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

In the Matter of Accusation Against: **PADRAIC C. LANE** Funeral Director No. FDR 913 **LANE FAMILY FUNERAL HOME** Funeral Establishment License No. FD 1777, Petitioners.	Case No.: A1 2012 102 OAH Case No. 2012100868

DECISION DENYING REINSTATEMENT

Padraic C. Lane and Lane Family Funeral Home submitted a Petition for Reinstatement on May 19, 2015. The Director of the Department of Consumer Affairs ("Director") offered the parties an opportunity to submit written arguments. The time for filing additional written argument in this matter having expired, the Petition and written arguments submitted by both parties, having been read and considered, the Director, pursuant to Government Code section 11522, makes and enters his decision as follows:

FACTUAL FINDINGS

License History

1. On or about June 24, 1997, the Bureau issued Funeral Director's License No. FDR 913 to Petitioner Padraic C. Lane ("Lane"). The funeral director's license expired on June 30, 2014, and has not been renewed.

2. On or about January 7, 2003, the Bureau issued Funeral Establishment License No. FD 1777 to Petitioner Lane Family Funeral Home ("LFFH"). The funeral establishment license expired on January 31, 2014, and has not been renewed.

Jurisdictional Matters

3. On or about September 16, 2010, Complainant filed the First Amended Accusation No. A1 2012 102 ("Accusation") against Gregory Robert Calderon individually and d.b.a. "Calderon Funeral Home" ("Petitioner") before the Director of the Department of Consumer Affairs. The Accusation alleged the Petitioner's conduct consisted of the following acts:

a. Violating Business and Professions Code section 7692, committing misrepresentation/fraud in providing funeral services;

b. Violating Business and Professions Code section 7693, committing false/misleading advertising;

c. Violating Business and Professions Code section 7703, in conjunction with section 7685, failing to provide written/printed price list.

d. On or about August 22, 2007, Petitioner suffered disciplinary action when the Director issued a Decision and Order placing Petitioner's funeral director's license and funeral establishment license on probation for three years due to the following acts:

(1) Diversion of nearly $20,000 in pre-need trust funds;

(2) Conviction of a crime substantially related to cemetery and funeral profession dealing with pre-need trust agreements;

(3) Fraudulent misrepresentation in the practice of funeral directing;

(4) Failure to exercise proper supervision and control over funeral establishment;

(5) Unprofessional negligent and/or incompetent conduct in the practice of funeral directing.

e. The Bureau issued Citations against Petitioner LFFH:

(1) On or about September 4, 2009, for violating California Code of Regulations, Title 16, Section 1258.1 (price ranges for caskets offered on the General Price List failed to match the actual prices of caskets for sale on the Casket Price List);

(2) On or about July 15, 2011, for violating California Code of Regulations, Title 16, section 1258.1, (price ranges for caskets offered on the General Price List failed to match the actual prices of caskets for sale on the Casket Price List);

(3) On or about May 24, 2012, for violating California Code of Regulations, Title 16, section 1258.1, (price ranges for caskets and alternative containers offered on the General Price List failed to match the actual caskets and alternative containers offered for sale on the Casket Price List).

4. Petitioner was served by Certified and First Class Mail copies of the Accusation, Statement to Petitioner, Notice of Defense, Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and 11507.7) at Petitioner's address of record.

5. Petitioner submitted a Notice of Defense, which contained a request for the hearing that ensued on August 21, 2013, before an Administrative Law Judge ("ALJ"). The ALJ issued a proposed decision, revoking Petitioner's licenses, which the Director adopted November 14, 2013, effective December 16, 2013.

Petitioner for Reconsideration

6. Petitioner filed a timely Petition for Reconsideration pursuant to Government Code section 11521. The Director denied the Petition for Reconsideration on December 13, 2013.

Petition for Reinstatement

7. On May 19, 2015, Petitioner filed a Petition for Reinstatement, pursuant to Government Code section 11522, seeking reinstatement. He submitted a Declaration and several character letters in support of the Petition.

8. On June 12, 2015, the parties were offered an opportunity to submit written argument. The deadline for the submission of written argument was July 24, 2015. Written argument was submitted by both parties.

9. Petitioner also submitted a Reply to Opposition to Petition for Reinstatement, received by the Bureau on August 3, 2015.[1]

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[1] Petitioner's Reply to Opposition to Petition for Reinstatement was received after the deadline for submission of written argument. The Director finds it has no probative value as to the issue of Petitioner's rehabilitation.

LEGAL CONCLUSIONS

Burden/Standard of Proof

1. In seeking reinstatement, petitioner bears a heavy burden of proving rehabilitation. (*Hippard v. State Bar* (1989) 49 Cal.3d 1084, 1091 [citing *Calaway v. State Bar* (1986) 41 Cal.3d 743, 745 and *Tardiff v. State Bar* (1980) 27 Cal.3d 395, 403].) He must show by the most clear and convincing evidence that efforts made towards rehabilitation have been successful. (*Hippard, supra* 49 Cal.3d at 1092 [citing *Feinstein v. State Bar* (1952) 39 Cal.2d 541, 546-547].) Clear and convincing evidence means the evidence is "so clear as to leave no substantial doubt" and is "sufficiently strong to command the unhesitating assent of every reasonable mind." (*Mathieu v. Norrell Corporation* (2004) 115 Cal.App.4th 1174, 1190 [citing *Mock v. Michigan Millers Mutual Ins. Co.* (1992) 4 Cal.App.4th 306, 332-333].)

Rehabilitation Criteria

2. Pursuant to California Code of Regulations, Title 16, Section 1253.5, the factors the Director must consider in reviewing the Petition are found in California Code of Regulations, Title 16, Section 1253:

(1) The nature and severity of the act(s) or offense(s).

(2) Total crime record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the petitioner.

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Legal Analysis

3. In applying the Findings of Fact to the Criteria for Rehabilitation, the Director finds:

a. *Criteria (1) Nature and severity of the offense(s)*: The allegations against Petitioner that led to the revocation of his license are severe, demonstrating fraud and dishonesty when dealing with consumers in one of their most vulnerable period of life, making end-of-life arrangements.

b. *Criteria (2) Total crime record*: Prior to the Petitioner's license revocations in 2013, there was discipline against Petitioner's licenses for diversion of pre-need trust funds, conviction of crime substantially related to managing pre-need trust agreements, fraudulent conduct and/or misrepresentation in the practice of funeral directing, failing to exercise proper supervision and control over funeral establishment, and unprofessional negligent and/or incompetent conduct in the practice of funeral directing, which resulted in three years of probation of Petitioner's licenses. The conduct which resulted in the revocations took place in 2011, which is the year following termination of Petitioners license probations. Additionally, both during and subsequent to Petitioner's probation, the Bureau instituted enforcement action against Petitioner for violating California Code of Regulations, Title 16, section 1258.1, for repeatedly having casket and alternative containers price ranges offered on the General Price List repeatedly which failed to match the actual prices of caskets and alternative containers for sale on the Casket Price List.

c. *Criteria (3) Time that has elapsed since of the act(s) or offense(s)*: The offenses cited in the Accusation occurred in 2011. It has been approximately four years since the violations. Petitioners' licenses have been revoked for less than two years. While it has been a very short period of time since the offenses and his prior discipline, there has been sufficient time for Petitioner to put forth at least some efforts toward rehabilitation.

d. Criteria (4) Compliance with any or all terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee: Petitioner has not submitted evidence of compliance with any or all terms of parole, probation, restitution or any other sanctions which may have been lawfully imposed against him.

e. Criteria (5) Evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code: Petitioner has not submitted evidence of Penal Code section 1203.4 expungement of his criminal conviction which led to the Bureau discipline of three year license probation.

f. Criteria (6) Evidence of rehabilitation submitted by the licensee: Rehabilitation is a state of mind, and the law looks with favor on rewarding with the opportunity to serve, one who has achieved reformation and regeneration. (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) The evidence presented is to be considered in light of the moral shortcomings that previously resulted in discipline. (*Hippard, supra* 49 Cal.3d at 1092 [citing *Tardiff, supra* 27 Cal.3d at 403 and *Roth v. State Bar* (1953) 40 Cal.2d 307, 313].)

Petitioner submitted a Declaration and six (6) letters in support with the Petition. Petitioner's Declaration demonstrates his continued failure to responsibility for his misconduct and continues to shift the blame on his former employee. He minimizes his actions as "lapse in judgment". He fails to reflect any contrition towards his victims. Further, none of the letters of support indicate an awareness of the allegations and facts which lead to license revocations. Nor do any of the letters demonstrate evidence of Petitioner's rehabilitation since revocation.

Along with Petitioner's written argument was another personal statement, additional letters in support of Petitioner, a printout of Delano, CA Quick Facts from the US Census Bureau, LFFH's General Price List effective January 1, 2011, numerous documents from various mortuaries including the mortuaries General Price Lists from 2014 and 2015, and excerpts from a deposition of John Stover conducted May 18, 2015 in the matter *of Padraic C. Lane and Lane Family Funeral Home v. Zinder & Koch.* None of these documents evidence Petitioner's rehabilitation.

Petitioner's second personal statement continues to direct the blame on his former employee and again fails to demonstrate any evidence of rehabilitation. And, none of the additional letters of support indicate an awareness of the allegations and facts which lead to Petitioner's license revocations, nor demonstrate any evidence of Petitioner's rehabilitation since revocation.[2] Lastly, the

[2] Petitioner submitted several additional letters of support to the Bureau on July 27, 2015, three days after the deadline for submission of written argument. The Director finds these additional letters have no probative value as to the issue of Petitioner's rehabilitation.

various additional documents submitted by Petitioner were not probative of Petitioner's rehabilitation or even rehabilitative efforts, since his licenses were revoked in 2013.

Petitioner's Petition, Declarations and Written Argument seek to re-litigate the administrative hearing and fail to present evidence to support a finding that Petitioner has achieved reformation, warranting reinstatement of his license.

DETERMINATION OF ISSUES

In considering whether to grant the Petition, the Director has considered the provisions of California Code of Regulations, Title 16, Sections 1253 and 1253.5. Given the Findings of Fact and Legal Conclusions above, Petitioner has failed to demonstrate he has rehabilitated himself and consequently has failed to prove that his license should be reinstated.

ORDER

The Petition is hereby denied. The license is not reinstated.

This Decision shall become effective on November 12, 2015

IT IS SO ORDERED this 12th day of November, 2015.

Doreathea Johnson

DOREATHEA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs