

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST

ROBERT E. WAINSCOTT,	FINAL DECISION AND ORDER
F/D/B/A LEDGEVIEW MEMORIAL PARK	96 RLC 017
CEMETERY,	95 RLC 018
RESPONDENTS.	LS9906171RLC

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

*Robert E. Waincott
2602 Dunmoore Dr.
Snellville, GA 30078*

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

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

*Division of Business Licensure and Regulation
Cemetery Advisory Committee
P.O. Box 8935
Madison, WI 53708-8935*

The state of Wisconsin, Department of Regulation and Licensing, having considered the Stipulation Agreement annexed-here to of the parties, in resolution of the captioned-matters, make the following:

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED pursuant to jurisdiction and authority granted to the Department, that the Stipulation Agreement annexed-here to, filed by Complainant’s attorney, shall be and hereby is incorporated, made and ordered the FINAL DECISION AND ORDER of the state of Wisconsin, Department of Regulation and Licensing.

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

Dated this 17th day of June, 1999.

Marlene Cummings

Secretary, or her designee

Department of Regulation and Licensing

STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST

ROBERT E WAINSCOTT,	STIPULATION
F/D/B/A LEDGEVIEW MEMORIAL PARK CEMETERY,	96 RLC 017
RESPONDENTS	95 RLC 018

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Respondent Robert E. Wainscott (Wainscott), and Complainant’s Attorney, Henry E. Sanders, Division of Enforcement, having reached agreement for disposition of the captioned matters, stipulate and agree as follows:

1. Respondent Wainscott, whose present address of record with the Department is 2602 Dunmoore Drive, Snellville, Georgia 30078, was at all time material to the complaint, registered as a cemetery salesperson, and was general manager of cemetery authority, Ledgeview Memorial Park Cemetery (Ledgeview), Neenah, Wisconsin, and had been so registered under the provisions of subchapter VIII, ch. 440, Wis. Stats., since April 27, 1995. Respondent certificate of registration expired on about January 1, 1997, up to about April 12, 1999, when he renewed his certificate of registration.

a. Ledgeview has since been purchased by and is owned by Loewen Group International, Inc., occurring on about September 1, 1997.

2. This Stipulation shall be submitted to the Department of Regulation and Licensing (Department) for approval and disposition of the matters. If the terms of the Stipulation are not acceptable to the Department, then the parties shall not be bound by any of the provisions of the Stipulation.

a. This Stipulation is dispositive of investigative complaints #s 95 RLC 018 and 96 RLC 017, and as they related to Respondent Robert E. Wainscott only.

3. Respondent has been advised of his right to a public hearing on each and every allegation of the complaints, but hereby freely and voluntarily waives his rights to hearings in these matters on the condition that all provisions of this Stipulation be acceptable to and approved by the Department.

a. Respondent further agrees to waive any appeal of the Department’s Final Decision and Order adopting the Stipulation Agreement.

95 RLC 018

4. The Department received a complaint against Respondents Wainscott and Ledgeview Cemetery from the son of two persons who alleged that, in response to an ad placed in the Fond du Lac (WI) Reporter newspaper by Respondents that provided in pertinent part:

"Notice to all veterans... Because of the lack of burial space and distance to a national cemetery, we at Ledgeview Memorial Park have opened a Garden of Valor to accommodate honorably discharged veterans and spouses. As an Honorably Discharged Veteran you qualify for these

spaces at No Charge..."

5. That the parents visited Ledgeview on May 17, 1995, in response to the ad; but alleged that once there, they were talked into buying crypts for the two (2) of them for \$4,395.00, minus lot trade-in credit of \$1,000.00, and they owed \$3,395.00.

6. Succinctly, the security agreement had no annual percentage rate noted; financial charge of \$2,270.00, financed amount of \$3,500.00, with total payments of \$6,120.00 if paid over the term of the loan in 120 payments (10 years) at \$51.00 per month for a total of \$6,210.00.

7. The security agreement also provided that "if paid within one year - all interest waived - no prepayment penalty," that both had accidental death protection at no cost to them, which indicated that "upon the accidental death of the purchaser, to waive all future payments and declare the entire purchase agreement paid in full, providing however, that at such time ... purchaser has not reached his/her 64th birthday and is in good health at the time of this agreement."

8. The purchasers were both not in good health and both were 68 and 73 years old, respectively.

9. Respondent Wainscott responded to the allegations, that the Complainants did respond to an ad that offered "free" burial spaces to veterans and their spouses ... that they elected Mausoleum entombment and agreed that it was wise to make these arrangements "pre-need"; that the copy of the contract given Complainant was the fourth part of a four-part NCR form, and that if the 13.11% did not show through then perhaps he did not press down hard enough, that if you looked at the numbers there was no secret that the finance charge would indeed be \$2,720.00 if, and only if, they decided to carry this note for the entire 10 year period; that they were given in writing on the face of the contract, the opportunity to pay off the contract within one (1) year and accrue no interest whatsoever ...

10. Respondent continued further and responded that the accidental death protection ... extended to all purchasers, regardless of health or age; the wording on the old contracts was poor and that it had been corrected; and that ... the purchasers ... called to request the cancellation of the contract on July 24, 1995, "way (67 days) beyond the 10 day cancellation prescribed by the State of Wisconsin."

11. Complainant's son had mailed Respondent a letter dated July 24, 1995, indicating:

"Bob. I am writing this letter for my parents ... they are requesting to be released from their contract due to misrepresentation. Please send their deposit of \$90.00 and two payments totaling \$102.00. Their total return will be \$192.00."

96 RLC 017

12. The Department received this complaint against Respondent Ledgeview Memorial Park Cemetery from the Wisconsin Department of Veteran Affairs (WDVA), on behalf of a consumer, Mr. Webster Tennes.

13. Mr. Tennes was an 82 year old World War II veteran who wanted to plan for "his final resting place" and responded to Ledgeview's ad (supra), indicating free burial space for honorably discharged veterans and their spouses.

14. Mr. Tennes indicated to WDVA that he had gone to Ledgeview and was told that there would be no charge for a burial plot. He paid \$350.00 to a salesperson, Timothy J. Young (unlicensed-hereinafter); to be buried in an official veteran cemetery; that recently, he had been contacted by the salesperson again who told Mr. Tennes that he needed to pay \$3,200.00 more. Mr. Tennes indicated that he did not recall what he would have been paying the salesman for, and refused to pay. Mr. Tennes called WDVA because he was confused and did not even know where the cemetery was.

15. In response to the complaint, Respondent Wainscott responded to the Department, almost verbatim to the responses he gave in complaint # 95 RLC 018, supra in pertinent part:

"Mr. Tennes did respond to an advertisement placed in a local paper regarding burial sites for veterans. The ad stated that we would provide a resting-place for all qualified veterans and their spouses at no charge: that is what we have done in the past and will do so in the future.

On of my reps., Mr. Tim Young called Mr. Tennes and made an appointment to visit with him at his home. During the course of their conversation Mr. Young explained that there was more involved than just a piece of land ... the Tennes engaged Mr. Young in conversation regarding the options available such as cremation burial, traditional burial as well as mausoleum entombment ... The Tennes entered into a contract with Ledgeview Memorial Park, and gave Young \$325.00, not \$350.00 ... and agreed to pay the balance of \$3,200.00 on or before December 15, 1995 (balance due in 90 days). They did not do so. They defaulted on their contract. They did not want to keep the arrangement and were sent an official cancellation notice by certified mail,

March 26, 1997."

16. The Tennies did not remember entering into a contract with Respondent for the purchase of two crypts for \$1,995.00 and for two bronze memorials and granite foundations for \$1,395.00 etc.

17. Respondent's "sales representative" Timothy J. Young was not then nor at anytime since, ever been registered as a cemetery salesperson or cemetery pre-need seller, and admittedly, engaged in the unlicensed practice of a cemetery salesperson or cemetery preneed seller. He was hired by Respondent Wainscott.

18. Subsequently, the Department submitted copies of Respondent's "Security Agreement, Retail Installment Contract for Goods and or Services" to the State Department of Financial Institutions, Office of the Commissioner of Banking, compliance officer, to determine whether or not the contract language was in compliance with the Wisconsin Consumer Act (WCA), Chs. 421-427, Wis. Statutes. The review and conclusions reached were:

"There are a number of provisions in the contract used in the transaction which do not comply with the WCA. The definitions of default in the agreement are inconsistent, and neither complies with the Wisconsin Statutes. One section provides that "If any installment is not paid at the time and place specified herein the entire amount unpaid shall be due and payable forthwith at the election of the holder of the note." Other sections provide that default occurs when any portion of an installment is unpaid for 60 days.

§425.103, Wis. Stats., provides that default with respect to payment occurs when an amount exceeding one payment is past due for than 10 days, or the first or last payment is unpaid for 40 days.

The agreement provides for acceleration after default without notice. Under §425.105, Wis. Stats., the merchant may not accelerate the maturity of an obligation because of default unless the merchant has sent the customer a notice of the right to cure the default as provided by §425.104, Wis. Stats. and 15 days have expired.

The agreement provides that upon acceleration or prepayment the unearned finance charge will be calculated by the Rule of 78s, less a \$15 acquisition fee. §422.209, Wis. Stats., provides that the Rule of 78s may be used to determine the refund of the unearned finance charge when the amount financed is less than \$5,000 and the term is less than 37 months. That method could not be used when the term is 120 months. The unearned finance charge must be determined either by a simple interest calculation, or based on an amortization schedule. Also, there is no provision for deducting a \$15.00 acquisition fee.

The agreement provides that the customer is responsible for court costs, collection expenses and reasonable attorney fees not to exceed 15% of the amount due. §422.411, Wis. Stats., prohibits contracting for attorney fees. §422.412 provides that only charges specifically authorized for default may be assessed. Collection fees are not authorized.

We would not object to a provision in the agreement that the customer will be responsible for statutory attorney fees and court costs.

In the section concerning Application of Payments, after applying payments to the sales tax and accrued default charges, the payment is applied to the "entire Finance Charge shown above." Under the WCA, payments must be applied only to the earned finance charge.

In the Buyer's Right to Cancel section, the actual date of the third business day after the contract was signed must be entered. Also, the last sentence of the notice, "if you fail to make the goods..." must be deleted. Under the Wisconsin Statutes a properly canceled contract is void. Failure to return goods would not reconstitute a voided agreement.

In the Notice To Purchaser, section c, reference is made to the "time-price differential." The term should be changed to "Finance Charge" to be consistent with the terminology throughout the agreement.

Finally, "Promissory Note" should be changed to "Installment Agreement" since a "note" generally indicates that a loan was made.

These comments only address the requirements of the WCA and may be in addition to any requirements of the Department of Regulation & Licensing.

We request that you provide your written assurance that you will revise the contract to bring it into compliance with WCA and that, within 30 days, you will send us a copy of a printer's proof or typed copy of the revised contract so we can review it for compliance."

19. Thereafter, Respondents purportedly changed and revised their contract form to conform to the conclusions of DFI. Per his review of the "Revised" contract, DFI concluded that:

"I have reviewed the contract you sent with your July 26, 1996 letter. We cannot approve the form at this time. I have the following comments:

1. Although you changed the heading from "Note" to "Installment Agreement," there are still references to a Note in the agreement. The term should be changed, either to "agreement" or "contract."
2. The second paragraph of the Installment Agreement provides that the Rule of 78's method will be used to determine the refund of the finance charge upon prepayment. Items 6 and 9c on the back side, concerning prepayment, and item 5, concerning acceleration, also provide for the use of that method. As I stated in my previous letter, the Rule of 78's can only be used if the term of payment is 37 months or less and the amount financed is \$5,000 or less. Is it your intention to limit the terms of these contracts to 37 months and \$5,000? If not, your contract must state that an amortization schedule will be used to determine the unpaid finance charge.
3. No change was made in the definition of default in the Installment Agreement or item 4 on the back side. A default occurs when the first or last payment is past due for 40 days. In any other situation, default occurs when more than one payment is past due for 10 days. Your definition of default should contain these provisions.
4. In the third paragraph of the Agreement, the customer waives various notices. Items 4 and 5 on the back side provide that the contract may be accelerated or terminated upon default. §425.105, Wis. Stats., provides that acceleration may not take place unless the account is in default and the customer has failed to cure the default within 15 days after the merchant has sent the customer notice of the right to cure the default. This would also apply to the repossession provision in section 12(h)."

20. Subsequently, Respondent forwarded to DFI, a further revised contractual form for review for compliance with WCA, and based upon such review, DFI commented:

"I have reviewed the above-referenced form, which you submitted with your November 15, 1996 letter, and I have the following comments.

While some progress has been made in revising the form, further modifications are needed. The form in its present condition cannot be approved for use in transactions governed by the Wisconsin Consumer Act.

The print size of the Truth in Lending disclosures is too small. You could eliminate some of the items in the INTERMENT PRODUCTS AND SERVICES section and allow more space to accommodate a larger type size for the disclosures. Specifically, items 16 and 17 would be the same dollar amount. You could eliminate item 16. There is no need to list item 20, the Deferred Payment Price, since the amount is shown in the Truth In Lending disclosure as the total sale price. The DEMAND FEATURE in the federal box can be deleted. That information is only required where there is a demand feature. Also, in the Truth in Lending Disclosure section concerning the payment schedule, replace FIRST PAYMENT DUE with WHEN PAYMENTS ARE DUE and provide more space so the salesperson can enter the timing of payments and when they begin, such as, Monthly-beginning March 1, 1997.

On the right-hand side of the first page, the NOTICE TO PURCHASER must be printed immediately above or adjacent to the space for the customer's signature. You could put the statement concerning acknowledgment that the agreement was read and understood below the signature, if you desire. I would also recommend eliminating the phrase, "IN WITNESS OF." Also, with respect to the NOTICE TO PURCHASER, revise (a) to read: DO NOT SIGN THIS BEFORE YOU READ THE WRITING ON THE REVERSE SIDE, EVEN IF OTHERWISE ADVISED: In (c), change TIME PRICE DIFFERENTIAL to FINANCE CHARGE.

Since the purchaser has already been advised to read the agreement before signing, the CAUTION above the signature is not needed.

Under the section TERMS AND CONDITIONS, eliminate the first items 1 and 2. The Truth In Lending Disclosure notifies the customer of the balance on which the finance charge is assessed.

I would suggest that you also eliminate ADDITIONAL TERMS AND CONDITIONS from the body of the agreement and add the following statement under item 5 of TERMS AND CONDITIONS: ADDITIONAL TERMS AND CONDITIONS ARE SET FORTH ON THE REVERSE SIDE.

On the back side, items 6 and 13 cover the same issue. They should be combined into one provision. Also, item 12 contains essentially the same provisions as are contained on the front of the contract. Eliminate one of those statements.

The default information in item 7 on the back side does not comply with the Wisconsin Consumer Act. Replace the first sentence with, "A default occurs when an amount exceeding one full payment is due for more than 10 days, or the first or last payment is unpaid for 40 days." It would also appear that the last sentence of item 7 should be deleted, since the agreement provides that the seller will have other obligations if the seller cancels the agreement.

We object to the provision in item 11 that "Purchaser waives presentment, demand, notice and protest." Upon default, under §425.105 of the Wisconsin Statutes, the creditor is required to send the customer a notice of the right to cure the default within 15 days. That sentence should be deleted.

The provision in item 14 is also contained in item 23 under ENTIRE AGREEMENT. The same information concerning the entire agreement is on the first page. Stating things twice in the same agreement, using different language, only causes confusion.

Finally, the last section in the BUYERS RIGHT TO CANCEL should be deleted. This is the section beginning "IF YOU DO NOT MAKE..." Under the Wisconsin Statutes, if a customer has properly canceled an agreement the agreement is void. Failure to return goods would not revive a void agreement. I should also point out that the merchant is required to give the customer two copies of the notice of right to cancel.

There appears a misspelling under DESCRIPTION OF MEMORIAL on the front page. "Sir name" should be Surname.

If you have any questions concerning these changes, do not hesitate to contact me at (608) 264-9565."

21. Ultimately, DFI notified the Department that, since they had notified Respondents of needed revisions of the subject contract, and the law, DFI did not intend to take any further action in the matter.

22. Prior to the resolution of the complaints by the Department, Respondent Wainscott relocated out of state, and a "Hold" was placed on his registration renewal so that the Department would be alerted if he should return to the state of Wisconsin. He recently relocated back to Wisconsin, thusly, this Stipulated Resolution!

23. Respondent Wainscott is presently associated with a different cemetery, and on about September 1, 1997, Lowen Group International, Inc., purchased and now owns Ledgeview Memorial Park Cemetery; and notified the Department that regarding the contract reviewed by DFI, Ledgeview had contracted and used the form in consumer transactions involving "more than 400, approximately 110 of which were veterans."

24. Since its purchase of Ledgeview Memorial Park Cemetery, Lowen Group has used its own contractual forms and would handle the subject contractual agreements "each one on an individual basis."

25. Based upon the above, Respondent Robert E. Wainscott is deemed to have violated secs. 440.93(1)(c),(e), Wis. Stats., (c) engaged in any practice relating to the sale of a cemetery lot, cemetery merchandise or mausoleum space which clearly demonstrate a lack of knowledge or ability to apply professional principles or skills, and (e), advertised in a manner that is false, deceptive or misleading; violated sec. 440.92, Wis. Stats. Cemetery Preneed Sellers Registration, by employing Timothy Young when he knew or should have known that he was not issued a Certificate of Registration by the Department; and violated Sec. 440.92(2), Wis. Stats., Preneed Sales Contracts.

26. Based upon the above and in settlement of these matters, Respondent Wainscott hereby consents, accepts and agrees to be reprimanded, and pay the amount of \$1,000.00 as assessment of costs in resolving the matters.

27. The \$1,000.00 assessment of costs shall be payable by cashiers check or money order made payable to the Department of Regulation and Licensing and submitted at the time of execution of this Stipulation, to:

Michelle Neverman

Department's Monitor
Department of Regulation & licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

28. Respondent agrees that this Stipulation Agreement may be incorporated into the Department's Final Decision and Order adopting the Stipulation Agreement.
29. Respondent further agrees that Complainant's Attorney Sanders and the Case Advisor assigned to the cases, may appear at any closed deliberative meeting of the Department with respect to the Stipulation, but those appearances are limited solely to clarification, justification, and to statements in support of the Stipulation and for no other purpose.

<u>Robert E. Wainscott</u>	<u>June 4, 1999</u>
Respondent	Date
<u>Henry E. Sanders</u>	<u>June 14, 1999</u>
Complainant's Attorney	Date