

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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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
KENTON D. BOETTCHER and :
BOETTCHER FAMILY FUNERAL :
HOME : LS0605161FDR
: :
RESPONDENTS. :

Division of Enforcement Case No. 04 FDR 016

The parties to this action for the purposes of Wis. Stats. Sec. 227.53 are:

Kenton D. Boettcher
2401 Fieldcrest Drive
Kaukauna, WI 54130

Boettcher Family Funeral Home
2401 Fieldcrest Drive
Kaukauna, WI 54130

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 parties in these matters agree to the terms and conditions of the attached Stipulation as the final decision of the matter(s), subject to the approval of the Funeral Directors Examining Board (Board). The Board has reviewed the Stipulation agreement annexed to this Final Decision and Order, and considers it acceptable. Accordingly, the Board adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Respondent Kenton D. Boettcher ("Boettcher"), whose date of birth is June 10, 1962, whose last known address of record with the Department of Regulation and Licensing ("Department") is 2401 Fieldcrest Drive, Kaukauna, WI 54130, holds a license as a Funeral Director (#77-4685). Boettcher was first granted the license on July 3, 1985, pursuant to Wis. Stat. ch. 445, and has held it at all times material to this complaint. The license is current through December 14, 2007.
2. Respondent Boettcher Family Funeral Home ("BFFH"), whose last known address of record with the Department of Regulation and Licensing ("Department") is 2401 Fieldcrest Drive, Kaukauna, WI 54130, holds a license as a Funeral Establishment (#78-2082). BFFH was first granted the license on April 11, 1996, pursuant to Wis. Stat. ch. 445, and has held it at all times material to this complaint. The license is current through May 31, 2007. BFFH is owned and operated by Boettcher.
3. B.D. died on January 31, 2004. On or about February 1, 2004, B.D.'s wife, L.D. made arrangement for his funeral with Boettcher of BFFH. During this conversation L.D. instructed Boettcher to deliver B.D.'s remains to Clintonville Graceland Cemetery for storage following the funeral service, to be held on February 4, 2004. The body was to be stored until weather conditions permitted burial.
4. Boettcher communicated the wrong date for the funeral service to B.D.'s pastor. B.D.'s name was also incorrectly spelled on the leaflets for the funeral service, and on the nameplate for the vault. Following the funeral service Boettcher failed to deliver B.D.'s remains to the cemetery as directed by L.D., but instead may have told one of L.D.'s relatives that he intended to store the body at a facility owned by him. L.D. visited the cemetery for several weeks, in the belief that B.D.'s remains were stored there.
5. Per Wis. Admin. Code § FD 3.02, a licensee or owner of a licensed funeral establishment engages in

unprofessional conduct by:

- (6) Providing and performing the services of funeral directing... in a manner which falls below minimal standards established by... practice in the profession.

6. Per Wis. Stat. § 445.105(4), “Violations of this chapter or any rules or regulations of the examining board committed by any person, or an officer, agent or employee with the knowledge or consent of any person operating such funeral establishments shall be considered sufficient cause for reprimand or for limitation, suspension or revocation of such funeral establishment permit.”

CONCLUSIONS OF LAW

1. The Wisconsin Funeral Directors Examining Board has jurisdiction to act in these matters pursuant to Wis. Stat. § 445.13.

2. The Wisconsin Funeral Directors Examining Board has authority to enter into this stipulated resolution of this matter pursuant to Wis. Stat. § 227.44(5).

3. Respondent Boettcher by his conduct as described in paragraphs 3-4 above, did commit one or more violations of Wis. Admin. Code § FD 3.02(6), thereby subjecting himself to discipline, as well as Respondent BFFH, per Wis. Stat. 445.105(4).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The licenses of Respondents KENTON D. BOETTCHER and BOETTCHER FAMILY FUNERAL HOME to practice as a Funeral Director and Funeral Establishment, respectively, in the State of Wisconsin are hereby REPRIMANDED.

2. Respondents shall, within one hundred and twenty (120) days of the date of this Order, pay to the Department of Regulation and Licensing partial costs of this proceeding in the amount of \$750.00, pursuant to Wis. Stat. § 440.22(2). Respondents shall be held jointly and severally liable for the costs ordered by the paragraph.

3. All payments and information required by this Order, and any request for removal of the limitation shall be mailed, faxed or delivered to:

Department Monitor
Department of Regulation and Licensing
Division of Enforcement
1400 East Washington Ave.
P.O. Box 8935
Madison, WI 53708-8935
Fax: (608) 266-2264
Telephone: (608) 261-7904

4. This Order shall be effective on the date of its signing.

By: J. C. Frazier
A Member of the Board

5/16/06
Date

**STATE OF WISCONSIN
BEFORE THE FUNERAL DIRECTORS EXAMINING BOARD**

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :
 : **STIPULATION**
KENTON D. BOETTCHER and :
BOETTCHER FAMILY FUNERAL :
HOME : **LS** _____
 :
RESPONDENTS. :

Division of Enforcement Case No. 04 FDR 016

It is hereby stipulated and agreed, by and between Kenton D. Boettcher, Respondent; Boettcher Family Funeral Home, Respondent; and Mark A. Herman, attorney for Complainant, State of Wisconsin, Department of Regulation and Licensing, Division of Enforcement, as follows:

1. This Stipulation is entered into as a result of a pending investigation of Respondents' licensures by the Division of Enforcement (Case No. 04 FDR 016). Respondents consent to the resolution of this investigation by stipulation without the issuance of a formal complaint.

2. Respondents understand that by signing this Stipulation they voluntarily and knowingly waives their rights, including: the right to a hearing on the allegations against them, at which time the State has the burden of proving those allegations by a preponderance of the evidence; the right to confront and cross-examine the witnesses against them; the right to call witnesses on their behalf and to compel their attendance by subpoena; the right to testify themselves; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to them under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.

3. Respondents have been provided with an opportunity to obtain the advice of legal counsel prior to signing this stipulation.

4. Respondents agree to the adoption of the attached Final Decision and Order by the Funeral Directors Examining Board. The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondents waive all rights to any appeal of the Board's order, if adopted in the form as attached.

5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by consideration of this attempted resolution.

6. The parties to this Stipulation agree that the attorney or other agent for the Division of Enforcement and any member of the Funeral Directors Examining Board ever assigned as an advisor in this investigation may appear before the Board in open or closed session, without the presence of the Respondents or their attorney, for purposes of speaking in support of this agreement and answering questions that any member of the Board may have in connection with the Board's deliberations on the Stipulation. Additionally, any such Board advisor may vote on whether the Board should accept this Stipulation and issue the attached Final Decision and Order.

7. Respondents are informed that should the Board adopt this Stipulation the Board's final decision and order is a public record and will be published in accordance with standard Department procedure.

8. The Division of Enforcement joins Respondent in recommending the Board adopt this Stipulation and issue the

attached Final Decision and Order.

KENTON D. BOETTCHER

Respondent, On behalf of himself and
Respondent Boettcher Family Funeral Home
2401 Fieldcrest Drive
Kaukauna, WI 54130

Date

MARK A. HERMAN

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

Date

[04 FDR 016: \$750.00 costs, reprimand.]