

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

BRIAN R. KENDALL,
THONI & KENDALL FUNERAL SERVICE,
RESPONDENTS.

FINAL DECISION AND ORDER
91 FDR 027

The parties to this action for the purposes of sec. 227.53, Stats., are:

Brian R. Kendall
209 Mary Street
Boscobel, Wisconsin 53805

Thoni & Kendall Funeral Service
209 Mary Street
Boscobel, Wisconsin 53805

Department of Regulation and Licensing
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

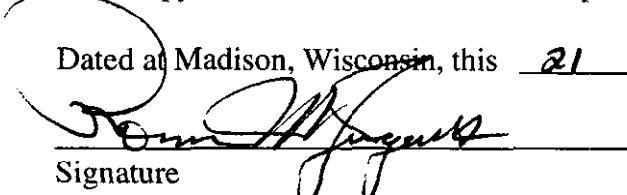
The State of Wisconsin, Funeral Directors Examining Board, having considered the Stipulation Agreement annexed hereto of the parties, in resolution of the captioned-matter, makes the following:

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 Respondents by certified mail.

Dated at Madison, Wisconsin, this 21 day of ^{MARCH}~~January~~, 1995


Signature

HES:deh
DOEATTY-CLG1150

STATE OF WISCONSIN
BEFORE THE FUNERAL DIRECTORS EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	STIPULATION
	:	91 FDR 027
BRIAN R. KENDALL,	:	
THONI & KENDALL FUNERAL SERVICE,	:	
RESPONDENTS	:	

Respondents Brian R. Kendall (Kendall), Thoni & Kendall Funeral Service (Establishment), their Attorney Ivars Kalnins, and Complainant's Attorney Henry E. Sanders, Division of Enforcement, having reached agreement for disposition of the captioned-matter, hereby stipulate and agree as follows:

- a. This agreement is dispositive of Investigative Complaint #91 FDR 027.

1. Respondent Thoni & Kendall Funeral Service Establishment, of 209 Mary Street, Boscobel, Wisconsin, was at all times material to the complaint licensed as a Funeral Establishment, and has been so licensed under the provisions of ch. 445, Wis. Stats., since August 7, 1962.

2. Respondent Kendall, of 209 Mary Street, Boscobel, Wisconsin, is and was at all times material to the complaint, licensed as a Funeral Director, and has been so licensed under the provisions of ch. 445, Wis. Stats., since August 8, 1984.

3. 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.

4. 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 hearings in this matter on the condition that all provisions of the Stipulation be acceptable to and approved by the Board.

- a. Respondents further agree to waive any appeal of the Board's final Decision and Order adopting the Stipulation Agreement.

5. On January 19, 1988, Depositor R.W. entered into an Irrevocable Funeral Trust (IFT) with Respondents, for her spouse, B.W., in the amount of \$1500; on October 3, 1988, R.W. as purchaser, purchased a Burial Receptacle (vault) Trust via Respondents for her spouse, B.W., in the amount of \$640.00, and

also on October 3, 1988, R.W. entered into a Burial Casket Trust via Respondents, in the amount of \$1159.00 for her spouse, B.W.

6. Thereafter, B.W. died on July 18, 1991, and on July 19, 1991, surviving spouse, R.W., went to Respondent's establishment and made funeral arrangements for B.W.

7. Respondent Kendall prepared a Funeral Purchase Contract/Statement of Goods and Services selected, Exhibit "A", which failed to reflect specifically, the individual and specific prices of the goods and services selected, and/or to reflect Trust monies involved, and/or received by Respondents.

- a. Exhibit "A" also indicated that the purchase contract was a cash transaction, due in full on August 19, 1991, even though Respondents were aware of and had possession of copies of the three (3) Trusts involved.

8. Subsequently, a surviving spouse relative filed a complaint with the Department on behalf of R.W., alleging that she (R.W.) was only given a copy of Exhibit "A" supra, reflecting lump sums amounts, without an itemization of the specific costs involved, and/or how much money was credited from the three (3) Trusts.

- a. The complaint alleged further that R.W. also submitted a written request to Respondents requesting an itemized statement of the goods and services she selected and the related costs, but Respondents failed to respond to her inquiries, and/or to provide answers.

9. Pursuant to the Department's investigation of the complaint, and specific requests to Respondents, Respondents initially failed to provide requested documentation to the Department, and gave conflicting responses. The amount of interest relating to the three (3) trusts were hard to decipher.

10. The Respondents deny the allegations contained in this Stipulation. However, in full settlement of this matter, Respondents enter a "no contest" or analogous plea to the allegations contained in the Stipulation, and for no other purpose. The alleged violations are as follows: C.F.R. sec. 453.2(a) Price Disclosure; C.F.R. sec. 453.(6), Retention of Documents, and secs. F.D.3.02(1),(3),(5), Wis. Adm. Code, violating or aiding and abetting a violation of any...Federal law (C.F.R. 453) substantially related to the practice of funeral directing, giving misleading...information to family or persons involved in the arranging of a funeral or final disposition, including, but not limited to, information on funeral costs, burial arrangements, and refusing to truthfully comply with duly authorized requests for information by the Board, respectively.

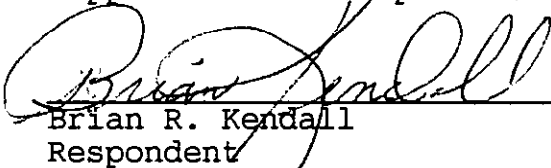
11. Respondent Funeral Home Establishment is subject to discipline pursuant to sec. 445.105(4), Wis. Stats.

12. Based upon the above and in settlement of this matter, both Respondents Brian R. Kendall and Thoni & Kendall Funeral Service Establishment hereby consent, accept, and agree to reprimands, and to pay the amount of \$500.0 to Department as part-assessment of costs in resolving this matter, either jointly or severally.

- a. The payment of \$500.00 shall be by 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.

13. Respondents agree that this Stipulation Agreement may be incorporated into the Board's Final Decision and Order adopting the Stipulation Agreement.

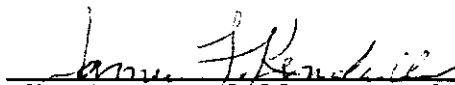
14. Respondents further agree that Complainant's Attorney Sanders may appear at any closed-deliberative meeting of the Board with respect to this Stipulation, but that appearance is limited solely to clarification, justification, and to statements in support of the Stipulation and for no other purpose.



Brian R. Kendall
Respondent

2-1-95

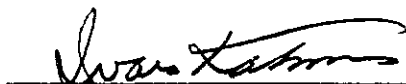
Date



Thoni & Kendall Funeral Service
Respondent

2-1-95

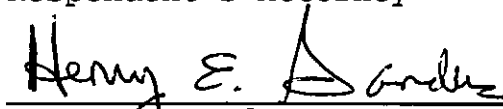
Date



Ivars Kalnins
Respondent's Attorney

2-1-95

Date



Henry E. Sanders
Complainant's Attorney

2/9/95

Date

FUNERAL PURCHASE CONTRACT
(STATEMENT OF FUNERAL GOODS AND SERVICES SELECTED)
We will explain the reasons in writing below.)
charges are only for those items that are used. If we are required by law to use any items,

(A) OUR SERVICE:

BASIC SERVICES OF FUNERAL DIRECTOR & STAFF \$
EMBALMING \$
If you selected a funeral which requires embalming such as a funeral with viewing, you may have to pay for embalming. You do not have to pay for embalming if you did not approve it you selected arrangements such as a direct cremation or immediate burial. If we charged you for embalming, we will explain why below.
REASON FOR EMBALMING
Required for Viewing

OTHER PREPARATION OF THE BODY \$
USE OF FACILITIES & EQUIPMENT:
For Funeral Ceremony, Incl. staff (Funeral Home, Church or Other) \$
For Visitation or Viewing, Incl. staff (Funeral Home, Church or Other) \$
Preparation Room \$
Other Use of Facilities \$
(Advise Use of Facilities, Reception Area, Parking Facilities, Shelter or Homeless, & all other misc. furnishings & equipment within the Funeral Home.)

TRANSFER OF REMAINS TO FUNERAL HOME \$
(Lies Transported) \$
AUTOMOTIVE EQUIPMENT:
Casket Coach (Hearse) \$
Funeral Sedan \$
Limousine \$
OTHER SERVICES/FACILITIES/EQUIPMENT:
..... \$

MISCELLANEOUS MERCHANDISE:
Acknowledgment Cards \$
Visitors Register \$
Memorial Folders \$
CASKET \$

TOTAL UNIT PRICE \$329.00
(Includes Items Checked ✓)
OUTER BURIAL CONTAINER (As selected) \$640.00

OTHER MERCHANDISE:
Receptacle (other than casket) \$
Wearing Apparel \$
FORWARDING OF REMAINS TO ANOTHER FUNERAL HOME \$
RECEIVING OF REMAINS FROM ANOTHER FUNERAL HOME \$
DIRECT CREMATION (As Selected) \$
IMMEDIATE BURIAL (As Selected) \$

THONI AND KENDALL

FUNERAL SERVICE
209 Mary Street
BOSCOBEL, WISCONSIN 53805
Phone 375-6252

JUL 25 91 4 46 47 4

July 19, 1991

Full name of deceased Basil Whiteaker (Please Print Name)

Date of Death July 18, 1991 Deceased is Husband

(B) CASH ADVANCE ITEMS: Total (A) Forward \$ 3769.00

Flowers \$
Cemetery \$
Clergyman \$
Special Music \$
Certified Copies \$
Death Notices \$
Transportation \$
Hair Dresser \$

(C) ADDITIONAL ITEMS ORDERED LATER:
Total (B) \$ 00.00

Newspaper Notices \$
Total (C) \$ 00.00

It is agreed any additional items ordered later shall become a part of this contract and shall be treated as such.
Total Amount \$ 3769.00

LEGAL, CEMETERY, CREMATORY OR OTHER REQUIREMENTS COMPELLING THE PURCHASE OF ANY ITEMS
USED ABOVE: Cemetery Requires A Vault

The undersigned purchaser(s) hereby attest to the following: (1) We authorized embalming of the above named deceased. (2) We were shown a Casket Price List and an Outer Burial Container Price List before the showing of caskets and outer burial containers. (3) We were given opportunity for retention of a General Price List upon the beginning of a discussion of funeral arrangements and/or selection of services and merchandise.

TERMS: This is a CASH TRANSACTION, due in full 8-19-91
PAST DUE AND DELINQUENT upon expiration of due date. A penalty of 12 % per annum for UNANTICIPATED LATE PAYMENT will be charged effective 8-19-91

(I, or we, having read the above, accept and approve same, and jointly and severally promise to make full payment therefor. Receipt of a copy of this contract is acknowledged.

Signature of Purchaser(s) Mrs. Ruby Whiteaker
Signature of Purchaser(s) Basil Whiteaker
We agree to render the service and furnish the

Street Address City and State Zip Code
Street Address City and State Zip Code
Street Address City and State Zip Code

Blue River Wisconsin 53518
Burial Route #2
Zip Code

Phone 375-6252

July 19, 1991

3769.00

3769.00

3769.00

3769.00

3769.00

3769.00

MAY-29-92 FRI 13:14

FEDERATED FUNERAL DIR.

FAX NO. 2175252104

P. 02

Exhibit "A" 116143

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 22, 1995.

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.)