

IN THE MATTER OF	*	BEFORE THE
JAMES A. MORTON & SONS	*	STATE BOARD OF
FUNERAL HOMES INC.,	*	MORTICIANS AND
Respondent	*	FUNERAL DIRECTORS
License Numbers: E00179	*	Case No. 13-017B

* * * * *

CONSENT ORDER

On or about September 18, 2015, the Maryland State Board of Morticians and Funeral Directors (the "Board"), charged James A. Morton & Sons Funeral Homes, Inc. (the "Respondent"), the holder of funeral establishment license number E00179, with violations of the Maryland Morticians and Funeral Directors Act (the "Act"), Md. Code Ann., Health Occ. ("Health Occ.") § 7-101 *et seq.* (2014 Repl. Vol.).

Specifically, the Board charged the Respondent with violating the following provisions of the Act:

§ 7-316. Denials, reprimands, suspensions, and revocations -- Grounds

(b) Funeral establishment. -- Subject to the hearing provisions of § 7-319 of this subtitle, the Board may deny a license to an applicant for a funeral establishment license, reprimand the holder of a funeral establishment license, place the holder of a funeral establishment license on probation, or suspend or revoke a funeral establishment license if, with the knowledge or at the direction of the funeral establishment:

(3) An employee of the funeral establishment fails to comply with § 7-405 of this title.

...

The pertinent provisions of § 7-405 are as follows:

§ 7-405. Pre-need contracts

(d) Deposit of funds; status and requirements of account. --

(1) Within 10 days after receiving a payment under a pre-need contract, the seller shall deposit into an interest bearing, escrow or trust account:

(i) For services, 100% of the payment under the pre-need contract; and

(ii) For goods:

1. An amount from the payment that is equal to 80% of the selling price of a casket or casket vault under the pre-need contract; and

2. 100% of the payment that is for all other goods under the pre-need contract.

(2) The interest bearing, escrow or trust account shall be with:

(i) A banking institution that is insured by an agency of the federal government; or

(ii) A savings and loan association that is insured by an agency of the federal government.

(3) (i) A pre-need escrow or trust account may not be deemed an asset of:

1. The individual licensee; or

2. The licensed funeral establishment.

(ii) A pre-need escrow or trust account with a banking institution or savings and loan association described in paragraph (2) of this subsection shall be:

1. Established using the name, address, and Social Security number of the buyer; and

2. Held in trust for the licensed funeral establishment.

...

(4) (i) Any interest or dividends earned by the escrow or trust account prior to service being rendered belong to the buyers of the pre-need contracts.

(e) Administration of accounts; irrevocable trusts; notice. --

...

- (2) (i) Except as otherwise provided in this subsection, a seller may not withdraw from the account any money received from a buyer unless the services and merchandise have been provided as agreed in the contract.

...

- (f) Scope of section; funding by life insurance policy or annuity contract. --

...

- (3) (i) A pre-need contract that is a guaranteed contract, a guaranteed in part contract, or a nonguaranteed contract may be funded by a life insurance policy or an annuity contract if:

1. The mortician, funeral director, licensed funeral establishment, or surviving spouse is not the owner of or beneficiary under the life insurance policy or annuity contract.

On or about October 14, 2015, a Case Resolution Conference ("CRC") was held at the Board's office. As a resolution of this case, the Respondent agreed to enter into this public Consent Order consisting of Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

The Board finds the following facts.

Background

1. At all times relevant to this Consent Order, the Respondent was and is a corporation and a licensed funeral establishment in the State of Maryland located at 1701 Laurens Street, Baltimore, Maryland, 21217.

2. On or about May 11, 1937, the Board granted the Respondent a corporation license, number C00040, to operate as a funeral establishment. On or about May 1, 1971, the Board granted the Respondent funeral establishment

license number E00179. The Respondent's licenses are valid through November 30, 2016.

3. At all times relevant to this Consent Order, James A. Morton II (the "Owner") owned the Respondent funeral establishment. The Respondent employs a licensed funeral director, Juanita G. Morton, license number D00076, as the corporate business manager (the "Manager").

4. Until June 12, 2013, the Owner also acted as the Respondent's supervising mortician. However, on or about that day, following a Board investigation, he voluntarily and permanently surrendered his license to practice mortuary science in the State of Maryland, license number M00435. Upon surrendering his license, the Owner was no longer authorized to act as the Respondent's supervising mortician. The Respondent's supervising mortician (the "Supervising Mortician"), since approximately July of 2013, has been Lillie Diana Johnson, license number M00319.

5. In approximately July of 2013, the Board received a complaint (the "Complaint") from another employee of the Respondent alleging that embalming work was being performed at the Respondent's facility without the supervision of a supervising mortician. Under the Board's statute, only a licensed mortician may perform embalming work. The Complaint did not name the individual performing the unsupervised embalming work.

6. Based on the Complaint, the Board began an investigation of the Respondent.

First Inspection

7. On or about October 8, 2013, Board inspectors performed an inspection at the Respondent funeral establishment's facility.

8. The Board inspectors identified numerous violations of the Board's sanitation requirements at the Respondent's facility, including but not limited to: signs of serious rodent infestation; missing sharps container; a regular trash container misused for bio-hazardous waste materials; and failure to properly tag corpses.

9. During the same inspection, Board staff examined several of the Respondent's files including three (3) pre-need contracts.¹ Two of the contracts had been pre-paid and the third was to be funded by a life insurance policy. The Board inspector sought the account records related to the pre-paid contracts, in order to document that the contract buyers' funds were properly deposited and kept in a trust or escrow account as required by the Board's statute. However, the Respondent's Supervising Mortician was unable to provide any.

10. On or about October 9, 2013, the next day, the Manager presented bank statements to Board staff that she claimed pertained to the funds received from the buyers of the contracts. However, upon examination by Board staff, the records contained no indication that they were related to any specific pre-need contract. Instead, the documents simply showed business accounts in the Respondent's name. It is impossible to determine whether the pre-need contract buyers' funds are or were ever held in those accounts. In any case, the Manager could not produce records indicating proper management of the funds in trust or escrow accounts.

¹ A pre-need contract is "an agreement between a consumer and a licensed funeral director, licensed mortician, or surviving spouse to provide any goods and services purchased prior to the time of death." *Health Occ. § 7-101(v)*.

11. When Board staff inquired further, the Manager admitted that she “had the cash pre-funding accounts in my bank accounts.” Nevertheless, she insisted to Board staff that she was able to keep track of “[whose] money was where” by memory.

Second Inspection

12. On or about January 24, 2014, Board staff performed a follow-up inspection of the Respondent’s facility. By this time, the Respondent had sufficiently addressed the previously flagged sanitation issues. Board staff also reviewed an additional five (5) pre-need contracts selected randomly from the Respondent’s files. These five were funded by life insurance policies.

13. Upon review, it was determined that for two (2) of the insurance-funded pre-need contracts, the Respondent was listed as both owner and primary beneficiary, in violation of the Board’s requirements, and that in two (2) more of the contracts, the Respondent had submitted requests to the insurance company attempting to become primary beneficiary on the policies without the respective policy owners’ signatures, and so the insurance company refused to grant with Respondent’s requests.

Third inspection

14. On or about January 12, 2015, Board staff reviewed an additional five (5) pre-need contracts to which the Respondent was a party. Three (3) of the buyers had paid in advance, yet the Respondent could produce no records showing that the buyers’ funds were in a trust or escrow account, or indeed in any account.

Fourth Inspection

15. On or about March 4, 2015, Board staff conducted another examination of the Respondent's pre-need contracts. This time, Board staff reviewed an additional eleven (11) pre-need contracts. At least seven (7) were cash-funded contracts, yet the Respondent could produce no records showing that the funds received from the buyers were properly deposited and held in trust or escrow accounts.

16. Instead, the Respondent provided a document that listed several pre-need contract buyers' names next to the names of various banks. Along with this document, the Respondent produced a haphazard collection of monthly bank statements and balances for various accounts in Respondent's name.

17. Moreover, the deposit amounts shown in these accounts do not match the amounts buyers paid the Respondent. Therefore, it is apparent that the Respondent deposited and held the buyers' pre-need contract funds in its own business accounts with no accounting controls.

Fifth Inspection

18. On or about March 19, 2015, Board staff reviewed five (5) more pre-need contracts of the Respondent. For two (2) cash-funded contracts, the Respondent was unable to produce records showing that the funds had been properly deposited and held in escrow or trust accounts as required under the Board's statute.

CONCLUSIONS OF LAW

The Board concludes as a matter of law the following.

The Respondent's conduct, as described above, constitutes a violation of Health Occ. § 7-316(b)(3) ("an employee of the funeral establishment fails to comply with § 7-405 of this title") for the following reasons.

With the knowledge or at the direction of the Respondent, an employee acting on behalf of the Respondent failed to properly deposit and hold in trust or escrow accounts proceeds from at least fourteen (14) cash-funded pre-need contracts it sold to consumers, and instead, simply deposited the proceeds into the Respondent's bank accounts, and managed the funds at will, in violation of Health Occ. § 7-405(d) & (e) as cited above.

With the knowledge or at the direction of the Respondent, an employee acting on behalf of the Respondent caused and/or attempted to cause the Respondent to be designated as the new owner and beneficiary of insurance policies taken out by consumers for the purpose of funding fund pre-need contracts offered by the Respondent, in violation of Health Occ. § 7-405(f)(3) as cited above.

NOTICE OF POSSIBLE SANCTIONS

If, after a hearing, the Board finds that there are grounds for action under Md. Code Ann., Health Occ. § 7-316(b)(3), the Board may reprimand the Respondent, place the Respondent on probation, suspend or revoke the Respondent's funeral establishment licenses, and/or may impose a monetary penalty of up to \$5,000.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is by the Board hereby:

ORDERED that the Respondent is hereby **REPRIMANDED**; and it is further

ORDERED that the Respondent is placed on **PROBATION** for a minimum of **five (5) years** and until the following terms and conditions are satisfied:

1. Within 90 days of the effective date of the Consent Order, the Respondent shall submit to the Board a complete and detailed report documenting the status of all pre-need contracts that the Respondent or an authorized agent of the Respondent has been a party to in the last three (3) years from the effective date of this Consent Order. The report shall contain the Respondent's Manager's written affirmation certifying under oath that the report is comprehensive and accurate. The Board shall have sole discretion to determine whether the report submitted satisfactorily complies with the terms of this Consent Order. Specifically, the report shall clearly explain and provide appropriate documentation to demonstrate the following:
 - i. For all cash-funded pre-need contracts: that all monies received by the Respondent or an authorized agent of the Respondent under each contract are held within a trust or escrow account according to the requirements of the Act; and
 - ii. For all insurance-funded pre-need contracts: that the Respondent or an authorized agent of the Respondent is neither an owner nor a beneficiary of any insurance policy that is the source of funding for a contract; and
2. Within six (6) months of the effective date of the Consent Order, the Respondent's Manager shall successfully complete a Board-approved in-person course equivalent to 8 (eight) hours of continuing education (CE) credit, with four (4) hours focusing on pre-need contract accounting and 4 (four) hours focusing on the ethics of funeral director practice, and shall submit documentation to the Board of her successful completion of this course; and
3. Within sixty (60) days of the effective date of the Consent Order, the Respondent or an authorized agent of the Respondent shall pay to the Board a fine in the amount of \$5000 (five thousand dollars); and
4. During the period of probation, the Respondent shall be subject to monitoring including random unannounced inspections by Board staff in order to verify that the Respondent is lawfully managing all accounts related to its pre-need contracts, both insurance-funded and cash-funded;

and it is further

ORDERED that after a minimum of five (5) years from the effective date of this Consent Order, the Respondent may submit a written petition to the Board requesting termination of probation. After consideration of the petition, the probation may be terminated through an order of the Board. The Board shall grant termination if the Respondent has fully and satisfactorily complied with all of the probationary terms and conditions and there are no pending investigations or outstanding complaints related to the facts outlined in this Consent Order; and it is further

ORDERED that the Respondent shall comply with the Act; and it is further

ORDERED that the Respondent shall at all times cooperate with the Board, any of its agents or employees, and with the Board-assigned inspector, in the monitoring, supervision and investigation of the Respondent's compliance with the terms and conditions of this Consent Order; and it is further

ORDERED that no part of the training or education that the Respondent receives in order to comply with this Consent Order may be applied to his required continuing education credits; and it is further

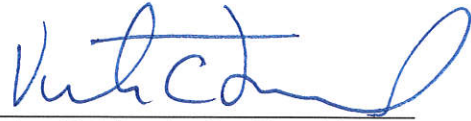
ORDERED that the Respondent shall be responsible for all costs incurred under this Consent Order; and it is further

ORDERED that if the Respondent violates any of the terms or conditions of the Consent Order, the Board, in its discretion, after notice and an opportunity for a show cause hearing before the Board, may impose an additional probationary term and conditions of probation, reprimand, suspension, revocation and/or a monetary penalty, said violation of probation being proved by a preponderance of the evidence; and it is further

ORDERED that this Consent Order is a **PUBLIC DOCUMENT** pursuant to Md. Code Ann., Gen. Prov. § 4-101 et seq. (2014 Repl. Vol.).

11/18/15

Date



Victor C. March, Sr., President
Maryland State Board of Morticians
and Funeral Directors

CONSENT

I, _____, an authorized agent of the Respondent, acknowledge that the Respondent has had the opportunity to consult with counsel at this and all stages of this matter. I understand that this Consent Order will resolve the investigation against the Respondent in this matter in lieu of Charges and a formal evidentiary hearing. By this Consent, the Respondent is hereby bound by the terms of this Consent Order. I acknowledge under oath that the Respondent in fact committed the specific violations as set forth above. I acknowledge under oath the accuracy of the Findings of Fact and the validity of the Conclusions of Law contained in this Consent Order. I acknowledge that for all purposes, the Findings of Fact and Conclusions of Law will be treated as if proven and/or as if entered into after the conclusion of a formal evidentiary hearing in which the Respondent would have had the right to counsel, to confront witnesses, to give testimony, to call witnesses on my own behalf, and to all other substantive and procedural protections provided by the law. The Respondent agrees to forego the opportunity to challenge these Findings of Fact and Conclusions of Law. I acknowledge the legal authority and jurisdiction of

the Board to initiate these proceedings and to issue and enforce this Consent Order. I affirm that the Respondent waives the right to any appeal in this matter. I affirm that I have asked and received satisfactory answers to all my questions regarding the language, meaning, and terms of this Consent Order. I sign this Consent Order voluntarily and without reservation, and I fully understand and comprehend the language, meaning, and terms of this Consent Order.

10-26-15
Date

Juanita G. Morton
Signature of Agent

Juanita G. Morton
Printed Name of Agent

NOTARY

STATE OF Maryland
CITY/COUNTY OF Baltimore City

I HEREBY CERTIFY that on this 26th day of October, 2015, before me, a Notary Public of the foregoing State and City/County personally appeared Juanita G. Morton (Agent), and made oath in due form of law that signing the foregoing Consent Order was his/her voluntary act and deed.

AS WITNESSETH my hand and notary seal.


Notary Public

My commission expires *May 28, 2009*