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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: **TREASURED MEMORIES FUNERAL CARE AND CREMATIONS,** **GREGORY A. HINKSON, OWNER** **9550 Warner Avenue** **Fountain Valley, CA 92708** **Funeral Establishment License No. FD 2162,** **and** **GREGORY A. HINKSON** **5405 Alton Parkway, #361** **Irvine, CA 92604** **Funeral Director License No. FDR 3285** Respondents.	Case No. A1 2014 15 **FIRST AMENDED ACCUSATION**

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Complainant alleges:

PARTIES

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

2. On or about March 29, 2013, the Cemetery and Funeral Bureau issued Funeral Establishment License Number FD 2162 to Treasured Memories Funeral Care and Cremations; Gregory A. Hinkson, Owner (collectively Treasured Memories). The Funeral Establishment License was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2015, unless renewed.

3. On or about October 14, 2010, the Cemetery and Funeral Bureau issued Funeral Director License Number FDR 3285 to Gregory A. Hinkson (Hinkson). The Funeral Director License was in full force and effect at all times relevant to the charges brought herein and will expire on October 31, 2014, unless renewed.

JURISDICTION

4. This First Amended Accusation is brought before the Director of Consumer Affairs (Director) for the Cemetery and Funeral 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.

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[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.

6. Code Section 7690 states:

"The bureau may discipline every accused licensee whose default has been entered or who has been tried and found guilty, after formal hearing, of any act or omission constituting a ground for disciplinary action.

"Any of the following penalties may be imposed by the bureau:

"(a) Suspension of the disciplinary order.

"(b) Reproval, public or private.

"(c) Probation.

"(d) Suspension of the right to practice.

"(e) Revocation of the right to practice.

"(f) Such other penalties as the bureau deems fit."

7. Code Section 7725.2 states:

"Except as otherwise provided in this article, a license that has expired may be renewed at any time within five years after its expiration on filing of an application for renewal on a form prescribed by the bureau and payment of all accrued and unpaid renewal fees. If the license is not renewed within 30 days after its expiration the licensee, as a condition precedent to renewal, shall also pay the delinquency fee prescribed by this chapter. Renewal under this section shall be effective on the date on which the application is filed, on the date on which all renewal fees are paid, or on the date on which the delinquency fee, if any, is paid, whichever last occurs. If so renewed, the license shall continue in effect through the date provided in Section 7725 that next occurs after the effective date of the renewal, when it shall expire if it is not again renewed.

"If a license is not renewed within one year following its expiration, the bureau may require as a condition of renewal that the holder of the license pass an examination on the appropriate subjects provided by this chapter."

8. 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. The proceedings under this article shall be conducted in accordance with Chapter 5 of Part 1 of

Division 3 of Title 2 of the Government Code, 1 and the bureau shall have all the powers granted therein.

9. Section 7686.5 of the Code states:

"All accusations against licensees shall be filed with the bureau within two years after the performance of the act or omission alleged as the ground for disciplinary action; provided, however, that the foregoing provision shall not constitute a defense to an accusation alleging fraud or misrepresentation as a ground for disciplinary action. The cause for disciplinary action in such case shall not be deemed to have accrued until discovery, by the bureau, of the facts constituting the fraud or misrepresentation, and, in such case, the accusation shall be filed within three years after such discovery."

STATUTORY PROVISIONS

10. Section 22 of the Code states:

"(a) 'Board' as used in any provisions of this Code, refers to the board in which the administration of the provision is vested, and unless otherwise expressly provided, shall include 'bureau,' 'commission,' 'committee,' 'department,' 'division,' 'examining committee,' 'program,' and 'agency.'

"(b) Whenever the regulatory program of a board that is subject to review by the Joint Committee on Boards, Commissions, and Consumer Protection, as provided for in Division 1.2 (commencing with Section 473), is taken over by the department, that program shall be designated as a 'bureau.'"

11. Section 141 of the Code states:

"(a) For any licensee holding a license issued by a board under the jurisdiction of the department, a disciplinary action taken by another state, by any agency of the federal government, or by another country for any act substantially related to the practice regulated by the California license, may be a ground for disciplinary action by the respective state licensing board. A certified copy of the record of the disciplinary action taken against the licensee by another state, an agency of the federal government, or another country shall be conclusive evidence of the events related therein.

"(b) Nothing in this section shall preclude a board from applying a specific statutory provision in the licensing act administered by that board that provides for discipline based upon a disciplinary action taken against the licensee by another state, an agency of the federal government, or another country."

12. 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."

13. Section 7705 of the Code states:

"Fraud or misrepresentation in obtaining a license constitutes a ground for disciplinary action."

14. Section 7707 of the Code states:

"Gross negligence, gross incompetence or unprofessional conduct in the practice of funeral directing or embalming constitutes a ground for disciplinary action."

REGULATORY PROVISIONS

15. California Code of Regulations, title 16, section 1253.6:

"In reaching a decision on a disciplinary action under the Administrative Procedure Act (Government Code Section 11400 et. seq.), the bureau shall consider the disciplinary guidelines entitled "A Manual of Disciplinary Guidelines for Funeral Establishments, Funeral Directors, Embalmers, and Apprentice Embalmers (September 1997)" which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the bureau in its sole discretion determines that the facts of the particular case warrant such a deviation - for example, the presence of mitigating factors; the age of the case; evidentiary problems."

COSTS

16. Section 125.3, subdivision (a), states, in pertinent part: "Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department . . . . upon request of the entity bringing the proceedings may request the administrative law judge may 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."

FIRST CAUSE FOR DISCIPLINE

(Prior Discipline)

17. Hinkson is subject to disciplinary action under Code section 141 in that he had a disciplinary action taken by another state, by any agency of the federal government, or by another country for an act substantially related to a funeral director. The circumstances are as follows:

18. On or about July 11, 2001, in an administrative proceeding before the New York Stock Exchange, Panel Decision 01-128, the Exchange took disciplinary action against Respondent's registration and membership. A hearing panel found that Respondent was a former registered representative with the Exchange; that in 2000 the Division of Enforcement of the Exchange received information that Respondent had been terminated from a firm because of allegations that Respondent, while employed with the firm, had misappropriated customer funds, distributed unapproved and misleading correspondence containing forged signatures to customers, and engaged in unauthorized trading; that in violation of Exchange Rule 477, Respondent failed to cooperate with the Exchange's written request for information and failed to cooperate with the Exchange's request that he appear to testify about these activities. As a result, the panel imposed on Respondent a censure and a permanent bar from membership, allied membership, approved person status, and employment or association in any capacity with any member or member organization.

19. On or about August 20, 2002, in an administrative proceeding entitled *In the Matter of Gregory A. Hinkson* before the U.S. Securities and Exchange Commission, Release No. 46387, File No. 3-10868, the Commission took disciplinary action against Respondent's registration and licenses (Series 7, 31, 63, and 65) as a broker. The Commission found that from 1998 to 2000, Respondent, while associated with Merril Lynch, a registered broker-dealer in Newport Beach, misappropriated $327,356.00 from five of his clients' accounts. The Commission found that from 1999 to 2000, while associated with Merril Lynch, Respondent performed trades in one of his client's accounts without the client's authorization, causing to this client to lose over

$140,000.00. As a result, the Commission ordered that Respondent be barred from association with any broker or dealer.

SECOND CAUSE FOR DISCIPLINE

(Fraud or Misrepresentation in Obtaining a License)

20. Treasured Memories and Hinkson are subject to disciplinary action under Code section 7705 in that they committed fraud or misrepresentation in obtaining a license. Complainant re-alleges and incorporates by reference the allegations set forth above in paragraphs 17-19. The circumstances are as follows:

21. On or about February 27, 2008, in an administrative proceeding entitled *In the Matter of the Statement of Issues Against Gregory Albert Hinkson* before the Department of Real Estate, State of California (now the Bureau of Real Estate), Case No. H-34361 LA, the Department of Real Estate took disciplinary action against Respondent's application for licensure as a real estate salesperson. Pursuant to a default proceeding, the Real Estate Commissioner denied Respondent's application under Section 10177, subdivisions (f) and (j). The bases for the Statement of Issues was the above-mentioned New York Stock Exchange disciplinary proceeding and a final judgment and permanent injunction that was entered against Respondent on July 19, 2002, in the United States District Court, Central District of California, Case No. 02-5576.

22. On or about October 26, 2010, the Bureau received an application for a funeral establishment license from Hinkson to be the sole owner and managing funeral director of an applicant called Public Direct Cremations. On the license application, Hinkson was asked, "Have you ever had any professional or vocational license or registration denied, suspended, revoked, placed on probation or other disciplinary action taken by this or any other governmental authority in this state or any other state, or any foreign country [¶] If 'yes,' please attach an explanation that includes license type, action, and company name (if applicable), year of action and state." In response to this question, Hinkson marked the box next to "No" and omitted an explanation of any prior disciplinary action or licensure denial. On or about October 19, 2010, Hinkson certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application and sent it to the Bureau. In truth and in fact, as Hinkson well

knew, Hinkson had a prior disciplinary action taken against his registration, licenses, and membership with the New York Stock Exchange and U.S. Securities and Exchange Commission and was denied licensure with the Bureau of Real Estate as described above. On or about November 23, 2010, the Bureau approved the application.

23. On or about March 12, 2013, the Bureau received an application for a funeral establishment license from Treasured Memories and Hinkson. On the license application, Treasured Memories and Hinkson were asked, "Have you ever had any professional or vocational license or registration denied, suspended, revoked, placed on probation or other disciplinary action taken by this or any other governmental authority in this state or any other state, or any foreign country [¶] If 'yes,' please attach an explanation that includes license type, action, and company name (if applicable), year of action and state." In response to this question, Treasured Memories and Hinkson left this question blank and omitted an explanation of any prior disciplinary action or licensure denial. On or about February 28, 2013, Treasured Memories and Hinkson certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application and sent it to the Bureau. In truth and in fact, as Treasured Memories and Hinkson well knew, Hinkson had a prior disciplinary action taken against his registration and membership with the New York Stock Exchange and U.S. Securities and Exchange Commission and was denied licensure with the Bureau of Real Estate as described above. On or about March 29, 2013, the Bureau approved the application.

THIRD CAUSE FOR DISCIPLINE

(Fraud)

24. Hinkson is subject to disciplinary action under section 7692 of the Code in that he committed misrepresentation or fraud in the conduct of the business or the profession of a funeral director or embalmer. Complainant re-alleges and incorporates by reference the allegations set forth above in paragraphs 17-23. The circumstances are as follows:

25. In a license application, Respondent misrepresented or concealed a material fact; he knew that his representations were false or misleading; he intended to induce the Bureau to rely

on his representations and responses in the license application; and the Bureau reasonably relied on them and issued a license.

FOURTH CAUSE FOR DISCIPLINE

(Unprofessional Conduct)

26. Hinkson is subject to disciplinary action under section 7707 for unprofessional conduct in the practice of funeral directing. Complainant re-alleges and incorporates by reference the allegations set forth above in paragraphs 17-25.

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 2162, issued to Treasured Memories Funeral Care and Cremations; Gregory A. Hinkson, Owner;

2. Revoking or suspending Funeral Director License Number FDR 3285, issued to Gregory A. Hinkson;

3. Ordering Treasured Memories and Hinkson 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; and

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

DATED: April 15, 2014

Lisa M. Moore

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

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