnishing of personal property or funeral merchandise, wherein the use or delivery of those services, property or merchandise is not immediately required, unless the contract requires that all money paid directly or indirectly . . . shall be held in trust for the purpose for which it was paid or delivered until the contract is fulfilled according to its terms . . . .

"None of the corpus of the trust shall be used for payment of any commission nor shall any of the corpus of the trust be used for other expenses of trust administration, or for the payment of taxes on the earnings of the trust."

10. Section 7736 of the Code states:

"For the purposes of this article the term 'trustee' shall mean any banking institution or trust company legally authorized and empowered by the State of California to act as trustee in the handling of trust funds or not less than three persons one of whom may be an employee of the funeral establishment; the word 'trustor' shall mean any person who pays the money or deposits the securities used for those preneed arrangements; the term 'beneficiary' shall be the person for whom the funeral services are arranged; the words 'corpus of the trust' shall include all moneys paid and securities delivered by the trustor pursuant to the provisions of the article."

11. Section 7737.5 of the Code states: "A trustee may deposit the corpus of the trust in any financial institution insured by the Federal Deposit Insurance Corporation."

12. Section 7737.7 of the Code states: "A trustee may deposit the corpus of the trust in any credit union which is insured by the National Credit Union Share Insurance Fund."

13. Section 7741 of the Code states: "Nothing in this article shall apply to cemetery property; cemetery commodities; cemetery service; or merchandise that is delivered as soon as paid for."

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14. Section 1262 of title 16 of the California Code of Regulations states:

"(a) Delivery of merchandise within the meaning of Business and Professions Code Section 7741 shall mean actual personal delivery to a purchaser, trustor or beneficiary of funeral merchandise that is used or is intended to be used in connection with a preneed arrangement or any agreement collateral thereto. Any payment or payments received for funeral merchandise, where actual personal delivery of that merchandise will be delayed, shall be held in a trust as provided in Business and Professions Code, Division 3, Chapter 12, Article 9, until that merchandise is actually and personally delivered to, and is in the immediate possession of, the purchaser.

"(b) Neither the delivery of a warehouse receipt, nor any other form of constructive delivery shall constitute delivery of funeral merchandise within the meaning of Section 7741.

"(c) Funeral merchandise includes, but is not limited to, caskets, alternative containers, clothing, printed materials and any other merchandise usually sold by a funeral establishment for use in connection with the funeral or preparation for disposition of human remains."

COST RECOVERY

15. Section 125.3 authorizes the award of reasonable costs of investigation and prosecution of the case where violations have been found.

FIRST CAUSE FOR DISCIPLINE

(Failure to Hold Pre-Need Payments in Permissible Trust)

16. Respondent Neptune is subject to disciplinary action under Code sections 7686 and 7735 in that Respondent Neptune failed to hold payments from pre-need cremation services contracts in a trust pursuant to Code section 7736, and either Code section 7737.5 or 7737.7. Instead of holding the corpus of the trust with a financial institution insured by the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Share Insurance Fund (NCUSIF), Respondent Neptune has been giving the funds to Evergreen Cemetery Association Special Care Trust. The circumstances are as follows.

a. A sample blank pre-need contract obtained during a Bureau's inspection of Respondent on or about October 7, 2009 provides that all monies are being trusted in the Evergreen Cemetery Association Special Care Trust.

b. A pre-need contract entered into on or about July 12, 2007 provides "TRUSTING OF ALL MONIES IN THE EVERGREEN CEMETERY ASSOCIATION SPECIAL CARE TRUST . . . ."

c. A pre-need contract entered into on or about September 17, 1992 provides for "TRUSTING OF ALL MONIES IN EVERGREEN CEMETERY ASSOCIATION SPECIAL CARE FUND . . . ."

SECOND CAUSE FOR DISCIPLINE

(Misrepresentation That Monies in Proper Trust Vehicle)

17. Respondent Neptune is subject to disciplinary action under Code sections 7686 and 7692 in that its pre-need contracts state that trusting the pre-need buyers' monies in the Evergreen Cemetery Association Special Care Trust is "SUBJECT TO ALL APPLICABLE LAWS," when in fact the corpus of the trust must be deposited either in an FDIC-insured financial institution (Code § 7737.5) or in an NCUSIF-insured credit union (Code § 7737.7). Complainant refers to and by this reference incorporates the allegations set forth in paragraph 16, subparagraphs a through c inclusive, above, as though set forth fully.

THIRD CAUSE FOR DISCIPLINE

(Failure to Use Price List for Pre-Need Sales)

18. Respondent Brown is subject to disciplinary action under Code sections 7686 and 7685 in that Respondent did not have a pre-need price list. The circumstances are as follows:

a. On or about October 7, 2009, during a Bureau representative's inspection of Respondent, the representative asked to see a pre-need price list. The only price list that Respondent had was a general price list that did not differentiate between pre-need and at-need prices.

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FOURTH CAUSE FOR DISCIPLINE

(Failure to Provide Pre-Need Purchasers Items in Contract at Time of Sale)

19. Respondent Neptune is subject to disciplinary action under Code sections 7686 and 7741, and section 1262 of title 16 of the California Code of Regulations in that Respondent Neptune has not provided the merchandise to the buyers at the time of sale. For example, instead of providing a cremation container to a pre-need purchaser who entered a contract on or about September 17, 1992, Respondent Neptune only provided that purchaser with a warehouse receipt dated September 30, 1992.

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 Funeral Establishment License Number FD 1406, issued to Respondent Neptune Society of Central California-Bakersfield;

2. Revoking or suspending Funeral Director License Number FDR 1731, issued to Respondent Gerald Alden Brown;

3. Awarding reasonable costs pursuant to Code section 125.3; and

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

DATED: December 6, 2010

Lisa M. Moore

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

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