

1 EDMUND G. BROWN JR.  
Attorney General of California  
2 KAREN B. CHAPPELLE  
Supervising Deputy Attorney General  
3 RENE JUDKIEWICZ  
Deputy Attorney General  
4 State Bar No. 141773  
300 So. Spring Street, Suite 1702  
5 Los Angeles, CA 90013  
Telephone: (213) 897-2537  
6 Facsimile: (213) 897-2804  
*Attorneys for Complainant*

7  
8 **BEFORE THE**  
**DEPARTMENT OF CONSUMER AFFAIRS**  
**FOR THE CEMETERY AND FUNERAL BUREAU**  
9 **STATE OF CALIFORNIA**

10  
11 In the Matter of the Accusation Against:

Case No. A1 2009 369

12 **NEPTUNE SOCIETY OF CENTRAL**  
**CALIFORNIA-BAKERSFIELD and**  
13 **GERALD ALDEN BROWN, Manager and**  
**Licensed Funeral Director**  
14 **201 'H' Street**  
**Bakersfield, CA 93304**  
15 **Funeral Establishment License No. FD 1406**  
**Funeral Director License No. FDR 1731**

**A C C U S A T I O N**

16 Respondents.  
17

18 Complainant alleges:

19 PARTIES

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

23 2. On or about May 13, 1983, the Bureau issued Funeral Establishment License Number  
24 FD 1406 to Neptune Society of Central California-Bakersfield (Respondent Neptune). The  
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 Funeral Establishment License was in full force and effect at all times relevant to the charges  
2 brought herein and will expire on May 31, 2011, unless renewed.

3 3. On or about July 14, 1999, the Bureau issued Funeral Director License Number FDR  
4 1731 to Gerald Alden Brown (Respondent Brown). The Funeral Director License was in full  
5 force and effect at all times relevant to the charges brought herein and will expire on July 31,  
6 2010, unless renewed.

### 7 JURISDICTION

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

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

### 15 STATUTORY AND REGULATORY PROVISIONS

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

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

22 7. Section 7686 of the Code states, in pertinent part, that the Bureau “may suspend or  
23 revoke licenses, after proper notice and hearing to the licensee, if the licensee has been found  
24 guilty by the bureau of any of the acts or omissions constituting grounds for disciplinary action.”

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

28 ///

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

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

10           “None of the corpus of the trust shall be used for payment of any commission nor shall any  
11 of the corpus of the trust be used for other expenses of trust administration, or for the payment of  
12 taxes on the earnings of the trust.”

13           10.    Section 7736 of the Code states:

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

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

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

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

28     ///



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

4 b. A pre-need contract entered into on or about July 12, 2007 provides "TRUSTING OF  
5 ALL MONIES IN THE EVERGREEN CEMETERY ASSOCIATION SPECIAL CARE TRUST  
6 . . . ."

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

10 SECOND CAUSE FOR DISCIPLINE

11 (Misrepresentation That Monies in Proper Trust Vehicle)

12 17. Respondent Neptune is subject to disciplinary action under Code sections 7686 and  
13 7692 in that its pre-need contracts state that trusting the pre-need buyers' monies in the Evergreen  
14 Cemetery Association Special Care Trust is "SUBJECT TO ALL APPLICABLE LAWS," when  
15 in fact the corpus of the trust must be deposited either in an FDIC-insured financial institution  
16 (Code § 7737.5) or in an NCUSIF-insured credit union (Code § 7737.7). Complainant refers to  
17 and by this reference incorporates the allegations set forth in paragraph 16, subparagraphs a  
18 through c inclusive, above, as though set forth fully.

19 THIRD CAUSE FOR DISCIPLINE

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

21 18. Respondent Brown is subject to disciplinary action under Code sections 7686 and  
22 7685 in that Respondent did not have a pre-need price list. The circumstances are as follows:

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

27 ///

28 ///

1 FOURTH CAUSE FOR DISCIPLINE

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

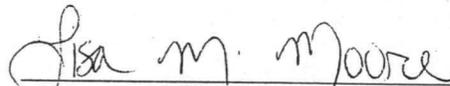
3 19. Respondent Neptune is subject to disciplinary action under Code sections 7686 and  
4 7741, and section 1262 of title 16 of the California Code of Regulations in that Respondent  
5 Neptune has not provided the merchandise to the buyers at the time of sale. For example, instead  
6 of providing a cremation container to a pre-need purchaser who entered a contract on or about  
7 September 17, 1992, Respondent Neptune only provided that purchaser with a warehouse receipt  
8 dated September 30, 1992.

9 PRAYER

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

- 12 1. Revoking or suspending Funeral Establishment License Number FD 1406, issued to  
13 Respondent Neptune Society of Central California-Bakersfield;
- 14 2. Revoking or suspending Funeral Director License Number FDR 1731, issued to  
15 Respondent Gerald Alden Brown;
- 16 3. Awarding reasonable costs pursuant to Code section 125.3; and  
17 4. Taking such other and further action as deemed necessary and proper.

18  
19  
20 DATED: December 6, 2010

21   
22 LISA M. MOORE  
23 Deputy Chief  
24 Cemetery and Funeral Bureau  
25 Department of Consumer Affairs  
26 State of California  
27 Complainant

28  
25 LA2010600853  
26 60570669.doc