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BEFORE THE FUNERAL DIRECTORS EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	FINAL DECISION
DAVID W. WACHHOLZ, GIANNA M.	:	AND ORDER
WACHHOLZ, HERBERT G. WACHHOLZ, JR.,	:	LS03051310FDR
DAVID J. TABBERT, AND WACHHOLZ-	:	
KRAUSE FUNERAL HOME, INC,	:	
RESPONDENTS.	:	

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

Wachholz-Krause Funeral Home, Inc.
181 S. Main Street
Markesan, WI 53946

Division of Business Licensure & 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 parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Funeral Directors Examining Board (Board). The Board has reviewed the Stipulation Agreement annexed to this Final Decision and Order, and considers it acceptable. Accordingly, the Board adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Respondent David W. Wachholz (77-4490), of P.O. Box 263, Markesan, Wisconsin 53946-0263, is and was at all times material to the complaint licensed as a funeral director, and had been so licensed under the provisions of ch. 445, Wis. Stats., since July 10, 1979. He was an officer, Board Member and 50% shareholder of Respondent Krause-Wachholz Funeral Home, Inc., and Funeral Director in charge of the funeral home.
2. Respondent Gianna M. Wachholz (77-4311) of 175 North Douglas Street, Ripon, WI 54971, was at all times material to the complaint licensed as a funeral director, and had been so licensed under the provisions of ch. 445, WIS. Stats., since April 10, 1978. She is the wife of Respondent David Wachholz.
3. Respondent Herbert G. Wachholz, Jr. (77-3348) of 219 E. Montello Street, Montello, WI 53949, was at all times material to the complaint licensed as a funeral director and had been so licensed under the provisions of ch. 445, Wis. Stats., since March 22, 1954. He is the father of Respondent David Wachholz.
4. Wachholz Family Funeral Home, f/k/a & d/b/a, Wachholz-Krause Funeral Home, Inc., of 181 S. Main Street, Markesan, WI 53946, was granted a permit (78-1491) as a Funeral Establishment on August 16, 1974. That permit expired on or about June 1, 1993 and continued in an expired status until the permit was renewed on November 29, 1999. Respondent was at all times material to the complaint, in an expired licensure status.
5. Respondent David J. Tabbert, whose last address on record with the Department is 175 N. Douglas Street, Ripon, WI 54971, was at all times material to the complaint employed by Respondent David Wachholz, working out of Respondent Funeral Establishment in an unlicensed capacity, but acting as a funeral director apprentice. Respondent Tabbert received a Certificate of Apprenticeship on June 1, 1999, which has not been renewed since then.
6. During the time that the establishment was in an expired licensure status, it was fully engaged in the business of operating as a licensed funeral establishment with Respondent David Wachholz as funeral director in charge.

7. This complaint was opened for investigation as a result of an "APPLICATION FOR REGISTRATION OF AGENT FOR SALE OF BURIAL AGREEMENT FUNDED BY LIFE INSURANCE POLICY" submitted by Respondent Gianna Wachholz, dated April 9, 1999.

8. Gianna Wachholz's Wisconsin application was for being an agent with three (3) funeral homes; Respondent Wachholz-Krause Funeral Home in Markesan, Wisconsin, Wachholz Family Funeral Home in Montello, Wisconsin, and Wachholz Family Funeral Home in Ripon, Wisconsin.

9. It was determined at that time by staff in the Department of Regulation and Licensing that the Markesan Establishment permit had not been renewed since 1993. The Director of the Department's Bureau of Direct Licensing and Real Estate contacted Respondent Gianna Wachholz and inquired why she had not filled in the blank for the permit number for the Markesan Establishment. She indicated that she could not find a copy of the permit which would have the number on it.

10. During the investigation into the matters, a funeral director who had previously and recently worked for Respondents David Wachholz, Gianna Wachholz, Wachholz Family Funeral Home, and Wachholz-Krause Funeral Home, indicated in pertinent part that:

"When he commenced working for Respondents in May 1999, he was introduced to Respondent Tabbert as a licensed apprentice on staff who had been with Respondents since the beginning of April 1999; that he learned in June 1999, that Tabbert did not have an apprenticeship permit, but had assisted Respondent David Wachholz and himself with embalming on several occasions, and had also made removals;

That after Tabbert became an apprentice funeral director, there came a time when Tabbert could not, and was not properly supervised because the designated, supervising funeral director was not available; that prior to Tabbert becoming a licensed agent to sell burial insurance, Tabbert had made pre-arrangements, and sold preneed burial insurance; and that Tabbert falsified and signed his own apprenticeship required reports, until he left for mortuary school in September 1999."

11. Subsequently, the Department was contacted by a funeral director who was secretary, treasurer, and 50% stockholder with Respondent David Wachholz in Wachholz-Krause Funeral Home, who complained in pertinent part that:

"It has been noted that David Wachholz ... has been operating the Krause-Wachholz Funeral Home (Markesan, Wisconsin) without a funeral establishment license since 1993. Mr. Wachholz has continued to knowingly and willingly conduct funerals and funeral type business out of that funeral home without a license. This has also involved his wife Gianna Wachholz ... and his father Herbert Wachholz.

Mr. David Wachholz has an apprentice, David Tabbert, who was making removals without a licensed director present. The Green Lake County Coroner's office, on at least two occasions, witnessed Mr. Tabbert making removals at the Markesan resident's home, and the Ripon Medical without David Wachholz or any other funeral director present.

Mr. David Wachholz and his wife Gianna have been overcharging families for funeral accommodations (cash advanced items) for a number of years ... obituaries, flowers and the like. Their billing statements do not carry a disclaimer that they may charge extra for cash advanced items. This is a violation of the FTC rule. I advised David, in January 1997, of this practice, and he and his wife continue to do this practice to this day," all not inclusive.

CONCLUSIONS OF LAW

1. The Wisconsin Funeral Directors Examining Board has jurisdiction to act in this matter pursuant to Sec. 445.13, Wis. Stats.
2. The Wisconsin Funeral Directors Examining Board is authorized to enter into the attached Stipulation pursuant to Sec. 227.44(5), Wis. Stats.
3. Respondent David W. Wachholz, violated, aided or abetted the violations of Sec. FD 3.02(1), Wis. Adm. Code and Secs, 445.105(l),(4)-(5), Wis. Stats. by operating a funeral establishment without a permit.
4. Respondent David W. Wachholz, violated, aided or abetted the violations of Secs. 445.095(1)(d)(e), (2)(b), (4), Wis. Stats., Apprenticeship, funeral directors; and Secs. 445.12(4)(5), Wis. Stats., by permitting an unlicensed person to embalm or prepare a body under his supervision.
5. Respondent David W. Wachholz violated, aided or abetted the violations of Secs. 445.125(3M) 4. (b) 1. a.-b., 2. a.-b.—(hm), Wis. Stats., and Sec. 4 Wis. Stats., by permitting an unlicensed person to sell preneed burial insurance.
6. Respondent David W. Wachholz has violated, aided or abetted the violations of. Secs. FD 2.03(1)-(2) and FD 2.06(1)-(2), Wis. Adm. Code by permitting the making or conducting of funeral arrangements without the supervision of a licensed funeral director.
7. Respondent David W. Wachholz violated, aided or abetted violations of Secs. FD 3.02(1)-(2), (6), (9), Wis. Adm. Code, by permitting the operation of an unlicensed funeral establishment.
8. Respondent David W. Wachholz violated, aided or abetted violations of Federal Trade Commission Part 453-Sees. 453.3, (f)(I)(I), (2)(I), and Secs. 453.5(a)(1)(ii)(2) by representing that the price charged for a cash advance item is the same as funeral goods or services required to be purchased as explained on the itemized statement in accordance with Sec. 453.3(d)(2) and he violated sec. 453.5(a)(1)(ii)(2) by failing to disclose to persons arranging funerals that the price being charged for a cash advance item is not the same as the costs to the funeral provide for the item when such is not the case.

ORDER

NOW, THEREFORE, IT IS ORDERED THAT:

1. Respondents David W. Wachholz, and Wachholz Family Funeral Home, f/k/a Wachholz-Krause Funeral Home, 181 S. Main Street, Markesan, Wisconsin, are reprimanded and will pay \$5,000.00 in forfeitures, either jointly or separately.
2. The complaints against Respondents Gianna W. Wachholz, Herbert Wachholz, Jr. and David J. Tabbert are hereby dismissed without prejudice.

3. The \$5,000.00 forfeiture shall be payable by cashier's check or money order made payable to the Department of Regulation and Licensing, and shall be payable on or before 30 days after the effective date of the Board's order adopting the Stipulation Agreement; and submitted to (the effective date of the Board's order is the date the Final Decision and Order are signed by the Board's chairperson or his designee) Department's Monitor.

Marlene Meyer

Monitor

Division of Enforcement

P.O. Box 8935

Madison, WI 53708-8935

FUNERAL DIRECTORS EXAMINING BOARD

By: Roy Pfeffer

5-13-03

On behalf of the Board

Date