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

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| In the Matter of the Accusation Against: | Case No. A1 2015 32 |
| **TRANQUILITY CREMATION AND FUNERAL SERVICE, INC.**<br>**5000 Birch Street, Ste. 3000**<br>**Newport Beach, CA 92660** | OAH No. 2015080864 |
| **Funeral Establishment License No. FD 2010,** | **DEFAULT DECISION AND ORDER** |
| **and** | [Gov. Code, §11520] |
| **ANNE E. NIES**<br>**4847 Hopyard Road, #412**<br>**Pleasanton, CA 94588** | |
| **Funeral Director License No. FDR 3098** | |
| Respondents. | |

## FINDINGS OF FACT

1. On or about April 17, 2015, Complainant Lisa M. Moore, in her official capacity as the Bureau Chief of the Cemetery and Funeral Bureau, Department of Consumer Affairs, filed Accusation No. A1 2015 32 against Tranquility Cremation and Funeral Service, Inc., Brian Dixon-Linnett, President/Treasurer, and Anne E. Nies before the Cemetery and Funeral Bureau, Department of Consumer Affairs. (Accusation attached as Exhibit A.)

2. On or about April 17, 2009, the Cemetery and Funeral Bureau, Department of Consumer Affairs issued Funeral Establishment issued License No. FD 2010 to Respondent Brian Dixon-Linnett (Respondent Dixon-Linett). The Funeral Establishment License expired on April 30, 2014, and has not been renewed.

3. On or about January 5, 2009, the Cemetery and Funeral Bureau issued Funeral Director License Number FDR 3098 to Anne E. Nies (Respondent Nies), as manager of Tranquility Cremation and Funeral Service, Inc. The Funeral Director License expired on January 31, 2014 due to non-payment of an outstanding fine, and cannot be renewed until payment of $501.00 has been made.

4. On or about April 21, 2015, Respondents were served by Certified and First Class Mail copies of the Accusation No. A1 2015 32, Statement to Respondent, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7). Respondent Dixon-Linnett and Respondent Nies were served at their addresses of record which, pursuant to California Code of Regulations, title 16, section 1203, is required to be reported and maintained with the Bureau. Respondent Dixon-Linnett address of record was and is 5000 Birch Street, Ste. 3000, Newport Beach, CA 92660 and Respondent Nies address of record was and is 4847 Hopyard Road, #412, Pleasanton, CA 94588.

5. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c) and/or Business & Professions Code section 124.

6. On or about May 26, 2015, Respondent Dixon-Linnett signed and returned a Notice of Defense, requesting a hearing in this matter. A Notice of Hearing was served by mail at Respondent Dixon-Linnett and Respondent Nies addresses of record informing them that an administrative hearing in this matter was scheduled for January 26, 2016. Respondent Nies at no time filed a notice of defense and did not requested a hearing. Out of an abundance of caution and because of her position as funeral director; Respondent Nies was noticed regarding the upcoming hearing. Respondent Dixon-Linnett failed to appear at the hearing. Respondent Nies at no time filed a notice of defense and was also not present at the hearing.

7. Government Code section 11506 states, in pertinent part:

(c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing.

8. California Government Code section 11520 states, in pertinent part:

(a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent.

9. Pursuant to its authority under Government Code section 11520, the Bureau finds Respondents are in default. Respondent Nies is in default for failure to file a notice of defense and Respondent Dixon-Linnett is in default for failure to appear at hearing. The Bureau will take action without further hearing and, based on the relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as taking official notice of all the investigatory reports, exhibits and statements contained therein on file at the Bureau offices regarding the allegations contained in Accusation No. A1 2015 32, finds that the charges and allegations in Accusation No. A1 2015 32, are separately and severally, found to be true and correct by clear and convincing evidence.

10. Taking official notice of its own internal records, pursuant to Business and Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation and Enforcement is $3,480.00 as of February 1, 2016.

## DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Tranquility Cremation and Funeral Service, Inc., Brian Dixon-Linnett, President/Treasurer has subjected its Funeral Establishment License No. FD 2010 to discipline.

2. Based on the foregoing findings of fact, Respondent Anne E. Nies, has subjected her Funeral Director License Number FDR 3098 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The Bureau is authorized to revoke Respondent Brian Dixon-Linnett, Funeral Establishment License and Respondent Anne E. Nies, Funeral Director License based upon the following violations alleged in the Accusation which are supported by the evidence contained in the Default Decision Evidence Packet in this case.:

a. Respondents Tranquility Cremation and Funeral Service, Inc. and its Manager and Funeral Director Anne E. Nies are subject to disciplinary action under section 7703 of the Code in that they violated California Code of Regulations, title 16, section 1203 by closing the Funeral Establishment at its address of record without filing a new mailing address with the Bureau.

b. Respondents Tranquility Cremation and Funeral Service, Inc. and its Manager and Funeral Director Anne E. Nies are subject to disciplinary action under section 7703 of the Code in that they violated California Code of Regulations, title 16, section 1210 by failing to surrender the Establishment License to the Bureau upon its discontinuance of business at their address of record in Newport Beach.

## ORDER

IT IS SO ORDERED that Funeral Establishment License No. FD 2010, heretofore issued to Respondent Tranquility Cremation and Funeral Service, Inc., Brian Dixon-Linnett, President/Treasurer, and Funeral Director License No. FDR 3098, heretofore issued to Anne E. Nies, are both revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondents may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on MAY 8, 2016.

It is so ORDERED APR 07 2016

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Attachment:
Exhibit A: Accusation

Doreathea Johnson

DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

# Exhibit A

Accusation

(TRANQUILITY CREMATION AND FUNERAL SERVICE, INC., BRIAN DIXON-LINNETT, PRESIDENT/TREASURER, ANNE E. NIES)

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*Attorneys for Complainant*

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

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| In the Matter of the Accusation Against:<br><br>**TRANQUILITY CREMATION AND FUNERAL SERVICE, INC.**<br>**5000 Birch Street, Ste. 3000**<br>**Newport Beach, CA 92660**<br><br>**Funeral Establishment License No. FD 2010,**<br><br>**and**<br><br>**ANNE E. NIES**<br>**4847 Hopyard Road, #412**<br>**Pleasanton, CA 94588**<br><br>**Funeral Director License No. FDR 3098**<br><br>Respondents. | Case No. A1 2015 32<br><br>**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 Bureau Chief of the Cemetery and Funeral Bureau, Department of Consumer Affairs.

2. On or about April 17, 2009, the Cemetery and Funeral Bureau issued Funeral Establishment License Number FD 2010 to Tranquility Cremation and Funeral Service, Inc.

(Respondent). The Funeral Establishment License expired on April 30, 2014 due to non-payment of an outstanding fine, and cannot be renewed until payment of $1,001.00 has been made.

3. On or about January 5, 2009, the Cemetery and Funeral Bureau issued Funeral Director License Number FDR 3098 to Anne E. Nies (Respondent), as manager of Tranquility Cremation and Funeral Service, Inc. The Funeral Director License expired on January 31, 2014 due to non-payment of an outstanding fine, and cannot be renewed until payment of $501.00 has been made.

**JURISDICTION**

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

5. Section 477 of the Code states:

> As used in this division:
>
> (a) "Board" includes "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency."
>
> (b) "License" includes certificate, registration or other means to engage in a business or profession regulated by this code.

6. Section 7686 of the Code provides, 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.

**STATUTORY PROVISIONS**

7. Section 7703 of the Code states: "Violation of any of the provisions of this chapter or of the rules and regulations adopted pursuant to this chapter constitutes a ground for disciplinary action."

**REGULATORY PROVISIONS**

8. California Code of Regulations, title 16, section 1203 states:

> Each person holding a certificate of registration, license, permit or any other authority to practice or engage in any activity in the State of California under any and all laws administered by the bureau shall file his or her proper and current mailing address with the bureau at its office in Sacramento and shall immediately notify the bureau at its

said office of any and all changes of mailing address, giving both his or her old and his or her new address.

9. California Code of Regulations, title 16, section 1210 states:

> The certificate of licensure shall remain the property of the State of California, in possession of the licensee only so long as he/she or it exercises the license at the location specified in the license, and said certificate shall be surrendered to the bureau upon change of address, change of name, assignment or upon discontinuance of business at the specified address. This rule shall not prevent a licensed funeral director from conducting a funeral in another licensed establishment, nor shall it prevent a licensed funeral director from conducting a funeral at a church, cemetery, home, public hall, lodge room, or other suitable place.

## COSTS

10. Section 125.3 of the Code provides, in pertinent part, that the Bureau 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, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

## FACTUAL ALLEGATIONS

11. On or about December 9, 2014, a field representative for the Bureau attempted to conduct an inspection of Tranquility Cremation and Funeral Service, Inc. at its address of record on 5000 Birch Street, Suite 3000, in Newport Beach, California. The field representative was told by a receptionist in the office building that Tranquility Cremation and Funeral Service, Inc. had moved out of the building on April 30, 2014. The name plate for the Funeral Establishment had been removed from the lobby directory. The Bureau did not receive a change of address from Respondents Tranquility Cremation and Funeral Service, Inc. or its Manager and Funeral Director, Anne E. Nies, nor was the Funeral Establishment license surrendered to the Bureau upon its change of address, or upon its discontinuance of business at the specified address in Newport Beach.

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## FIRST CAUSE FOR DISCIPLINE

**(Failure to File a Change of Address)**

12. Respondents Tranquility Cremation and Funeral Service, Inc. and its Manager and Funeral Director Anne E. Nies are subject to disciplinary action under section 7703 of the Code in that they violated California Code of Regulations, title 16, section 1203 by closing the Funeral Establishment at its address of record without filing a new mailing address with the Bureau.

## SECOND CAUSE FOR DISCIPLINE

**(Failure to Surrender License)**

13. Respondents Tranquility Cremation and Funeral Service, Inc. and its Manager and Funeral Director Anne E. Nies are subject to disciplinary action under section 7703 of the Code in that they violated California Code of Regulations, title 16, section 1210 by failing to surrender the Establishment License to the Bureau upon its discontinuance of business at their address of record in Newport Beach.

## DISCIPLINARY CONSIDERATIONS

14. To determine the degree of discipline, if any, to be imposed on Respondents, Complainant alleges the following:

a. On April 25, 2013, Respondent Anne E. Nies was issued Citation No. IC 2013 143 for violating California Code of Regulations, title 16, section 1204. While working as the managing Funeral Director, she failed to exercise supervision and control of the Funeral Establishment. Respondent was assessed a fine in the amount of $501.00. The fine is unpaid.

b. On April 25, 2013, Respondent Tranquility Cremation and Funeral Service, Inc. was issued Citation No. IC 2012 454 alleging a violation of Code section 7692 in that it used misrepresentation or fraud in the conduct of the business or the profession of a funeral director. Respondent was assessed a fine in the amount of $1,001.00. The fine is unpaid.

c. On August 10, 2012, Respondent Tranquility Cremation and Funeral Service, Inc. was issued Citation No. IC 2012 121 alleging a violation of Code section 7737 in that it failed to place a consumers' payment of $1,790.00 into a preneed trust account within 30 days as required. Respondent was assessed a fine in the amount of $1,001.00. The fine was paid.

## 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 2010, issued to Tranquility Cremation and Funeral Service, Inc.;

2. Revoking or suspending Funeral Director License Number FDR 3098, issued to Anne E. Nies;

3. Ordering Tranquility Cremation and Funeral Service, Inc. and/or Anne E. Nies 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: April 13, 2015

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

SD2015700581