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STATE OF WISCONSIN

BEFORE THE FUNERAL DIRECTORS EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY

PROCEEDINGS AGAINST

FINAL DECISION AND ORDER

DANIEL L. NEWCOMER

98 FDR 003

RESPONDENT.

LS9903162FDR

: :

:

The parties to this proceedings for the purpose of Wis. Stats. sec. 227.53 are:

*Daniel L. Newcomer
P.O. Box 26
1105 E. 9th Ave.
Brodhead, WI 53520-0026*

*Bureau of Business & Design Professions
Funeral Directors Examining Board
P. O. Box 8935
Madison, WI 53708-8935*

*Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935*

The State of Wisconsin, Funeral Directors Examining Board, having considered the stipulation agreement annexed-hereto, of the parties, in resolution of the captioned-matter, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered pursuant to jurisdiction and authority granted to the Board, that the stipulation agreement annexed hereto, filed by Complainant's attorney, shall be and hereby is incorporated, made and ordered the Final Decision and Order of the State of Wisconsin, Funeral Directors Examining Board.

Let a copy of this order be served on Respondent by certified mail.

Dated this 16th day of March, 1999.

Roy T. Pfeffer, Chair

Funeral Director Examining Board

STATE OF WISCONSIN

BEFORE THE FUNERAL DIRECTORS EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :

PROCEEDINGS AGAINST :

: STIPULATION

DANIEL L. NEWCOMER, : 98 FDR 003

RESPONDENT. :

Respondent Daniel L. Newcomer (Newcomer), and Complainant's Attorney, Henry E. Sanders, Division of Enforcement, having reached agreement for disposition of the captioned-matter, stipulate and agree as follows:

1. This Stipulation shall be submitted to the Funeral Directors Examining Board (Board) for approval and disposition of the matters. If the terms of the Stipulation are not acceptable to the Board, then the parties shall not be bound by any of the provisions of the Stipulation.

a. This Stipulation is dispositive of investigative complaint # 98 FDR 003.

2. Respondent has been advised of his right to a public hearing on each and every allegation of the complaint, but hereby freely and voluntarily waive his right to a public hearing in this matter on the condition that all provisions of this Stipulation be acceptable to and approved by the Board.

a. Respondent further agrees to waive any appeal of the Board's Final Decision and Order adopting the Stipulation agreement.

3. Respondent Newcomer of P.O. Box 26, 1105 East 9th Avenue, Brodhead, WI 53520, was initially licensed as a funeral director on August 5, 1968, but his license is presently expired, and non-renewable, due to a tax lien because of unpaid taxes.

a. Because of his right of licensure renewal, Respondent is still subject to the jurisdiction of the Board.

4. The Department received a complaint against Respondent in early 1998, from a consumer, alleging that her mother (since deceased) had paid Respondent for a gravestone marker on December 28, 1995; and arranged to have the consumer's sibling exhumed and buried with her parents on one lot they had purchased.

5. The Consumer's father expired on January 6, 1996, and her mother expired on April 20, 1996. Respondent had cashed the check for the headstone on January 20, 1996.

6. Notwithstanding several conversations and communications with Respondent, with Respondent promising and assuring her that the marker would be ordered and placed; and that the deceased sibling would be exhumed and moved, Respondent never carried out his assurances and promises. The consumer filed this complaint with the Department.

7. At the screening stage of the complaint process, Respondent was written via a letter dated March 24, 1998, from the Department, to provide the Department with written responses to the complaint within 10 days of receipt of the letter, to assist the screening panel to make a decision to open an investigation or not.

a. Respondent never responded to the "10 day letter."

8. Accordingly, a complaint file was opened, and an investigation ensued, with Respondent being contacted by Investigator Garrette by letter dated September 2, 1998, sent by certified mail, which was received by Respondent on September 11, 1998.

9. Respondent never responded to the letter and Investigator Garrette telephoned him on September 22, 1998. Garrette instructed Respondent to respond to the September 2, 1998, letter, and Respondent promised to submit the requested information by September 25, 1998.

10. Respondent responded as directed and provided that the headstone had been received and placed on the parents grave on May 22, 1998; but that he had to make arrangements for the exhumation and re-burial of the consumer's deceased sibling.

a. There were some mitigating circumstances regarding why the headstone was not timely placed, but the delay was more the cause of Respondent's inaction.

11. Succinctly, subsequently, Respondent failed on several other occasions to be responsive to the Department's requests. Ultimately, a subpoena duces tecum was served on him scheduling him to personally appear before the Department on December 14, 1998.

12. During the course of the investigation, it was determined that Respondent's application for renewal was received timely by the Department on January 5, 1998. On March 16, 1998, a "10 Day Notice" was mailed to him from Wisconsin Department of Revenue (DOR) notifying him that his application for renewal would be denied by the Department unless the Department received documentation from DOR that he was not liable for delinquent taxes. As of May 4, 1998, Respondent still remained liable for delinquent taxes owed to DOR.

13. Respondent was formally notified by the Department that his application for renewal was denied by letter dated June 15, 1998, which was received by him on July 17, 1998, and by letter dated July 29, 1998, Respondent was notified that his credential as a funeral director expired on July 15, 1998.

14. Admittedly, Respondent has engaged in unlicensed funeral directing from about July 17, 1998, until about January 21, 1999, when Richard E. Peterson (#77/3662) became the licensed funeral director in charge of Newcomer Funeral Home, Broadhead, Wisconsin.

15. Based upon the above enumerated facts and series of occurrences, Respondent Newcomer has variously violated sec. 445.04(2), Wis. Stats. No person may engage in the business of a funeral director, or make a representation as engaged in such business, in whole or in part, unless first licensed as a funeral director by the Board; violated variously secs. FD 3.02(5)-(6),(9), Wis. Adm. Code. Unprofessional conduct. (5) Refusing to comply with a daily authorized request for information by the Board in a timely manner ... there is a rebuttable presumption that a person who takes more than 30 days to provide information requested by the Board has not acted in a timely manner; (6) Providing and performing the services of funeral directing ... in a manner which falls below minimum practice in the profession, and (9) engaged in misleading or deceptive conduct in the conduct of business or the profession.

16. Based upon the above and in settlement of this matter, Respondent hereby consents, accepts and agrees to be reprimanded; and if and when he becomes credentialed again as a funeral director, he is to work one (1) full year under the supervision of a licensed funeral director, commencing on the date his credential is renewed.

17. Respondent and Complainant's Attorney Sanders agree that this Stipulation Agreement may be incorporated in the Board's Final Decision and Order adopting the Stipulation Agreement.

18. Respondent further agree that Complainant's Attorney Sanders and the case Advisor assigned to the complaint, may appear at any closed deliberative meeting of the Board with respect to this Stipulation, but those appearances will be limited solely to clarification, justification, and to statements in support of the Stipulation and for no other purpose.

Daniel L. Newcomer March 12, 1999

Respondent Date

Henry E. Sanders March 29, 1999

Complainant's Attorney Date

