

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

In the Matter of the Citations Against:

BAKERSFIELD FUNERAL HOME;
SEUNGWON LEE,

Funeral Establishment License No. FD 1792

Respondent.

Case Nos. IC 2012 401; IC 2013 16

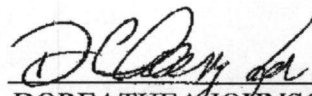
OAH NOs. 2013041097; 2013080237

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted as the Decision of the Director of Consumer Affairs in the above-entitled matter.

This Decision shall become effective on JANUARY 31, 2014

IT IS SO ORDERED JAN 16 2014.



DOREATHA JOHNSON
Deputy Director, Legal Affairs
Department of Consumer Affairs

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

In the Matter of the Citation Against:

BAKERSFIELD FUNERAL HOME;
SEUNGWON LEE,

Funeral Establishment
License No. FD 1792

Respondent.

Case No. IC 2012 401

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In the Matter of the Citation Against:

BAKERSFIELD FUNERAL HOME;
SEUNGWON LEE,

Funeral Establishment
License No. FD 1792

Respondent.

Case No. IC 2013 16

OAH No. 2013080237

PROPOSED DECISION

Samuel D. Reyes, Administrative Law Judge, Office of Administrative Hearings, heard these consolidated matters in Bakersfield, California, on October 1, 2013.

Zachary T. Fanselow, Deputy Attorney General, represented Lisa M. Moore (Complainant), Chief, Cemetery and Funeral Bureau (Bureau), Department of Consumer Affairs, State of California.

Bakersfield Funeral Home (Respondent) was represented by its owner, Seungwon Lee (Lee).

Complainant issued the citations alleging violation of requirements governing preneed funeral arrangements involving four separate consumers and seeking immediate compliance with the law. Respondent asserts that the violations are the responsibility of the prior owner and that it is also a victim.

Oral and documentary evidence was received at the hearing, and the matter was submitted for decision.

FACTUAL FINDINGS

1. Complainant issued the citations in her official capacity.
2. Funeral Establishment License number FD 1679 was issued on October 13, 1999, for the establishment then located at 308 West Perkins Avenue, McFarland, California. Michael Kenny Davis (Davis) became its owner on August 4, 2003. Davis sold the establishment to Lee on December 30, 2011, and the name of the establishment was thereafter changed to the McFarland Family Funeral Home, with its address at 425 West Perkins Avenue in McFarland (McFarland Establishment). The license was assigned to Respondent on December 30, 2011.
3. Funeral Establishment License number FD 1792 was issued on August 4, 2003, with Davis as its owner, for the establishment located at 3121 19th Street, Bakersfield, California (Bakersfield Establishment). Davis sold the establishment to Lee on December 30, 2011, and the name of the establishment was thereafter changed to the Bakersfield Funeral Home. The license was assigned to Respondent on December 30, 2011.
4. On June 7, 2012, the Bureau issued Funeral Director License number FDR 3506 to David H. Lee (D. Lee), Lee's son.
5. Lee had no prior experience in the funeral business and procured the services of Michael Pettit (Pettit), a licensed funeral director, as manager of the establishments. Pettit was associated with the funeral establishments from December 30, 2011 through July 16, 2012, when D. Lee became the manager of the establishments.
6.
 - a. In his Application for Assignment of Funeral Establishment (Application), filed on November 9, 2011, Respondent, through Lee, signed under penalty of perjury: "We/I desiring to transact the business of a Funeral Establishment within the State of California, hereby make application for the assignment of the funeral establishment listed on page 1 of this application, pursuant to the provisions of Section 7630 of the California Business and Professions Code." (Exh. 9, at p. 124.) The establishment referred to in the Application was the Bakersfield Establishment.
 - b. On Section F of the Application, entitled "Funeral Trust Funds Preneed Reporting," Respondent certified that the establishment had no preneed trust accounts. No annual trust accounting statements had been submitted prior to the sale of the business to Lee.

c. As part of the application process, Davis submitted a Preneed Funeral Trust Declaration of Non-Reporting Status for License number 1792, in which he checked the box next to the following text: "Pursuant to Title 16 Section 1261 the funeral establishment is exempt from annual trust reporting requirements. The client directly deposits his or her own money in a bank or savings institution trust account in the name of the client as trustee for the funeral establishment, provided that, until death, the client retains the exclusive power to hold, manage, pledge, and invest the funds and may revoke the tentative trust and withdraw the funds at any time. There is no delivery whatsoever to the funeral establishment of money to pay for the services or goods until funeral goods and services have been provided." (Exh. 9, at p. 128.)

7. Prior to the sale of the establishments to Lee, Davis had sold preneed contracts to multiple consumers, which contracts, as set forth in Business and Professions Code¹ section 7735 et seq., permit consumers to prepay for future funeral services. However, contrary to his assertions in the documents filed with the Bureau, Davis had in fact received money from consumers pursuant to the preneed contracts.

8. Lee was given the opportunity to examine the books maintained by Davis prior to completion of the sale. Lee testified that he looked through the records provided by Davis, and did not find any preneed contracts. Lee also testified that Davis told him that the preneed contracts were held by the banks, and that the establishments would be paid when funeral services had to be provided.

9. In January 2012, after the conclusion of the sale, Lee found preneed contracts in the establishments. Lee did not find any money paid by the consumers. After attempts to obtain the money from Davis were unsuccessful, Lee reported the matter to the Bureau.

10. In early 2012, the Bureau conducted an audit of Respondent's preneed trust funds and contracts at both funeral establishments for the period of December 31, 2002 through June 30, 2012. The McFarland Establishment had last reported, as of December 31, 2002, a total of \$25,600 in trust funds. Trust funds had never been reported for the Bakersfield Establishment. Based on a review of available records, auditors concluded that approximately \$60,398 had been collected for 84 outstanding preneed contracts and not placed in trust. The current location of the funds was not determined.

11. The Bureau also investigated complaints from four consumers. On October 3, 2000, Miguel and Lucy B.² entered into individual preneed contracts with Davis, each for \$2,013. They thereafter provided funds to Davis to satisfy in full their obligations under the contracts. In September 2012, they requested Respondent to provide written evidence that their

¹ All further statutory references are to the Business and Professions Code.

² Initials have been used instead of surnames to protect the consumers' privacy.

funds were being held in trust. Respondent declined to provide such written assurance, but told the consumers that it would honor their contracts.

12. In late 2003, Gilberto and Elia S. entered into individual preneed contracts with Davis, each for \$795. They thereafter provided funds to Davis to satisfy their obligations under the contract. Gilberto S. paid \$400 and Elia S. paid \$510. The consumers have sought a refund of their money from Respondent, but have been denied payment. Lee informed them he did not have the money and that Davis took it. Respondent agreed to credit the consumers' payments toward new contracts.

13. The records pertaining to the four consumers showed that Davis generated all four preneed contracts from the Bakersfield Establishment even if, as in the case of Miguel and Lucy B., the consumers resided in McFarland at the time they entered into the contracts. Moreover, the audit showed that funds received from consumers were comingled regardless of establishment.

14. Lee testified that he is also a victim of Davis and that he does not presently have the consumers' money to place in trust. Respondent believes that Davis took the money, and is suing to recover it. There is also a criminal investigation into Davis's actions. Respondent vows to honor all outstanding preneed contracts. As of the time of the audit, Respondent had paid approximately \$8,318 in funeral expenses to honor existing preneed contracts.

LEGAL CONCLUSIONS

1. The Bureau is authorized to issue citations pursuant to section 125.9 and its implementing regulations, California Code of Regulations, title 16, section 1240 et seq.

2. Section 7630, subdivision (a), provides: "A funeral establishment's license may be assigned upon payment of the fee fixed by this chapter, the filing of a completed application, and upon submission of an audit report prepared and signed by an independent certified public accountant or public accountant currently licensed in this state. The audit report shall include an unqualified opinion on the accuracy of the trust fund balances and a report of compliance with the provisions of this article and Article 9 (commencing with Section 7735). Any shortages in the trust funds shall be funded." If the applicant cannot submit the audit report due to estate matters or litigation for which the director or his or her designee is a party, the applicant may request approval from the Bureau to secure a bond by an admitted surety insurer guaranteeing the payment to each account of any shortages in the trust funds. (§ 7630, subd. (b).) Subdivision (d) states that "The assignee shall comply with all provisions previously placed on the assignor. The assignee shall maintain the bond referred to in this section after assignment of the funeral establishment's license by the bureau." It is therefore clear from the statutory scheme that the Legislature wanted to ensure the safety of trust funds held by a funeral establishment in connection with preneed contracts, not only by requiring the assignment of licenses and

creating a legal obligation in the assignee for the services but also by requiring reports or bonds to ensure the availability of the funds.

3. It is undisputed that as of December 31, 2011, Respondent became the assignee of the funeral establishment licenses previously held by Davis. As the assignee, Respondent is required to honor the obligations of the Bakersfield Establishment, including preneed contracts, as required by section 7630, subdivision (d). Respondent must therefore honor the preneed contracts of the four consumers in these consolidated matters, by reason of factual finding numbers 3, and 6 through 13. However, Respondent did not honor the preneed contracts when it failed to provide a written proof that the funds of two consumers were being held in trust, as set forth in factual finding number 11, and when it failed to refund money to two other consumers, as set forth in factual finding number 12.

4. Respondent argued that two of the preneed contracts, those of Miguel and Lucy B., were not the obligation of the Bakersfield Establishment, the only entity cited by the Bureau. This argument is not persuasive, as the contracts in question contained references to the Bakersfield Establishment and like most of the contracts appeared to have been generated at and for the Bakersfield Establishment.

5. Section 7335 requires that funds held by a funeral establishment from consumers for payment of funeral expenses pursuant to a preneed contract be held in trust. As set forth in factual finding numbers 6 through 13, Respondent has not placed such funds in trust. That the funds actually paid by the consumers are no longer in Respondent's possession is no defense, as Respondent has assumed all the obligations of his predecessor in becoming the assignee of the establishment licenses.

6. Section 7707 provides that "Gross negligence, gross incompetence or unprofessional conduct in the practice of funeral directing or embalming constitutes a ground for disciplinary action." Respondent's failure to honor the preneed contracts of the four consumers in these consolidated matters and its failure to place all consumer funds obtained for preneed services in trust constitutes grounds for disciplinary action, by reason of factual finding numbers 3, and 6 through 13.

7. Respondent's financial difficulties and his lack of involvement in collecting the money used to pay for preneed services do not absolve him of the responsibility to comply with the law. Section 7630 makes it clear that a funeral establishment license is assigned and that the assignment makes Respondent responsible for the assignor's liabilities. Respondent had the opportunity to examine all of the books of the predecessor owner and had the obligation to conduct due diligence before purchasing the business.

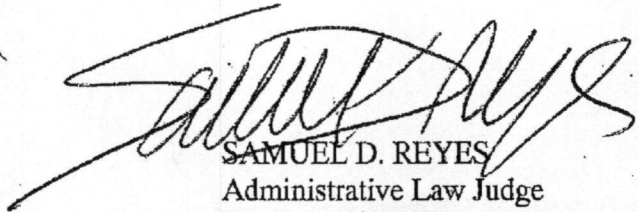
8. The Bureau assessed a fine of \$1,001. In the existing circumstances, where Respondent is also Davis's victim and where it has taken responsibility for performing the services that have become due under the preneed contracts, such a fine is not reasonable or fair, and may actually divert funds needed for the trust account.

9. The orders of abatement are reasonable and consistent with the requirements of sections 125.9, 7630 and 7735.

ORDER

1. Except as set forth in legal conclusion number 8, the citations are sustained.
2. Respondent is ordered to comply with the orders of abatement in both citations.

DATED: 10/29/63


SAMUEL D. REYES
Administrative Law Judge
Office of Administrative Hearings



NOTICE OF CITATION AND ASSESSMENT OF FINE

December 19, 2012

CERTIFIED MAIL

Bakersfield Funeral Home (FD 1792)
3121 19th Street
Bakersfield, CA 93301

RE: License No: FD 1792
Case No: I 2012 401 & I 2012 402
Citation No: IC 2012 401

The Department of Consumer Affairs, Cemetery and Funeral Bureau (Bureau), issues this citation pursuant to Business and Professions Code Section 125.9 and California Code of Regulations, Title 16, Division 12, Article 5.5 (commencing with Section 1240).

VIOLATION

Business and Professions Code Section 7707 states:

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

Violation occurred when Field Representative Daniel Redmond conducted an investigation into complaints filed by Miguel and Lucy Becerra. The Becerra's alleged that Bakersfield Funeral Home refused to provide them with receipts showing that they had purchased preneed funeral arrangements from the establishment. The investigation confirmed a violation of Business and Professions Code Section 7707, unprofessional conduct in failing to fulfill the provisions of Business and Professions Code Section 7630. The establishment refused to comply when informed of its responsibility to fund preneed funeral arrangements that had been purchased by the consumers from the previous owner.

Violation of Section 7707 constitutes a separate class A violation, the administrative fine for which ranges from \$1001.00 to \$2500.00. You are not being assessed an administrative fine for violation of Business and Professions Code Section 7707. Abatement will be considered satisfactory resolution of the violation cited.

The total fine assessment is \$0

Payment of the administrative fine, if any, and abatement will be considered satisfactory resolution of the violation(s) cited.

Notwithstanding the above assessment of fines, in accordance with Business and Professions Code Section 125.9(b)(3), the total fine(s) assessed for the violations contained in this citation shall not exceed \$5000.00.

This citation shall become a final order of the Bureau 30 days after the date of issuance. Payment of any administrative fine shall be due within 30 days of the date of issuance of the citation. Payment shall be made by cashier's check or money order only, payable to the Cemetery and Funeral Bureau. A personal or business check will not be accepted. Please indicate the citation number on the cashier's check or money order and mail it to the Bureau at 1625 North Market Blvd., Suite S208, Sacramento, CA 95834.

If you wish to contest all or part of this citation, you may request a formal appeal hearing by filing with the Bureau a written request for a hearing within 30 days of the date of issuance of this citation. For further information regarding a formal appeal, please refer to Title 16, California Code of Regulations Section 1244 (enclosed). Without waiving your right to request a formal hearing, you may also request an informal office conference by filing with the Bureau a written request within 10 days of service of the citation, pursuant to Title 16, California Code of Regulations Section 1245 (enclosed). You may, but need not, be represented by counsel.

If this citation is not contested, either informally or formally, payment of any administrative fine shall not constitute an admission of the violations charged.

Failure to pay any fine within 30 days of the issuance or affirmation of the citation shall constitute a violation and may result in further disciplinary action. If the citation is not contested and the fine is not paid, the full amount of the administrative fine shall be added to the fee for renewal of your license and your license shall not be renewed without payment of the renewal fee and administrative fine.

ORDER OF ABATEMENT

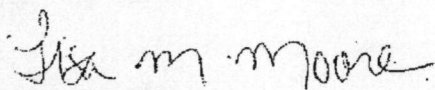
The Bureau hereby directs that you immediately take such action as may be necessary to achieve full compliance with all provisions of the Funeral Directors and Embalmers Law, Health and Safety Code and regulations adopted by the Bureau.

Additionally, within 45 days from receipt of this citation, provide proof to the Bureau of the following:

- That a letter, on funeral establishment letterhead, has been sent to each individual identified through the Bureau's audit as having purchased a preneed agreement from FD 1792 assuring them that their services will be provided with no additional funds due at time of need and informing them of their right to cancel in accordance with California Code of Regulations Section 1264.
- Statement regarding status of the civil lawsuit against Mr. Davis, with the promise of quarterly updates as to its progress.
- A written guarantee that the amount of missing preneed money identified in the audit, less the amount of serviced preneed contracts, be placed immediately into trust as required upon completion of the lawsuit.
- A contingency plan outlining a 48 month payment schedule of the missing preneed money should Mr. Lee not prevail against, or be able to collect from, Mr. Davis in the lawsuit.

If you have any questions, please contact the Cemetery and Funeral Bureau at (916) 574-7870.

Sincerely,



Lisa M. Moore, Chief
Cemetery and Funeral Bureau

Enclosures

cc: Daniel Redmond

DEPARTMENT OF CONSUMER AFFAIRS
CEMETERY AND FUNERAL BUREAU

Bakersfield Funeral Home (FD 1792)
3121 19th Street
Bakersfield, CA 93301

RE: License No: FD 1792
Case No: I 2012 401 & I 2012 402
Citation No: IC 2012 401

I hereby acknowledge receipt of the above referenced citation and notification of my rights to contest the citation pursuant to Business and Professions Code Section 125.9 and Title 16, California Code of Regulations Sections 1244 and 1245.

____ Enclosed is a cashier's check or money order in the amount of \$_____ as payment for the citation and fine assessment.

____ *I hereby contest the citation and request an informal office conference. I understand that I am not waiving my right to a formal hearing pursuant to Chapter 5 (commencing with Section 11500) of Part 1, Division 3 of Title 2 of the Government Code.

____ *I request a formal hearing pursuant to Chapter 5 (commencing with Section 11500) of Part 1, Division 3 of Title 2 of the Government Code.

____ *I request an informal conference, however in lieu of personally attending, I am enclosing information and/or documents for use in re-evaluating the circumstances surrounding the issuance of the citation.

The citation, order of abatement and/or administrative fine are contested for the following reasons:

*** No administrative fines are due while a citation is under appeal. If appealing, do not submit any payment at this time.**

Name: _____ Date: _____
Signature: _____ Telephone No.: _____
Title: _____ Fax No.: _____

Appeal of Citation

Title 16, California Code of Regulations Section 1244

(a) Any person or entity served with a citation pursuant to this article and Section 125.9 and 125.95 of the Business and Professions Code may contest the citation by filing with the bureau, within 30 days of the date of issuance of the citation, a written request for a hearing. All hearings under this section shall be conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The cited person or entity may contest any or all of the following aspects of the citation:

- (1) The occurrence of a violation of the Funeral Directors and Embalmers Law or of a regulation adopted by the bureau.
- (2) The reasonableness of the order of abatement, if an order of abatement is included in the citation.
- (3) The reasonableness of the period of time allowed for correction in an order of abatement, if an order of abatement is included in the citation.
- (4) The amount of the fine, if a fine is included in the citation.

(b) Failure of a cited person or entity to appear at the time and location of the requested hearing shall be deemed a withdrawal of his, her or its appeal, and the citation shall constitute a final order of the bureau and shall not be subject to appeal or review.

Informal Office Conference

Title 16, California Code of Regulations Section 1245

(a) Without waiving his, her or its right to contest the citation pursuant to subdivision (b)(4) of Business and Professions Code Section 125.9, and Section 1244 of this code, the cited person or entity may, within ten (10) days after service of the citation, notify the bureau chief in writing of his, her or its request for an informal office conference regarding the violations charged in the citation.

(b) An informal office conference shall be held with the cited person or entity or his, her or its legal counsel or authorized representative, within thirty (30) days of receipt of the request. After conclusion of the informal office conference, the citation may be affirmed, modified or dismissed. The cited person or entity shall be notified of the actions taken, in writing, within 15 days of the conclusion of the conference, stating the reasons for the actions, the findings, and the decision. This written notification shall be served in accordance with the provisions of Section 11505(c) of the Government Code. This decision shall be deemed to be a final order with regard to the citation issued, including the fine levied and the order of abatement.

(c) The person or entity cited does not waive his, her or its right to contest the citation pursuant to subdivision (b)(4) of Business and Professions Code Section 125.9, and Section 1245 of this code, by requesting an informal office conference after which the citation is affirmed. However, if the citation is dismissed after an informal office conference, any request for a hearing on the matter shall be deemed to be withdrawn. If the citation, including any fine levied or any order of abatement issued, is modified, the citation originally issued shall be considered withdrawn and a new citation issued. If a hearing is requested for a subsequent citation, it shall be requested in accordance with subdivision (b)(4) of Business and Professions Code Section 125.9 and Section 1245 of this code.

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Bakersfield Funeral Home
3121 19th Street
Bakersfield, CA 93301

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☒ Agent
☒ Addressee
 B. Received by (Printed Name) C. Date of Delivery
 D. Is delivery address different from item 1? ☐ Yes
 If YES, enter delivery address below: ☐ No

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.
 4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number
 (7) from service: 7010 1670 0001 7383 0998

PS Form 3811, February 2004

Domestic Return Receipt

102585-02-M-1540



STATE AND CONSUMER SERVICES AGENCY • GOVERNOR EDMUND G. BROWN JR.
Cemetery and Funeral Bureau
1625 N Market Blvd., Ste S-208
Sacramento, CA 95834
P 916-574-7870 | F 916-928-7988 | web www.cfb.ca.gov



NOTICE OF CITATION AND ASSESSMENT OF FINE

May 16, 2013

CERTIFIED MAIL

Bakersfield Funeral Home (FD 1792)
3121 19th Street
Bakersfield, CA 93301

RE: License No: FD 1792
Case No: I 2013 16 & I 2013 19
Citation No: IC 2013 16

The Department of Consumer Affairs, Cemetery and Funeral Bureau (Bureau), issues this citation pursuant to Business and Professions Code Section 125.9 and California Code of Regulations, Title 16, Division 12, Article 5.5 (commencing with Section 1240).

VIOLATION

Business and Professions Code Section 7707 states:

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

Violation occurred when Field Representative Daniel Redmond conducted an investigation into complaints filed by Gilberto and Ramona Elia Sanchez. The Sanchez's alleged that Bakersfield Funeral Home has no accounting of the money they paid to purchase their preneed funeral arrangements. The investigation confirmed a violation of Business and Professions Code Section 7707, unprofessional conduct in failing to fulfill the provisions of Business and Professions Code Section 7630. The establishment refused to comply when informed of its responsibility to fund preneed funeral arrangements that had been purchased by the consumers from the previous owner. Further, the establishment then entered into new preneed funeral contracts with the Sanchez's in November 2012 and sold them Homesteaders Insurance policies to fund the new arrangements.

Violation of Section 7707 constitutes a separate class A violation, the administrative fine for which ranges from \$1001.00 to \$2500.00. You are hereby being assessed an administrative fine of \$1001.00 for violation of Business and Professions Code Section 7707.

The total fine assessment is \$1001.00

Payment of the administrative fine, if any, and abatement will be considered satisfactory resolution of the violation(s) cited.

Notwithstanding the above assessment of fines, in accordance with Business and Professions Code Section 125.9(b)(3), the total fine(s) assessed for the violations contained in this citation shall not exceed \$5000.00.

This citation shall become a final order of the Bureau 30 days after the date of issuance. Payment of any administrative fine shall be due within 30 days of the date of issuance of the citation. Payment shall be made by cashier's check or money order only, payable to the Cemetery and Funeral Bureau. A personal or business check will not be accepted. Please indicate the citation number on the cashier's check or money order and mail it to the Bureau at 1625 North Market Blvd., Suite S208, Sacramento, CA 95834.

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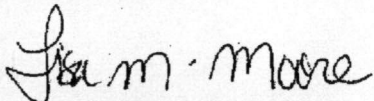
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ORDER OF ABATEMENT

The Bureau hereby directs that you immediately take such action as may be necessary to achieve full compliance with all provisions of the Funeral Directors and Embalmers Law, Health and Safety Code and regulations adopted by the Bureau.

If you have any questions, please contact the Cemetery and Funeral Bureau at (916) 574-7870.

Sincerely,

A handwritten signature in cursive script that reads "Lisa M. Moore".

Lisa M. Moore, Chief
Cemetery and Funeral Bureau

Enclosures

cc: Daniel Redmond

DEPARTMENT OF CONSUMER AFFAIRS
CEMETERY AND FUNERAL BUREAU

Bakersfield Funeral Home (FD 1792)
3121 19th Street
Bakersfield, CA 93301

RE: License No: FD 1792
Case No: I 2013 16 & I 2013 19
Citation No: IC 2013 16

I hereby acknowledge receipt of the above referenced citation and notification of my rights to contest the citation pursuant to Business and Professions Code Section 125.9 and Title 16, California Code of Regulations Sections 1244 and 1245.

____ Enclosed is a cashier's check or money order in the amount of \$ _____ as payment for the citation and fine assessment.

____ *I hereby contest the citation and request an informal office conference. I understand that I am not waiving my right to a formal hearing pursuant to Chapter 5 (commencing with Section 11500) of Part 1, Division 3 of Title 2 of the Government Code.

____ *I request a formal hearing pursuant to Chapter 5 (commencing with Section 11500) of Part 1, Division 3 of Title 2 of the Government Code.

____ *I request an informal conference, however in lieu of personally attending, I am enclosing information and/or documents for use in re-evaluating the circumstances surrounding the issuance of the citation.

The citation, order of abatement and/or administrative fine are contested for the following reasons:

*** No administrative fines are due while a citation is under appeal. If appealing, do not submit any payment at this time.**

Name: _____ Date: _____
Signature: _____ Telephone No.: _____
Title: _____ Fax No.: _____

Appeal of Citation

Title 16, California Code of Regulations Section 1244

(a) Any person or entity served with a citation pursuant to this article and Section 125.9 and 125.95 of the Business and Professions Code may contest the citation by filing with the bureau, within 30 days of the date of issuance of the citation, a written request for a hearing. All hearings under this section shall be conducted in accordance with the provisions of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The cited person or entity may contest any or all of the following aspects of the citation:

- (1) The occurrence of a violation of the Funeral Directors and Embalmers Law or of a regulation adopted by the bureau.
- (2) The reasonableness of the order of abatement, if an order of abatement is included in the citation.
- (3) The reasonableness of the period of time allowed for correction in an order of abatement, if an order of abatement is included in the citation.
- (4) The amount of the fine, if a fine is included in the citation.

(b) Failure of a cited person or entity to appear at the time and location of the requested hearing shall be deemed a withdrawal of his, her or its appeal, and the citation shall constitute a final order of the bureau and shall not be subject to appeal or review.

Informal Office Conference

Title 16, California Code of Regulations Section 1245

(a) Without waiving his, her or its right to contest the citation pursuant to subdivision (b)(4) of Business and Professions Code Section 125.9, and Section 1244 of this code, the cited person or entity may, within ten (10) days after service of the citation, notify the bureau chief in writing of his, her or its request for an informal office conference regarding the violations charged in the citation.

(b) An informal office conference shall be held with the cited person or entity or his, her or its legal counsel or authorized representative, within thirty (30) days of receipt of the request. After conclusion of the informal office conference, the citation may be affirmed, modified or dismissed. The cited person or entity shall be notified of the actions taken, in writing, within 15 days of the conclusion of the conference, stating the reasons for the actions, the findings, and the decision. This written notification shall be served in accordance with the provisions of Section 11505(c) of the Government Code. This decision shall be deemed to be a final order with regard to the citation issued, including the fine levied and the order of abatement.

(c) The person or entity cited does not waive his, her or its right to contest the citation pursuant to subdivision (b)(4) of Business and Professions Code Section 125.9, and Section 1245 of this code, by requesting an informal office conference after which the citation is affirmed. However, if the citation is dismissed after an informal office conference, any request for a hearing on the matter shall be deemed to be withdrawn. If the citation, including any fine levied or any order of abatement issued, is modified, the citation originally issued shall be considered withdrawn and a new citation issued. If a hearing is requested for a subsequent citation, it shall be requested in accordance with subdivision (b)(4) of Business and Professions Code Section 125.9 and Section 1245 of this code.