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

10 In the Matter of the Accusation Against:

Case No. A1 2008-85

11 **MELANIE ANN MARTINSEN**
12 **2780 North Akers Street**
13 **Visalia, CA 93291**

DEFAULT DECISION AND ORDER

14 **Funeral Director License No. FDR 2561**

[Gov. Code, §11520]

15 Respondent.

16
17 FINDINGS OF FACT

18 1. On or about May 13, 2010, Complainant Richard L. Wallinder, Jr., in his official
19 capacity as the Bureau Chief of the Cemetery and Funeral Bureau, Department of Consumer
20 Affairs^{1/}, filed Accusation No. A1 2008-85 against Melanie Ann Martinsen (Respondent) before
21 the Director of Consumer Affairs.

22 2. On or about April 12, 2005, the Cemetery and Funeral Bureau (Bureau) issued
23 Funeral Director License No. FDR 2561 to Respondent. The Funeral Director License expired on
24 April 30, 2008, and has not been renewed.

25 ^{1/} Effective January 1, 1996, the Department of Consumer Affairs succeeded to, and
26 was vested with, all the duties, powers, purpose, responsibilities and jurisdiction of the
27 Cemetery Board and the Board of Funeral Directors and Embalmers, and consolidated the
28 functions into the Cemetery and Funeral Programs. Effective January 1, 2001, the regulatory
agency is designated as the Cemetery and Funeral Bureau.

1 3. On or about May 19, 2010, Constance A. Ward, an employee of the Department of
2 Justice, served by Certified and First Class Mail a copy of the Accusation No. A1 2008-85,
3 Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code
4 sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Bureau, which
5 was and is:

6 2780 North Akers Street
7 Visalia, CA 93291.

8 A copy of the Accusation is attached as exhibit A, and is incorporated herein by reference.

9 4. Service of the Accusation was effective as a matter of law under the provisions of
10 Government Code section 11505, subdivision (c).

11 5. On or about June 1, 2010, the aforementioned documents were returned by the U.S.
12 Postal Service marked "Forwarding Address Expired."

13 6. Business and Professions Code section 118 states, in pertinent part:

14 (b) The suspension, expiration, or forfeiture by operation of law of a license
15 issued by a board in the department, or its suspension, forfeiture, or cancellation by
16 order of the board or by order of a court of law, or its surrender without the written
17 consent of the board, shall not, during any period in which it may be renewed,
18 restored, reissued, or reinstated, deprive the board of its authority to institute or
19 continue a disciplinary proceeding against the licensee upon any ground provided by
20 law or to enter an order suspending or revoking the license or otherwise taking
21 disciplinary action against the license on any such ground.

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

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

28 8. Respondent failed to file a Notice of Defense within 15 days after service upon her of
the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. A1
2008-85.

 9. 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.

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2 10. Pursuant to its authority under Government Code section 11520, the Director finds
3 Respondent is in default. The Director will take action without further hearing and, based on the
4 evidence on file herein, finds that the allegations in Accusation No. A1 2008-85 are true.

5 11. The total cost for investigation and enforcement in connection with the Accusation
6 are \$1,335.28 as of July 15, 2010.

7 DETERMINATION OF ISSUES

8 1. Based on the foregoing findings of fact, Respondent Melanie Ann Martinsen has
9 subjected her Funeral Director License No. FDR 2561 to discipline.

10 2. A copy of the Accusation is attached.

11 3. The agency has jurisdiction to adjudicate this case by default.

12 4. The Director of Consumer Affairs is authorized to revoke Respondent's Funeral
13 Director License based upon the following violations alleged in the Accusation:

14 a. Respondent is subject to disciplinary action under section 7703 in that Respondent
15 violated California Code of Regulations, title 16, section 1243 by failing to comply with a citation
16 as required. The circumstances are that Respondent failed to place pre-need funeral funds into a
17 trust within 30 days of their receipt in violation of section 7737, and failed to place pre-need
18 funds in her possession into a trust or insurance company in violation of section 7707. The
19 violations occurred when pre-need monies paid by client M.H. to Hadley Funeral Chapels, the
20 establishment for which Respondent was the licensed managing funeral director of record, were
21 not placed into trust. A citation dated May 23, 2008, was issued for violation of section 7707,
22 assessing Respondent an administrative fine of \$1,001, which was uncontested and became final
23 30 days after the date of issuance on June 23, 2008. Respondent has not paid the fine.

24 ORDER

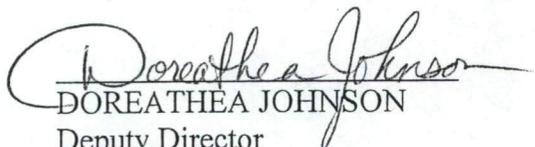
25 IT IS SO ORDERED that Funeral Director License No. FDR 2561, heretofore issued to
26 Respondent Melanie Ann Martinsen, is revoked.

27 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
28 written motion requesting that the Decision be vacated and stating the grounds relied on within

1 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
2 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

3 This Decision shall become effective on September 2, 2010.

4 It is so ORDERED August 3, 2010

5 
6 DOREATHEA JOHNSON
7 Deputy Director
8 Division of Legal Affairs
9 Department of Consumer Affairs

10 default decision_LIC.rtf
11 DOJ docket number:SA2009102470

12 Attachment:

- 13 Exhibit A: Accusation No.A1 2008-85
- 14 Exhibit B: Declaration in Support of Default Decision

Exhibit A
Accusation No. A1 2008-85

1 EDMUND G. BROWN JR.
Attorney General of California
2 JANICE K. LACHMAN
Supervising Deputy Attorney General
3 JOHN PADRICK
Deputy Attorney General
4 State Bar No. 155123
1300 I Street, Suite 125
5 P.O. Box 944255
Sacramento, CA 94244-2550
6 Telephone: (916) 323-6708
Facsimile: (916) 327-8643
7 *Attorneys for Complainant*

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

12 In the Matter of the Accusation Against:
13 **MELANIE ANN MARTINSEN**
2780 North Akers Street
14 **Visalia, CA 93291**
Funeral Director License No. FDR 2561

Case No. A1 2008 85

A C C U S A T I O N

15 Respondent.

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17 Complainant alleges:

18 **PARTIES**

19 1. Richard L. Wallinder, Jr. (Complainant) brings this Accusation solely in his official
20 capacity as the Bureau Chief of the Cemetery and Funeral Bureau, Department of Consumer
21 Affairs.¹

22 2. On or about April 12, 2005, the Cemetery and Funeral Bureau issued Funeral
23 Director License Number FDR 2561 to Melanie Ann Martinsen (Respondent). The Funeral
24 Director License expired on April 30, 2008, and has not been renewed.

25
26 ¹ 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.

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JURISDICTION

3. This 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.

4. 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.

5. Section 7690 of the Code states, in pertinent part, that the Bureau may discipline every accused licensee whose default has been entered on any act or omission constituting a ground for disciplinary action.

6. Section 7703 of the Code states that "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."

7. California Code of Regulations, title 16, section 1243 states: When a citation containing an assessment of an administrative fine is not contested or if the citation and fine is contested and the licensee cited does not prevail, failure of the licensee to pay the fine within 30 days of the issuance or affirmation shall constitute a violation and may result in disciplinary action being taken by the board. When a citation is not contested and a fine is not paid, the full amount of the fine shall be added to the fee for renewal of the license and the license shall not be renewed without payment of the renewal fee and fine.

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CAUSE FOR DISCIPLINE

(Violation of Regulations)

8. Respondent is subject to disciplinary action under section 7703 in that Respondent violated California Code of Regulations, title 16, section 1243 by failing to comply with a citation

1 as required. The circumstances are that Respondent failed to place pre-need funeral funds into a
2 trust within 30 days of their receipt in violation of section 7737, and failed to place pre-need
3 funds in her possession into a trust or insurance company in violation of section 7707. The
4 violations occurred when pre-need monies paid by client M.H. to Hadley Funeral Chapels, the
5 establishment for which Respondent was the licensed managing funeral director of record, were
6 not placed into trust. A citation dated May 23, 2008, was issued for violation of section 7707,
7 assessing Respondent an administrative fine of \$1,001, which was uncontested and became final
8 30 days after the date of issuance on June 23, 2008. Respondent has not paid the fine.

9 **PRAYER**

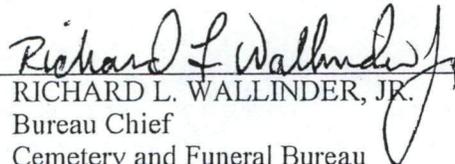
10 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
11 and that following the hearing, the Director of Consumer Affairs issue a decision:

12 1. Revoking or suspending Funeral Director License Number FDR 2561, issued to
13 Melanie Ann Martinsen Melanie Anne Martinsen.

14 2. Ordering Melanie Anne Martinsen to pay the Cemetery and Funeral Bureau the
15 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
16 Professions Code section 125.3;

17 3. Taking such other and further action as deemed necessary and proper.
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20 DATED: 5/13/10


21 RICHARD L. WALLINDER, JR.
22 Bureau Chief
23 Cemetery and Funeral Bureau
24 Department of Consumer Affairs
25 State of California
26 Complainant

25 SA2009102470
26 accusation.rtf
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