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FILE COPY

STATE OF WISCONSIN
BEFORE THE FUNERAL DIRECTORS EXAMINING BOARD


IN THE MATTER OF :
DISCIPLINARY PROCEEDINGS AGAINST :
PARK-ROWE FUNERAL HOME and :
JANE AUSTEN, :
RESPONDENTS. :

PROPOSED ORDER
Case No. LS-9310114-FDR
(92 FDR 019)

This case involves an alleged violation of provisions of the administrative code regulating funeral directors by Ms. Austen when she was employed by Park-Rowe Funeral Home. Attorney Sanders has submitted the attached motion to dismiss, which is self-explanatory. THEREFORE,

IT IS ORDERED that this case as to respondent Park-Rowe Funeral Home be dismissed without prejudice.

Dated February 22, 1994.



John N. Schweitzer
Administrative Law Judge
Department of Regulation and Licensing
Madison, WI 53708-8935

FINAL ORDER

The Funeral Directors Examining Board has reviewed this Proposed Order and approves it as a Final Order.

Dated 17 MARCH, 1994.



For the Funeral Directors Examining Board

cc: Attorney John Grindell
Grindell Law Offices, S.C.
Box 585
Frederic, WI 54837

Attorney Richard Grayson
Sanborn & Grayson
201 Midwest Federal Building
50 East Fifth Street
St. Paul, MN 55101

Attorney Henry Sanders
Department of Regulation & Licensing
Division of Enforcement
Madison, WI 53708-8935

STATE OF WISCONSIN
BEFORE THE FUNERAL DIRECTOR EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST

MOTION TO DISMISS
WITHOUT PREJUDICE
92 FDR 019

PARK-ROWE FUNERAL HOME,
JANE A. AUSTIN,
RESPONDENTS.

Complainant, by its Attorney, Henry E. Sanders, moves the Administrative Law Judge, John N. Schweitzer, to dismiss the captioned-matter against Respondent Park-Rowe Funeral Home, only.

1. A Notice of Hearing and Complaint was filed against the named Respondents on October 11, 1994, which was subsequently received by them.

2. The Complaint was filed against Respondent Park-Rowe Funeral Home solely because of the alleged violations of its employee, Respondent Jane A. Austin.

3. However, pursuant to an ensuing investigation, and the attached Affidavit of Mr. Raymond Rowe, present owner of the Park-Rowe Funeral Home, it is concluded that Jane Austin employer, has no knowledge of any unprofessional conduct of Respondent Austin, in the captioned-matter, prior to or subsequent thereto, and that the captioned-matter is the first complaint of which the employer, Park-Rowe Funeral Home, and Mr. Raymond Rowe had knowledge regarding Respondent Austin.

4. Accordingly, even though the Department has jurisdiction and authority to proceed in a disciplinary proceeding against the employer, Park-Rowe Funeral Home pursuant to Sec 445.105(4), Wis. Stats., it is concluded that under the circumstances, that the complaint against Respondent Park-Rowe Funeral Home be dismissed, without prejudice.

Dated at Madison, Wisconsin this 18th day of February, 1994.

DEPARTMENT OF REGULATION AND LICENSING


Henry Sanders, Attorney

HS:deh
ATY-CLG351

STATE OF WISCONSIN
BEFORE THE FUNERAL DIRECTORS EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST

AFFIDAVIT

PARK-ROWE FUNERAL HOME,
JANE A. AUSTIN,
RESPONDENTS.

Case #92 FDR 019

STATE OF WISCONSIN]
COUNTY OF POLK] ss.

Raymond Rowe, being first duly sworn on oath, deposes and states as follows:

1. That he is an owner of Park-Rowe Funeral Home, having purchased it in 1989.
2. That according to his business records, the above captioned matter is the first call whereby the Park-Rowe Funeral Home performed funeral services at Willow Ridge, Inc. Skilled Nursing Home.
3. That the above captioned matter is the first complaint of which he has knowledge regarding Jane Austin.
4. That he had no knowledge of any improper or unprofessional conduct of Jane Austin, either in the above captioned action, or prior thereto or subsequent thereto.
5. That he makes this Affidavit in support of the stipulated dismissal of the above captioned action as against the Park-Rowe Funeral Home.

Dated this 23 day of December, 1953.

Raymond Rowe

Personally came before me this 23 day of December, 1993, the above named Raymond Rowe, to me known to be the person who executed the foregoing instrument and acknowledged the same.

Notary Public, Polk Co., Wis.
My commission expires 8-7-94

A. C. JOHNSON
Notary Public State of Wisconsin
My Commission Expires Aug. 7, 1994

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:

THE 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 21, 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.)

SECTIONS 227.49 AND 227.53, OF THE WISCONSIN STATUTES

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be a prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of this order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3) (e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

(2) The filing of a petition for rehearing shall not suspend or delay the effective date of the order, and the order shall take effect on the date fixed by the agency and shall continue in effect unless the petition is granted or until the order is superseded, modified, or set aside as provided by law.

(3) Rehearing will be granted only on the basis of:

(a) Some material error of law.

(b) Some material error of fact.

(c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

(4) Copies of petitions for rehearing shall be served on all parties of record. Parties may file replies to the petition.

(5) The agency may order a rehearing or enter an order with reference to the petition without a hearing, and shall dispose of the petition within 30 days after it is filed. If the agency does not enter an order disposing of the petition within the 30-day period, the petition shall be deemed to have been denied as of the expiration of the 30-day period.

(6) Upon granting a rehearing, the agency shall set the matter for further proceedings as soon as practicable. Proceedings upon rehearing shall conform as nearly may be to the proceedings in an original hearing except as the agency may otherwise direct. If in the agency's judgment, after such rehearing it appears that the original decision, order or determination is in any respect unlawful or unreasonable, the agency may reverse, change, modify or suspend the same accordingly. Any decision, order or determination made after such rehearing reversing, changing, modifying or suspending the original determination shall have the same force and effect as an original decision, order or determination.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) 1. Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. If the agency whose decision is sought to be reviewed is the tax appeals commission, the banking review board, the consumer credit review board, the credit union review board, the savings and loan review board or the savings bank review board, the petition shall be served upon both the agency whose decision is sought to be reviewed and the corresponding named respondent, as specified under par. (b) 1 to 5.

2. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency.

3. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59 (6) (b), 182.70 (6) and 182.71 (5) (g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified. The petition may be amended, by leave of court, though the time for serving the same has expired. The petition shall be entitled in the name of the person serving it as petitioner and the name of the agency whose decision is sought to be reviewed as respondent, except that in petitions for review of decisions of the following agencies, the latter agency specified shall be the named respondent:

1. The tax appeals commission, the department of revenue.

2. The banking review board or the consumer credit review board, the commissioner of banking.

3. The credit union review board, the commissioner of credit unions.

4. The savings and loan review board, the commissioner of savings and loan, except if the petitioner is the commissioner of savings and loan, the prevailing parties before the savings and loan review board shall be the named respondents.

5. The savings bank review board, the commissioner of savings and loan, except if the petitioner is the commissioner of savings and loan, the prevailing parties before the savings bank review board shall be the named respondents.

(c) A copy of the petition shall be served personally or by certified mail or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon each party who appeared before the agency in the proceeding in which the decision sought to be reviewed was made or upon the party's attorney of record. A court may not dismiss the proceeding for review solely because of a failure to serve a copy of the petition upon a party or the party's attorney of record unless the petitioner fails to serve a person listed as a party for purposes of review in the agency's decision under s. 227.47 or the person's attorney of record.

(d) The agency (except in the case of the tax appeals commission and the banking review board, the consumer credit review board, the credit union review board, the savings and loan review board and the savings bank review board) and all parties to the proceeding before it, shall have the right to participate in the proceedings for review. The court may permit other interested persons to intervene. Any person petitioning the court to intervene shall serve a copy of the petition on each party who appeared before the agency and any additional parties to the judicial review at least 5 days prior to the date set for hearing on the petition.

(2) Every person served with the petition for review as provided in this section and who desires to participate in the proceedings for review thereby instituted shall serve upon the petitioner, within 20 days after service of the petition upon such person, a notice of appearance clearly stating the person's position with reference to each material allegation in the petition and to the affirmance, vacation or modification of the order or decision under review. Such notice, other than by the named respondent, shall also be served on the named respondent and the attorney general, and shall be filed, together with proof of required service thereof, with the clerk of the reviewing court within 10 days after such service. Service of all subsequent papers or notices in such proceeding need be made only upon the petitioner and such other persons as have served and filed the notice as provided in this subsection or have been permitted to intervene in said proceeding, as parties thereto, by order of the reviewing court.