FILE COPY

STATE OF WISCONSIN
BEFORE THE FUNERAL DIRECTORS EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY PROCEEDINGS AGAINST	:	
	:	FINAL DECISION AND ORDER
MARK R. LAEMMRICH,	:	92 FDR 022
RICHARD G. LAEMMRICH,	:	93 FDR 043
LAEMMRICH FUNERAL HOME,	:	
RESPONDENTS.	:	

The parties to this proceeding for the purpose of Wis. Stats. Sec. 227.53 are:

Mark R. Laemmrich
312 Milwaukee St.
Menasha, WI 54952

Richard G. Laemmrich
312 Milwaukee St.
Menasha, WI 54952

Laemmrich Funeral Home
312 Milwaukee St.
Menasha, WI 54952

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 in Secs. 445.13, Stats., and RL 2.12, Wis. Adm. Code, that the stipulation agreement annexed hereto, filed by Complainants 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 Respondents by certified mail.

Dated at Madison, Wisconsin, this 17 day of March, 1994

Signature

HS:dab
ATTY-HLG773

STATE OF WISCONSIN
BEFORE THE FUNERAL DIRECTORS EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY PROCEEDINGS AGAINST	:	STIPULATION
MARK R. LAEMMRICH,	:	92 FDR 022
RICHARD G. LAEMMRICH,	:	93 FDR 043
LAEMMRICH FUNERAL HOME,	:	
RESPONDENTS.	:	

Respondents, Mark R. Laemmrich, Richard G. Laemmrich, Laemmrich Funeral Home, and their attorney, F. David Krizenesky, 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 matter. 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 this stipulation.

2. Respondents have been advised of their rights to public hearings on each and every allegation of the complaint, but hereby freely and voluntarily waive their rights to public hearings in this matter on the condition that all provisions of this stipulation be acceptable to and approved by the Board.

a. Respondents further agree to waive any appeals of the Board's Final Decision and Order adopting the stipulation agreement.

3. Respondent Mark R. Laemmrich, of 312 Milwaukee Street, Menasha, Wisconsin 54952, is and was at all time material to the complaint, licensed as a funeral director, and has been so licensed under the provisions of ch. 445, Wis. Stats., since September 17, 1976.

4. Respondent Laemmrich Funeral Home, of 312 Milwaukee Street, Menasha, Wisconsin 54952, is and was at all time material to the complaint, licensed as a funeral establishment under the provisions of ch. 445, Wis. Stats.

5. Respondent Richard G. Laemmrich, of 312 Milwaukee Street, Menasha, Wisconsin 54952, is and was at all time material to the complaint, licensed as a funeral director, and has been so licensed under the provisions of ch. 445, Wis. Stats., since November 20, 1948. Respondent Richard Laemmrich is also the father of Respondent, Mark Laemmrich, and is also the owner of Respondent, Laemmrich Funeral Home.

a. By Final Decision and Order of the Wisconsin Funeral Directors Examining Board (Board) dated May 25, 1985, Exhibit "A", Respondent Richard Laemmrich was disciplined by the Board and ordered suspended for a period of seven (7) days

for failing to timely file death certificates as required by Wis. Stats. secs. 445.15(2) and 69.45(1) and (2), for failing to timely obtain burial permits, and for providing false information to an agent of the Board.

6. On about November 24, 1993 in case #CF 378 01 02, in the Winnebago County Circuit Court, Branch VI, the Honorable Judge Bruce K. Schmidt presiding, Respondent Mark R. Laemmrich pled no contest, was found guilty and convicted of one (1) count of Theft by Bailee in violation of sec. 943.20(1)(b), Stats., and one (1) count of forgery with the intent to defraud, in violation of sec. 943.38(1), Stats., Exhibit "B", Judgment of Conviction with attached addendum (conditions of probation).

7. That attached hereto is Exhibits "B1-B2", are certified copies of the criminal complaint and criminal information pursuant to which Respondent Mark Laemmrich made his plea of no contest involving one consumer and one trust transaction. That attached hereto as Exhibit "B3", is a certified copy of the police report involving the investigation of Mark Laemmrich leading to this above-mentioned conviction along with related documentation.

8. Although Respondent was charged with and convicted of one count each of theft and forgery, Respondent's conduct included sixteen (16) victims and a total dollar amount of $65,740.00. All other fourteen counts were read into the record at sentencing, Exhibit "B4", attached hereto, in pertinent part. See also Exhibit "B3" supra.

9. Further, pursuant to the criminal investigation of Respondent Mark Laemmrich, information from Mrs. Rosemary Derrick (Mrs. Derrick), a court appointed guardian for Gertrude Mielke, was presented to the Winnebago County District Attorney's office regarding Respondent Richard Laemmrich, Respondent Mark Laemmrich's father, Exhibits "C-C2", attached hereto.

10. The exhibits indicated succinctly that, in December 1988, Mrs. Derrick learned that Respondent Laemmrich Funeral Home held a funeral trust for Derrick's guardian, Mielke. Mrs. Derrick communicated with Richard Laemmrich by letter dated December 12, 1988, requesting copies of the trust contract and account showing the money currently in the trust. Respondent Richard Laemmrich never responded to the letter or its request.

11. Thereafter, in March 1989, Mrs. Derrick personally visited Laemmrich Funeral Home and made the verbal request to Respondent Richard Laemmrich. Richard Laemmrich looked into his files, took out a copy - unshown to Derrick - reviewed it, and indicated to Mrs. Derrick that there was no amount indicated on the trust, that therefore, there was no trust set up for Mrs. Mielke.

12. Mrs. Mielke died on October 25, 1989, and on November 4, 1989, Mrs. Derrick again wrote to Richard Laemmrich requesting a copy of the burial contract, itemized funeral bill, and copy of Mielke's death certificate.

13 Respondent Richard Laemmrich responded to Mrs. Derrick by letter dated November 7, 1984 (Exhibit "C1" supra) and indicated that he had retained the $1,000.00 trust money in his safety deposit box, and obviously, not in trust as was legally required, nor pursuant

to the funeral trust agreement (Exhibit "C2" supra), and the trust agreement date had been altered.

14. Additionally, pursuant to this department's investigation of Mark Laemmrich in case #92 FDR 022, and involving Respondent's abuse of the funeral trust for Esther Gallau on October 2, 1992, Respondent Richard Laemmrich was made aware of Mark Laemmrich's fraud and theft of the $5,000.00 related trust monies, and Richard personally repaid the money, Exhibit "D", but apparently did nothing to prevent Mark from abusing further trust agreements from about October 1992 through December 1993.

15. Further, and also pursuant to departmental investigative contacts with Respondent Mark Laemmrich regarding case #92 FDR 022, in March 1993, Attorney Joseph (Skip) Beisenstein, contacted the department on behalf of Respondent Mark Laemmrich.

16. In a telephone conversation on March 15, 1993, between Attorney Beisenstein and Complainant's attorney Sanders, and in response to a question from Attorney Sanders regarding how could the department be sure that Respondent had not abused other trusts than Esther Gallau, Attorney Beisenstein represented to Attorney Sanders that Richard Laemmrich had "inventoried" every other trust agreement with Laemmrich Funeral Home, and that the subject trust for Gallau was the only trust involved.

17. Notwithstanding the fact that Respondent Mark Laemmrich knew that the department was investigating his abuse of trust monies as early as March 1993, he continued to abuse trust monies related to other trusts up to November-December 1993.

18. By virtue of the acts, errors and/or omissions by Respondent Mark Laemmrich enumerated in the criminal information, criminal complaint, Judgment of Conviction, and the police department's investigation report, Respondent Mark Laemmrich has violated secs. FDE 3.02(1), (6), (9), Wis. Adm. Code, Unprofessional Conduct. Violation of any state or federal law substantially related to the practice of funeral directing, providing and performing the services of funeral directing . . . in a manner which falls below minimum standards established by statute, rule or practice in the profession, and engaged in misleading or deceptive conduct in the conduct of business or the funeral profession.

19. Respondent Mark Laemmrich has engaged in a pattern and practice of mishandling burial trusts/monies since at least from October 1992 through November-December, 1993, and thereby has violated secs. 445.12(4), and 445.125(1)-(2), Wis. Stats., . . . took undue advantage of patrons or committed any fraudulent act in the conduct of business, or do any other act not in accord with rules of the examining board and not in accord with proper business practice of funeral directing; Burial Agreements. Failure to treat such trust funds in trusts . . . until the occurrence of the death of the potential decedent, in every such instance of trust money mishandling or theft; and not depositing trust monies in every such instance Respondent failed to do so, as is enumerated in the above criminal information, criminal complaint, and police investigative report.

20. Respondent Richard Laemmrich, father of Respondent Mark Laemmrich, and owner of Laemmrich Funeral Home, has by not depositing trust money of $1,000.00 pursuant to

a funeral trust agreement, in the Security Bank of Menasha in April 1980, paragraphs 9-13 supra, violated sec. 445.12(4), Stats., . . . took undue advantage of a patron or committed any fraudulent act in the conduct of business . . . not in accord with proper business practice . . . or profession of funeral directing; violated secs. 445.125(1)(a), (2), Stats., Burial Agreement; by lying to Mrs. Derrick, violated secs. FDE 3.02(3), (5), (6), (9), Wis. Adm. Code, giving misleading or deceptive information . . . on funeral burial agreements . . ., . . . falsifying records . . ., . . . funeral directing below minimum standards . . ., and engaged in misleading or deceptive conduct . . .

21. Respondent Richard Laemmrich, has since at least October 1992, when he learned that Mark Laemmrich had engaged in theft and forgery regarding the Esther Gallau trust monies, up to about November/December 1993, without notifying the Board, law enforcement agencies, or anyone else, and by failing to assure the integrity of other burial trusts with Laemmrich Funeral Home, and by lying to the department via Attorney Beisenstein that he had inventoried all other burial trusts, has violated, aided or abetted all of the above enumerated violations of Respondent Mark Laemmrich supra, and/or violated sec. FDE 3.02(5), Wis. Adm. Code, refusing to comply truthfully to requests for information by Attorney Sanders.

22. By virtue of the acts, and/or conduct, violations and conviction enumerated above of Respondents Mark and Richard Laemmrich, Laemmrich Funeral Home is subject to disciplinary action against its licenses and/or permits, pursuant to sec. 445.105(4), Wis. Stats.

23. Based upon the above and in settlement of this matter, Respondent Richard Laemmrich hereby consents, accepts and agrees to a one month (30 days) suspension of his funeral director's licenses and/or permits, commencing effectively April 1, 1994. On or before the effective date of the suspension, Respondent Richard Laemmrich shall surrender to the department all funeral director licenses and/or certificates previously issued to him. Additionally, Respondent Richard Laemmrich agrees to pay either jointly or severally, with Respondent Mark Laemmrich and/or Laemmrich Funeral Home, a total of $1,000.00 to the department as part payment of costs in pursuing these matters.

a. The $1,000.00 payment shall be by either a cashier's check or money order made payable to the Department of Regulation and Licensing, and submitted to the department at the point of execution of this stipulation.

24. Respondent Mark Laemmrich hereby consents, accepts and agrees to a minimum two (2) years suspension, commencing June 1, 1994.

Following the minimum two years suspension, Respondent Mark may petition the Board for reinstatement/lifting of the suspension, and among other things that may be required by the Board, demonstrate rehabilitation and otherwise qualify for relicensing, with the understanding that any such decision to reinstate/lift the suspension is solely within the discretion of the Board. On or before the effective date of the suspension, Respondent Mark Laemmrich shall surrender to the department all funeral director licenses and/or certificates previously issued to him. Additionally, Respondent Mark Laemmrich agrees:

a. No visitation rights for Mark Laemmrich to/on the premises of any establishment under the ownership of Laemmrich Funeral Home, and/or Richard Laemmrich;

and to not participate in any way directly or indirectly - in the operations of any funeral establishment, during the period of suspension.

25. Respondent Laemmrich Funeral Home, agrees to a reprimand.

26. Further Respondent Richard Laemmrich agrees and consent, to a minimum suspension of two years of his funeral director licenses and/or certificates, if during the one month suspension of him, Respondent Mark Laemmrich should abuse any other burial trusts of Laemmrich Funeral Home, and or if Richard should fail to disclosure to the Department, other discovered instances of Burial Trusts/Monies Abuses by Mark.

27. Respondents and their attorney, and Complainant's attorney agree that this stipulation agreement may be incorporated into the Board's Final Decision and Order adopting the stipulation agreement.

28. Respondents and their attorney further agree that Complainant's attorney may appear at any closed deliberative meeting of the Board with respect to the stipulation, but that appearance is limited solely to clarification, justification, and to statements in support of the stipulation and for no other purpose.

Mark R. Laemmrich
Respondent

3-10-94
Date

Richard G. Laemmrich
Respondent

3-14-94
Date

Laemmrich Funeral Home
Respondent

3-14-94
Date

F. David Krizenesky
Respondents Attorney

3-10-94
Date

Henry E. Sanders
Complainant's Attorney

3/16/94
Date

HES:kcb
ATY-DLG437

NOTICE OF APPEAL INFORMATION

Notice Of Rights For Rehearing Or Judicial Review, The Times Allowed For Each, And The Identification Of The Party To Be Named As Respondent.

Serve Petition for Rehearing or Judicial Review on:
STATE OF WISCONSIN FUNERAL DIRECTORS EXAMINING BOARD

1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708.

The Date of Mailing this Decision is:

MARCH 24, 1994.

1. REHEARING

Any person aggrieved by this order may file a written petition for rehearing within 20 days after service of this order, as provided in sec. 227.49 of the *Wisconsin Statutes*, a copy of which is reprinted on side two of this sheet. The 20 day period commences the day of personal service or mailing of this decision. (The date of mailing this decision is shown above.)

A petition for rehearing should name as respondent and be filed with the party identified in the box above.

A petition for rehearing is not a prerequisite for appeal or review.

2. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in sec. 227.53, *Wisconsin Statutes* a copy of which is reprinted on side two of this sheet. By law, a petition for review must be filed in circuit court and should name as the respondent the party listed in the box above. A copy of the petition for judicial review should be served upon the party listed in the box above.

A petition must be filed within 30 days after service of this decision if there is no petition for rehearing, or within 30 days after service of the order finally disposing of a petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30-day period for serving and filing a petition commences on the day after personal service or mailing of the decision by the agency, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing this decision is shown above.)