

**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
HINKSON, OWNER

Funeral Establishment License No. FD2162

and

GREGORY A. HINKSON

Funeral Director License No. FDR 3285

Respondents.

Case No. A1 2014 15

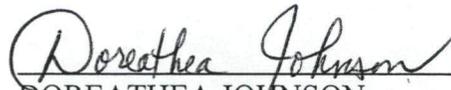
OAH No. 2014020402

DECISION

The attached Proposed Decision is hereby adopted by the Director of Consumer Affairs as the Decision in the above entitled matter.

This Decision shall become effective December 12, 2014.

IT IS SO ORDERED Nov. 13, 2014.


DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

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PROPOSED DECISION

Heidi R. Weisbaum, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on September 22, 2014, in San Diego, California.

Adrian R. Contreras, Deputy Attorney General, represented complainant Lisa M. Moore, Bureau Chief, Cemetery and Funeral Bureau, Department of Consumer Affairs, State of California.

Respondent Gregory A. Hinkson represented himself and respondent Treasured Memories Funeral Care and Cremations. Respondent Martin Hinkson, owner of respondent Treasured Memories Funeral Care and Cremations, made no appearance.

The record was closed and the matter was submitted on September 22, 2014.

The record was reopened for the filing of a document on September 26, 2014. The document was received October 1, 2014, and marked as complainant's exhibit 11. The record was closed and the matter submitted the same day.

FACTUAL FINDINGS

1. Lisa M. Moore, Bureau Chief, Cemetery and Funeral Bureau (Bureau), Department of Consumer Affairs, State of California, filed First Amended Accusation No. A1 2014 15, in her official capacity on April 15, 2014. Respondents had filed a timely Notice of Defense to the Accusation. (Gov. Code §11507.)

2. On October 14, 2010, the Bureau issued Funeral Director License No. FDR 3285 to respondent Gregory A. Hinkson. The license will expire October 31, 2014, unless renewed.

3. On March 29, 2013, the Bureau issued Funeral Establishment License No. FD 2162, to respondent Treasured Memories Funeral Care and Cremations (Treasured Memories), with Gregory A. Hinkson as owner and manager.

4. On May 16, 2014, the ownership of Treasured Memories changed from Gregory Hinkson to his brother Martin Hinkson. Another individual, not associated with this matter, became the manager. The license will expire March 31, 2015, unless renewed.

Amendments to the First Amended Accusation

5. At the commencement of the hearing, complainant amended the First Amended Accusation (FAA) by substituting, in the caption, the name of Martin Hinkson for Gregory A. Hinkson, as owner of respondent Treasured Memories. Additionally, complainant amended paragraph two of the FAA by substituting the following paragraph regarding the licensing history of Treasured Memories:

2. On or about March 29, 2013, the Cemetery and Funeral Bureau issued Funeral Establishment License Number FD2162 to Respondent Gregory Hinkson, as owner of Treasured Memories Funeral Care and Cremations. On or about May 16, 2014, Gregory Hinkson gave the funeral establishment to his brother, Respondent Martin Hinkson, and FD 2162 was subsequently assigned to Martin Hinkson, as owner of Treasured Memories Funeral Care and Cremations. 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.

Prior Discipline and Denial of License

6. On August 20, 2002, in United States Securities and Exchange Commission proceeding Release No. 46387, File No. 3-10868, entitled *In the Matter of Gregory A. Hinkson*, the Commission found the following:

- (1) From July 1997 to June 2000, Hinkson was a registered broker-dealer with Merrill Lynch in Newport Beach, California;
- (2) From December 1998 to May 2000, Hinkson misappropriated \$327,356 from five of his clients' accounts and from October 1999 to May 2000, he performed unauthorized trades in one client's account resulting in a loss to the client in excess of \$140,000;
- (3) On July 11, 2001, Hinkson was censured and permanently barred from the New York Stock Exchange, and his securities registration was revoked;
- (4) On July 25, 2002, the U.S. District Court for the Central District of California, in the matter of *S.E.C. v. Gregory A. Hinkson*, No. SA CV02-5576 (DT)(AJWx), entered a final judgment permanently enjoining Hinkson from violating in any manner Section 17(a) of the Securities Act of 1933 (15 U.S.C. §77(q)), Section 10(b) of the Securities Exchange Act of 1934 (15 U.S.C. §78j(b)), and Section 10b-5 (17 C.F.R. §240.10b-5), and ordered him to pay disgorgement in the amount of \$381,068.54, plus civil penalties.

Based on these findings, the Securities and Exchange Commission barred Hinkson from employment or association in any capacity with any broker or dealer or member of the New York Stock Exchange.

7. In January 2006, Hinkson filed an application for a real estate salesperson license with the California Department of Real Estate (Department). In the application, he admitted the prior discipline by the New York Stock Exchange and the Securities and Exchange Commission. In October 2007, the Department filed a Statement of Issues denying the application. Hinkson requested a hearing on the matters alleged in the Statement of Issues. The hearing was scheduled for January 16, 2008, but Hinkson failed to appear. Based on his default, the Department denied his application for a real estate salesperson license.

Gregory Hinkson

8. Gregory Hinkson is 50 years old and has an Associate of Arts degree from Cypress College in Orange County. When he was in college, he had a night job with a company that contracted with the Orange County Coroner's Office to pick up dead bodies and transport them to the Coroner's Office. He also volunteered as a laboratory technician with the Coroner's Office and helped prepare the bodies for disposition.

9. Hinkson got back into the "death-care" business, as he called it, after being denied the real estate sales license. Initially, he worked as a driver transporting dead bodies

and as a sales representative for a cremations company. On October 14, 2010, Hinkson obtained his Funeral Director License No. 3285.¹

10. Hinkson's first company was Public Direct Cremations. On October 19, 2010, Hinkson applied for a funeral establishment license for the company. In the Certification Affidavit for the license, Hinkson answered "No" to the questions asking whether he had ever been convicted of or pled no contest to a violation of any local, state, federal or foreign law, and whether he had ever had any professional or vocational license or any registration denied or disciplined by any state or foreign country. He signed under penalty of perjury. On November 23, 2010, the Bureau issued Funeral Establishment License No. FD 2075 for Public Direct Cremations. In July 2012, Hinkson transferred ownership of Public Direct Cremations to another individual not involved with this matter. He remained the manager for another year.

11. Hinkson's next enterprise was Treasured Memories. He described the business as arranging transportation of dead bodies from the place of death to either a cemetery or a crematory, or to a place for scientific research. Hinkson stated the majority of their work was for the scientific research community. Funerals represented a small percentage of their business. Another small percentage came from indigent cases they did for the Orange County Coroner's Office.

12. In February 2013, Hinkson applied for a funeral establishment license for Treasured Memories. The application included a Certification Affidavit identical to the one he completed for Public Direct Cremations. This time, however, Hinkson left the "Yes" and "No" answer boxes blank regarding any prior convictions or license denials or discipline before signing under penalty of perjury to the truth of all statements made in the document. On March 29, 2013, the Bureau issued Funeral Establishment License No. FD2162 for Treasured Memories.

13. Hinkson testified that because he had admitted the S.E.C. violations on the real estate salesperson application and had been denied the license, he knew what would happen with the funeral establishment application if he admitted the actions. So he intentionally left the boxes blank.

14. Hinkson gave Treasured Memories to his brother Martin Hinkson this past spring. An application to transfer ownership and assign the funeral establishment license to Martin Hinkson was sent to the Bureau.² On receipt of the application, the Bureau sent a letter to Martin Hinkson informing him of the accusation against Gregory and Treasured Memories, and further stating that the Bureau would not continue "processing [the]

¹ No evidence was presented regarding the information Hinkson provided to or omitted from the Bureau to obtain his funeral director's license.

² The exact date of the application to transfer ownership is unknown as the application itself is not part of the exhibits.

application” until the matter was adjudicated or “Gregory Hinkson [was] removed as the designated funeral director.” The letter, dated April 16, 2014, asked for a written response.

15. Neither brother provided a written response. Instead, Gregory Hinkson alleged he contacted the Bureau and asked if the transfer would go through if he were removed as funeral director. He did not state to whom he spoke. But he re-sent the application with Martin Hinkson as owner and an employee named Christopher Macera as funeral director. The Bureau subsequently approved the assignment of ownership, effective May 16, 2014.

16. Gregory Hinkson described his brother Martin’s duties as being primarily responsible for picking up and transporting bodies, and estimated that Martin works approximately 10 to 20 hours per week for the business. Though he stated Martin has done every aspect of the business that he, Gregory, has done and is especially adept with the public, he stated that it is only when he is away that Martin is in charge.

17. Gregory Hinkson candidly admitted the allegations in the First Amended Accusation, and stated more than once that he was the guilty party, not his brother Martin Hinkson. He was very concerned about the repercussions for his brother. He asserted that had he known the Bureau would proceed against Treasured Memories after assigning ownership to his brother, he would not have proceeded with the assignment. When he was directed to the sentences in the April 2014 letter from the Bureau stating that the accusatory pleadings were filed against Treasured Memories as well as himself, he remarked he “must have missed that.”

18. Hinkson offered no explanation for his past transgressions. He did not testify about his Merrill Lynch conduct or whether he ever made full reimbursement to the victims of his conduct. He did not testify about his failure to appear at the hearing on his real estate sales license.

19. Hinkson provided two letters dated March 2014 from the Orange County Sheriff’s Department, in his defense. One is from a Senior Deputy Coroner and the second is from a Supervising Deputy Coroner. Both are positive and describe Hinkson’s invaluable assistance to the Coroner’s Office in providing funeral services for indigent families.

Stipulated Surrender of License and Order Re: Only Gregory Hinkson

20. On September 12, 2014, Hinkson signed a document entitled, “Stipulated Surrender of License and Order Re: Only Gregory Hinkson,” calling for the surrender of his Funeral Director License No. FDR 3285. At the time of the hearing, the Bureau had not yet acted on the stipulation.

21. In the Stipulated Surrender, Hinkson admitted the allegations against him. Specifically, he admitted: (1) prior discipline by the New York Stock Exchange and the United States Securities and Exchange Commission for misappropriating clients’ funds,

distributing misleading correspondence containing forged signatures to customers, and engaging in unauthorized trading; (2) prior denial of a real estate salesperson's license by the California Department of Real Estate (now Bureau of Real Estate); (3) fraud or misrepresentation in the obtainment of the funeral establishment license for Treasured Memories by virtue of his failure to admit the prior discipline and license denial; (4) misrepresentation or fraud in the conduct of business or the profession of a funeral director; and, (5) unprofessional conduct in the practice of funeral directing.

22. The Stipulated Surrender further called for Gregory Hinkson to pay to the Bureau \$4055.00, for its costs of investigation and enforcement, should he apply for reinstatement of his funeral director license or any new license.

Evaluation

MARTIN HINKSON

23. The Bureau amended the First Amended Accusation (FAA) at the beginning of the hearing in two places. The first, in the caption, substituted the name of Martin Hinkson for Gregory A. Hinkson, as owner of Treasured Memories. The second, in paragraph 2 of the FAA, reflected the ownership change of Treasured Memories to Martin Hinkson, and the assignment of Funeral Establishment License No. FD2162 to Martin Hinkson. Both amendments refer to Martin Hinkson as a "respondent."

24. There was no evidence that Martin Hinkson was served with the jurisdictional documents. (Gov. Code §11440.20.) Nor was Martin Hinkson present for the hearing. While an agency may amend the pleadings at any time before a matter is submitted, "[a]ll parties shall be notified thereof." (Gov. Code §11507.) Gregory Hinkson represented that Martin was "aware of the hearing and authorized" Gregory to represent him. Awareness does not constitute service. As there was no evidence of service of the jurisdictional documents on Martin Hinkson, no findings may be made against him. (Gov. Code §11505, subd. (c).)

25. Further, Martin Hinkson is the nominal head of Treasured Memories, only. He does not work full-time for the company. He takes over only when Gregory is away. And, he did not appear at the hearing to represent "his" company, let alone himself.

TREASURED MEMORIES

26. Gregory Hinkson obtained the funeral establishment license for Treasured Memories by failing to admit his prior discipline and the denial of his real estate salesperson license. Treasured Memories' Funeral Establishment License No. FD 2162 was therefore obtained unlawfully by misrepresentation and fraud. Hinkson admitted the same in the Stipulated Surrender and at the hearing.

27. The assignment of the ownership of Treasured Memories to Martin Hinkson did not change the unlawful character of the funeral establishment license. The fact the Bureau processed the assignment and issued the license with charges still pending against Treasured Memories did not change the unlawful character of the license, either. The funeral establishment license was issued through fraud and misrepresentation.

COSTS

28. The Bureau incurred costs of investigation and enforcement of this matter in the amount of \$5,627.50 for the services of the Attorney General. By the terms of the Stipulated Surrender, Hinkson will pay \$4,055.00 in costs should he ever apply for a new license or seek to have his license reinstated. No additional costs are reasonable.

LEGAL CONCLUSIONS

1. Business and Professions Code section 141 provides:
 - (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.
2. Business and Professions Code section 7686 provides:

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.
3. Business and Professions Code section 7692 provides:

Misrepresentation or fraud in the conduct of the business or the profession of a funeral director or embalmer constitutes a ground for disciplinary action.
4. Business and Professions Code section 7705 provides:

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

5. Business and Professions Code section 7707 provides:

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

6. Business and Professions Code section 125.3 provides:

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 . . . 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.

7. Cause exists to revoke respondent Treasured Memories Funeral Care and Cremations' Funeral Establishment License No. FD 2162, pursuant to Business and Professions Code sections 7686 and 7705, as established by Findings 1 through 27.

8. The remaining allegations in the First Amended Accusation pertain to Gregory Hinkson. As he stipulated to the surrender of his Funeral Director License No. FDR 3285, no further conclusions are made as to him.

9. As there was no evidence Martin Hinkson was properly served with or notified of the jurisdictional documents, no legal conclusions are made as to him.

10. In the Stipulated Surrender, signed by the parties September 12, 2014, Gregory Hinkson agreed to pay to the Bureau \$4,055.00, for its costs of investigation and enforcement, should he ever apply for a new license or seek to have his license reinstated. That amount is reasonable. No additional costs are warranted.

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ORDER

Funeral Establishment License No. FD 2162, issued to respondent Treasured Memories Funeral Care and Cremations by the Cemetery and Funeral Bureau of the State of California, is revoked.

DATED: October 31, 2014

Handwritten signature of Heidi R. Weisbaum in cursive script, with a horizontal line underneath the signature.

HEIDI R. WEISBAUM

Administrative Law Judge

Office of Administrative Hearings