



RECEIVED
OFFICE OF LEGAL COUNSEL

DEC 2 2022

DEPARTMENT OF COMMERCE
AND INSURANCE

STATE OF TENNESSEE
BEFORE THE COMMISSIONER OF COMMERCE AND INSURANCE

IN THE MATTER OF:)
)
SUNSET MEMORIAL GARDENS) Case No. CEM-2022007621
7180 NORTH LEE HWY.)
CLEVELAND, TENNESSEE 37312-7350)

CONSENT ORDER

THIS MATTER comes before the Commissioner of the Department of Commerce and Insurance (“Commissioner”). **SUNSET MEMORIAL GARDENS** (“Respondent”) voluntarily enters into this Consent Order to avoid formal charges and a contested case proceeding with respect to the matters described herein.

GENERAL STIPULATIONS

1. It is expressly understood that this Consent Order is subject to the Commissioner’s acceptance and has no force and effect until such acceptance is evidenced by the entry of the Commissioner’s signature.
2. This Consent Order is executed by the Respondent for the purpose of avoiding further administrative action with respect to this cause. Furthermore, should this Consent Order not be accepted by the Commissioner, it is agreed that presentation to and consideration of this Consent Order by the Commissioner shall not unfairly or illegally prejudice the Commissioner from further participation or resolution of these proceedings.

3. Respondent fully understands that this Consent Order will in no way preclude additional proceedings by the Commissioner against Respondent for acts or omissions not specifically addressed in this Consent Order or for facts and/or omissions that do not arise from the facts or transactions herein addressed.

4. Respondent fully understands that this Consent Order will in no way preclude proceedings by state government representatives, other than the Commissioner for violations of the **Cemetery Act of 2006 (hereinafter “the Act”)** addressed specifically in this Consent Order, against the Respondent for violations of law under statutes, rules, or regulations of the State of Tennessee, which may arise out of the facts, acts, or omissions contained in the Findings of Fact and Conclusions of Law stated herein, or which may arise as a result of the execution of this Consent Order by the Respondents.

5. Respondent expressly waives all further procedural steps, and expressly waives all rights to seek judicial review of or to otherwise challenge or contest the validity of this Consent Order, the stipulations and imposition of discipline contained herein, and the consideration and entry of said Consent Order by the Commissioner.

AUTHORITY AND JURISDICTION

TENN. CODE ANN. §§ 46-1-306 and 56-1-308 and Rule 0780-5-9-.25 of the Rules of the Department of Commerce and Insurance, Division of Regulatory Boards, Burial Services Section, authorize the Commissioner to take disciplinary action and/or assess civil penalties as consequences of any violation of TENN. CODE ANN., Title 62 and 46 and/or any rules promulgated thereunder.

PARTIES

1. The Commissioner is the lawful agent through which the Act and its rules are

administered and is authorized to bring this action.

2. Respondent is a licensed cemetery having been issued cemetery registration, number 102, with a last known mailing address of 7180 North Lee Hwy., Cleveland, Tennessee 37312-7350.

FINDINGS OF FACT

1. On January 24, 2022, an auditor with Burial Services examined the records and reports supporting preneed funeral contracts that were sold and serviced for the period of January 1, 2020 through December 31, 2021, to determine whether the Respondent was operating in compliance with applicable law.

2. During the examination, the auditor discovered the following:

a. Records indicated that the cemetery corporate ownership has not maintained the cemetery company (Cecil Lawrence, Inc.) in an active status with the Tennessee Secretary of State as a corporation since October 6, 2020 as required by applicable law.

b. Respondent failed to correctly complete their 2020 Annual Report on Merchandise and Services Trust. Specifically, Section II, "Trust and Sales Data," was not completed correctly. Failing to submit a revised copy of the report after failing to correctly fill out the report is a repeat violation for the 2019 report. As of the date of the examination, there was no evidence that Burial Services had received a revised 2019 report.

3. On September 16, 2022, Respondent submitted records from the Tennessee Department of State, Division of Business Services, confirming that the cemetery company had reactivated its corporate status as required by law.

4. Respondent submitted evidence to show that the revised and corrected 2019 Annual Report on Merchandise and Services Trust was emailed to the state auditor on August 20, 2020 and was filed through the FormStack online filing system on September 9, 2020, due to technical difficulties with CORE system, the ordinary method of submission. However, at the

time of the audit, Burial Services had not received the revised 2019 report despite Respondent's earlier attempts at submission.

5. Respondent hereby admits to the foregoing findings of fact.

CONCLUSIONS OF LAW

1. Respondent's acts and conduct constitute a violation of **TENN. CODE ANN. § 46-1-203**, which states, in pertinent part, as follows:

(a) No person or group of persons shall engage in the business of owning and operating a cemetery company except as authorized by this chapter and chapter 2 of this title, and without first:

(1) If an entity required to register with or obtain any form of approval from the secretary of state, obtaining such registration or approval and retaining the same in an active status as long as the cemetery company is owned and operated by the applicant . . .

2. Respondent's acts and conduct constitute a violation of **TENN. CODE ANN. § 46-1-214**, which states, in pertinent part, as follows:

(a)(1) Not later than seventy-five (75) days after the end of each of its fiscal years, each cemetery company that engages in sales requiring the establishment of a trust account under this part shall file with the commissioner on the prescribed form a report containing:

(A) Beginning balances of deposited funds and accumulated earnings in the trust account;

(B) The deposits to the trust account during the year;

(C) The amount of earnings during the year;

(D) The amounts of withdrawals of deposits and earnings remaining in trust at the end of the year; and

(E) The aggregate procurement costs, including transportation and labor, of all merchandise and services sold preneed and yet to be delivered after the report year end; provided, that deferred or installment payments may be prorated to the extent allowed under § 46-1-217.

(c) For late filing of a report required under this section, a cemetery company shall pay a late penalty not to exceed one hundred dollars (\$100) for each month or fraction thereof that the report is late.

3. **TENN. CODE ANN. § 46-1-306**, states in pertinent part the following:

(a) The Commissioner may refuse to issue or renew, and may revoke or suspend, the registration of any cemetery registered pursuant to this chapter or corresponding provisions of prior law for any one (1) or more of the following reasons:

(6) Violation, on the part of a cemetery operator of any provision of this chapter or chapter 2 of this title, or rule promulgated by the commissioner under this chapter or chapter 2 of this title.

(10) Failure on the part of a cemetery company or any cemetery operator, or on the part of the trustee or any officer of the trustee, to timely and completely file the reports required by this chapter;

(b) In addition to or in lieu of any other lawful disciplinary action, the commissioner may assess civil penalties in an amount not to exceed one thousand dollars (\$1,000) for each separate violation of a law, rule or order pertaining to this chapter. Each day of continued violation constitutes a separate violation.

ORDER

NOW, THEREFORE, on the basis of the foregoing, and Respondent's waiver of the right to a hearing and appeal under the Act and the Uniform Administrative Procedures Act, **TENN. CODE ANN. §§ 4-5-101 to 4-5-404 (2011)**, and Respondent's admission of jurisdiction of the Board, the Board finds that Respondent, for the purpose of settling this matter, admits the Findings of Fact and Conclusions of Law, agrees to the entry of this Order and agrees that this Order is in the public interest, necessary for the protection of the public and consistent with the purposes fairly intended by the policy and provisions of the Act.

IT IS ORDERED, pursuant to **TENN. CODE ANN. § 46-1-306 and Rule 0780-5-9-.25** of the Act that Respondent:

1. Pay a **CIVIL PENALTY** in the amount of **SEVEN HUNDRED FIFTY DOLLARS (\$750.00)** further Respondent must submit proof satisfactory to the Department that Respondent has regained active corporation status with the Secretary of State and must submit a revised Annual Report on Merchandise and Services Trust for the 2019 and 2020 reports. Payment shall be made immediately on the date this agreement is executed by the Commissioner's designee and payment shall be mailed to:

**TENNESSEE DEPARTMENT OF COMMERCE AND INSURANCE
OFFICE OF LEGAL COUNSEL
500 JAMES ROBERTSON PARKWAY, 12th FLOOR
DAVY CROCKETT TOWER
NASHVILLE, TENNESSEE 37243**

2. It is further **ORDERED** that Respondent and all persons in any way assisting, aiding, or helping Respondent in any of the aforementioned violations of the Act, shall **CEASE AND DESIST** from all such activities.

3. **IT IS ORDERED** that this Consent Order represents the complete and final resolution of, and discharge with respect to all administrative and civil, claims, demands, actions and causes of action by the Commissioner against Respondent for violations of the Act alleged by the Burial Services Section to have occurred with respect to the transactions involving the above referenced parties and the facts contained herein.

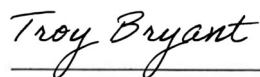
4. This Consent Order is in the public interest and in the best interests of the parties and represents a compromise and settlement of the controversy between the parties and is for settlement purposes only. By the signatures affixed below, Respondent affirmatively states they have freely agreed to the entry of this Consent Order, that they waive the right to a hearing on the matters underlying this Consent Order and to a review of the Findings of Fact and Conclusions of Law contained herein, and that no threats or promises of any kind have been made to Respondent

by the Commissioner, the Burial Services Section, or any agent or representative thereof. The parties, by signing this Consent Order, affirmatively state their agreement to be bound by the terms of this Consent Order and aver that no promises or offers relating to the circumstances described herein, other than the terms of settlement as set forth in this Consent Order, are binding upon them.


EXECUTED this 2nd day of December, 2022.


Sunset Memorial Gardens
Authorized Agent (Print): Cecil Lawrence
Title: _____

11/22/2022
Date


Troy Bryant BPR # 037877
Associate General Counsel
Department of Commerce and Insurance
Division of Regulatory Boards
(615) 770-0447

12-2-22
Date


Alex Martin, Assistant Commissioner
Department of Commerce and Insurance

12/5/22
Date