

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN
BEFORE THE FUNERAL DIRECTORS EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST

GARY A. HARTSON,
d/b/a HARTSON FUNERAL HOME,
RESPONDENT.

FINAL DECISION AND ORDER
99 FDR 024

LS0007181FDR

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

Gary A. Hartson
11111 W. Janesville Road
Janesville, WI 53130

Division of Business Licensure and Regulation
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

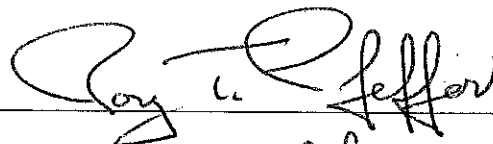
The Funeral Directors Examining Board, having considered the stipulation agreement annexed-hereto of the parties, in resolution of the captioned-matter makes the following:

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 Respondent by certified mail.

Dated this 18th day of July, 2000.


Chair

STATE OF WISCONSIN
BEFORE THE FUNERAL DIRECTORS EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST

GARY A. HARTSON,
d/b/a HARTSON FUNERAL HOME,
RESPONDENT.

STIPULATION
99 FDR 024

Respondent Gary A. Hartson (Hartson), 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. Respondent Hartson of 11111 West Janesville Road, Janesville, Wisconsin 53130, is and was at all times material to the complaint, licensed as a funeral director, d/b/a and funeral director in charge of Hartson Funeral Home, and has been so licensed under the provisions of ch. 445, Wis. Stats., since November 16, 1979.

a. This stipulation is dispositive of investigative complaint #99 FDR 024.

2. 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 the stipulation.

3. Respondent has been advised of his right to a public hearing on each and every allegation of the complaint, but hereby freely and voluntarily waives his right to a hearing in this matter on the condition that all provisions of the stipulation be acceptable to and approved by the Board.

a. Respondent further agrees to waive any appeal of the Board's Final Decision and Order adopting the stipulation.

4. The Department received a complaint from the Funeral Service Alliance of Wisconsin (Alliance), along with a card printed with the words:

Hartson Funeral Home
Robert A. Olsen
Funeral Director

5. The complaint alleged in pertinent part that Robert A. Olsen might be holding himself out as a funeral director, when in fact Olsen might not be licensed by the Board, as a funeral director.

6. An investigation into the matters determined that Olsen had been employed by Hartson funeral establishment as an apprentice since November 12, 1996, and issued apprentice permit #3955 by the board on June 2, 1997.

7. The investigation further determined that in about 1999, a consumer was "funeral shopping" in Hartson funeral establishment, and Olsen serviced her, and gave her the Hartson Funeral Home business card identifying himself as a funeral director.

8. Respondent Hartson responded to the complaint that the printing company which printed the cards for his business made a mistake in printing the cards; which were verified by the printer, i.e., in 1997, shortly after Olsen was issued a funeral apprentice permit by the Department, business cards were ordered for him, but when the order was telephoned in to the printer, the printer assumed that Olsen was a funeral director and produced the cards indicating that Olsen was a "funeral director."

- a. Respondent Hartson also indicated that 500 business cards were ordered for Olsen in 1997, that as of October 1999, about 200 cards were distributed, about 95% to physician offices when he would drop off death certificates, and the other 5% were given to people who came into the funeral home that might have questions. As of October 8, 1999, the remaining 300 cards were discarded.

9. The Board considered all of the investigative facts and evidence and concluded in pertinent part that: the parties knew or should have known that the business cards falsely indicated that Mr. Olsen was a funeral director, given the number of cards involved; that the mistakes should have been caught and resolved, notwithstanding the mix-up by the company that printed the business cards.

10. Accordingly, based upon the above enumerated facts and occurrences, Respondent Hartson is deemed to have aided and abetted the violation of sec. 445.04(2), Wis. Stats., no person may . . . make representation as engaged in such business, in whole or in part, unless first licensed as a funeral director by the . . . board: violated sec. FD 3.02(1), Wis. Adm. Code, Unprofessional Conduct. (1) Violating or aiding and abetting a violation of any state . . . law substantially related to the practice of funeral directing.

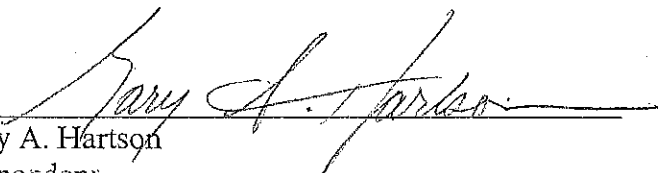
11. Based upon the above and in settlement of these matters, Respondent hereby consents, accepts and is reprimanded, and agrees to pay \$250.00 as part assessment of costs in resolving the matters.

12. The \$250.00 part assessment of costs shall be payable at the time of the execution of this stipulation, and shall be payable by cashiers check or money order made payable to the Department of Regulation and Licensing and submitted to the attention of:

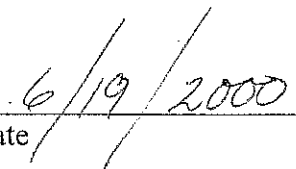
Ted Nehring
Monitor
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

13. Respondent agrees that this stipulation agreement may be incorporated into the Board's Final Decision and Order Adopting the Stipulation Agreement.

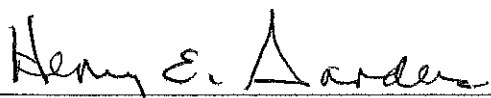
14. Respondent further agrees that Complainant's attorney Sanders, and the case advisor assigned to the complaint, may appear at any closed deliberative meeting of the Board with respect to the stipulation, but those appearances will be limited solely to clarification, justification, and to statements in support of the stipulation and for no other purposes.



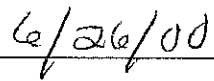
Gary A. Hartson
Respondent



Date



Henry E. Sanders
Complainant's Attorney



Date

HES:kcb

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NOTICE OF RIGHTS OF APPEAL

TO: Gary Hartson

You have been issued an Order. For purposes of service the date of mailing of this Order is July 20, 2000. Your rights to request a rehearing and/or judicial review are summarized below and set forth fully in the statutes reprinted on the reverse side.

A. 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 section 227.49 of the Wisconsin Statutes. The 20 day period commences on the day of personal service or the date of mailing of this decision. The date of mailing of this Order is shown above.

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

A petition for rehearing shall specify in detail the grounds for relief sought and supporting authorities. Rehearing will be granted only on the basis of some material error of law, material error of fact, or new evidence sufficiently strong to reverse or modify the Order which could not have been previously discovered by due diligence. The agency may order a rehearing or enter an order disposing of the petition without a hearing. If the agency does not enter an order disposing of the petition within 30 days of the filing of the petition, the petition shall be deemed to have been denied at the end of the 30 day period.

A petition for rehearing is not a prerequisite for judicial review.

B. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in section 227.53, Wisconsin Statutes (copy on reverse side). The petition for judicial review must be filed in circuit court where the petitioner resides, except if the petitioner is a non-resident of the state, the proceedings shall be in the circuit court for Dane County. The petition should name as the respondent the Department, Board, Examining Board, or Affiliated Credentialing Board which issued the Order. A copy of the petition for judicial review must also be served upon the respondent at the address listed below.

A petition for judicial review must be served personally or by certified mail on the respondent and filed with the court within 30 days after service of the Order 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. Courts have held that the right to judicial review of administrative agency decisions is dependent upon strict compliance with the requirements of sec. 227.53 (1) (a), Stats. This statute requires, among other things, that a petition for review be served upon the agency and be filed with the clerk of the circuit court within the applicable thirty day period.

The 30 day period for serving and filing a petition for judicial review commences on the day after personal service or mailing of the Order by the agency, or, if a petition for rehearing has been timely filed, the day after personal service or mailing of a final decision or disposition by the agency of the petition for rehearing, or the day after the final disposition by operation of the law of a petition for rehearing. The date of mailing of this Order is shown above.

The petition shall state the nature of the petitioner's interest, the facts showing that the petitioner is a person aggrieved by the decision, and the grounds specified in section 227.57, Wisconsin Statutes, upon which the petitioner contends that the decision should be reversed or modified. The petition shall be entitled in the name of the person serving it as Petitioner and the Respondent as described below.

SERVE PETITION FOR REHEARING OR JUDICIAL REVIEW ON:

Funeral Directors Examining Board

1400 East Washington Avenue

P.O. Box 8935

Madison WI 53708-8935