

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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BEFORE THE FUNERAL DIRECTORS EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY :  
 PROCEEDINGS AGAINST :  
 : FINAL DECISION  
 MOLTEN-BELL & SON FUNERALHOME, : AND ORDER  
 RESPONDENT : LS0305136FDR

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

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

## FINDINGS OF FACT

1. Respondent Molten-Bell & Son Funeral Home (Molten Bell) of 700 Milwaukee Avenue, South Milwaukee, WI 53172, is and was at all time material to the complaint registered/issued a certificate of registration as a funeral establishment (78-2 172), and had been so registered under the provisions of Ch. 445, Wis. Stats., since February 19, 1998.

2. The complaint against Respondent arose out of a complaint filed against a different funeral director and funeral establishment, by a consumer who complained that she had been contacted on July 12, 1999, via a "Confidential Funeral Planning Survey," which was followed up by a telephone call to her on July 28, 1999, from a preneed funeral insurance salesperson; that the survey letter did not identify who was calling, nor what funeral home the caller was calling for, and that it appeared that the sender of the survey, and the maker of the telephone call had violated sec. INS 20.01, Wis. Adm. Code, Home Solicitation Selling; and sec. RL 6.10(1), Wis. Adm. Code, Solicitation of prospective purchasers of burial agreements funded with the proceeds of a life insurance policy.

3. An investigation into the matters determined that the person who had followed-up to the mailed survey, supra, and who had telephoned the consumer/Complainant on July 28, 1999, was Paul J. Handzel, a licensed insurance intermediary, who was only licensed to sell life insurance, under Ch. 628, Wis. Stats., Insurance Marketing.

4. It was also determined that insurance intermediary, Paul J. Handzel, was not registered as an "Agent for Sale of Burial Agreement Funded by Life Insurance Policy," with the Department, and that he was in violation of secs. 445.125(3m)(a)1. 4.(b)1.2.a.b.(c)1., Wis. stats., and secs. FD 6.03(1)(c),(2),(5), Wis. Adm. Code, Registration Requirements; and Sec. FD. 6.02(1) "Agent".

5. Secs. 445.125(3m) Burial Agreements funded with proceeds of life insurance policies. (a) In this sub section:

1. "Agent" means an authorized representative of a funeral director or operator of a funeral establishment.

4.(b)1. A licensed funeral director, an operator of a funeral establishment, an agent of a licensed funeral director or, subject to par.(c), an agent of an operator of a funeral establishment may sell or solicit the sale of a burial agreement that is funded with the proceeds of a life insurance policy if all of the following apply:

2.a. A licensed funeral director or operator of a funeral establishment may authorize an agent who is an insurance intermediary licensed under Ch. 628, and who meets the training requirements established by the Examining Board under par. (j)1.a., to sell or solicit the sale of a burial agreement that is funded with the proceeds of a life insurance policy and that meets the requirements specified in pars.(d) to (f).

b. A licensed funeral director or operator of a funeral establishment shall report to the examining board the identity of any agent authorized by the licensed funeral director or operator of the funeral establishment under sub. 2.a. and provide evidence satisfactory to the board that such agent meets the training requirements established by the board by rule under par. (j)1.a.

(c)1. No Agent of an operator of a funeral establishment may solicit the sale of or sell a burial agreement funded with the proceeds of a life insurance policy unless he or she has a contract with the operator of the funeral establishment that authorizes him or her to act as the agent of the operator of the funeral establishment and that satisfies the requirements established by the Examining Board by rule under par.(j)1 .c.

Secs. FD 6.03(1)(a),(c), (2), (5), Wis. Adm. Code, Registration Requirements. (1) A licensed funeral director or operator of a funeral establishment shall submit an application with all of the following information:

a. The identity of any agent authorized by s. 445.125(3m), Stats., to sell or solicit the sale of a burial agreement that is funded with the proceeds of a life insurance policy on behalf of the licensed funeral director or operator of a funeral establishment.

c. Evidence satisfactory to the Board that the agent has successfully completed at least 20 hours of approved educational training as provided in s. FD 6.05...

2. A copy of each contract between an agent and an operator of a funeral establishment shall accompany the application.

(5) No agent may sell or solicit the sale of a burial agreement funded with the proceeds of a life insurance policy unless he or she is registered with the Board.

6. Paul J. Handzel; had submitted an "Application For Registration Of Agent For Sale Of Burial Agreement Funded By Life insurance Policy", dated March 1, 1999 (receipted on April 20, 1999), with the Department. The application was deemed incomplete because the application lacked a copy of each contract between the agent and funeral director or operator whom the agent intended to represent; and evidence of successful completion of a required 20-hour training program.

7. Handzel was notified of and was requested to provide the incomplete items via a "Request For Additional Information" form dated May 20, 1999, submitted to his 3432 Plymouth Lane, Island Lake, Illinois address. A copy of sec. FD 6.08, Wis. Adm. Code, was submitted along with the request, with a notice that upon receipt of the items indicated in the letter, his application would be processed.

8. Handzel never responded and a second request letter, "Request For Additional Information" was faxed to him dated August 23, 1999, along with another copy of sec. FD 6.08, Wis. Adm. Code, which letter remarked:

"Enclosed is a copy of the second request letter, dated August 23, 1999. Also is included a copy of FD 6.08. The required contract must contain all five items listed in that section. You are required to have a signed contract for each funeral establishment. You cannot have one that covers several different establishments."

9. Handzel never completed his application for, and was never granted Department's registration as an agent for sale of burial agreements funded by life insurance policies; and his license as an insurance intermediary to sell life insurance was cancelled in January 2000, by the Department of Wisconsin Commissioner of Insurance.

10. During the interim of the above enumerated occurrences, at all time not known, Paul J. Handzel worked at Respondent Molten- Bell Funeral Home as an unregistered/unlicensed agent for the sale of burial agreements funded by life insurance policies, from at "least late January 1999, to the end of March 1999."

11. Respondent's response to the violations is, "as far as we know Paul was licensed, registered, and contracted through Equity Corporation International (ECI) and American Memorial insurance Company."

a. Respondent's position is that it had no say so regarding what preneed agent would be assigned to its establishment.

## 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. The Wisconsin Funeral Directors Examining Board has sufficient cause for reprimand or for limitation, suspension or revocation of respondent's funeral establishment permit for violations of ch. 445, stats., or any rules or regulations of the examining board committed by any person, or an officer, agent or employee with the knowledge or consent of any person operating such funeral establishment, pursuant to sec. 445.105(4), Wis. Stats.
4. Respondent Molten- Bell & Son Funeral Home has violated sec. FD 3.02(1), Wis. Adm. Code, violated, aided or abetted the violation of any state or federal law substantially related to the practice of funeral directing by permitting Paul Handzel to act as an agent for the sale of burial agreements funded by a life insurance policy without completing his subject application, and when he was not registered by the Board.
5. Respondent Molten- Bell & Son Funeral Home has violated, aided or abetted the violation of secs. FD 3.02(1),(9), Wis. Adm. Code, (1) violating or aiding and abetting a violation of any state or federal law substantially related to the practice of funeral directing, (9) engaging in misleading or deceptive conduct in the conduct of business or the profession; Violated, aided or abetted the violation of secs. FD 6.03(1)(a), (c), (2), (5), Wis. Adm. Code, by Paul Handzel acting as an agent for sale of burial agreement funded by a life insurance policy without completing his subject application, and when he was not registered by the Board.
6. Respondent Molten- Bell has violated, aided or abetted the violations of secs. FD 6.08(1)-(5), Wis. Adm. Code, Contractual Standards for agents and operators of funeral establishments, by allowing Paul Handzel to work out of its establishment when he was not registered with the Department, nor in compliance with contractual standards for agents and operators of funeral establishments.
7. Respondent Molten- Bell has by permitting Paul Handzel to act as an agent for the sale of burial agreements funded by a life insurance policy without completing his subject application, and when he was not registered by the Board violated, aided or abetted the violation of secs. INS 23.20(1)(a)-(b), wis. Adm.. Code. General (1) an insurance intermediary may sell a life insurance or annuity policy for the purpose of funding a prearranged funeral plan only if:
  - a. The insurance intermediary is an authorized and appointed agent under s.445.125(3m), stats., of the funeral director or funeral establishment which provides the prearranged funeral plan; or
  - b. The insurance intermediary does not, directly or indirectly, receive referrals or other marketing information from a funeral director or operator of a funeral establishment or an agent of the funeral director or funeral establishment, sell the prearranged funeral plan, or participate in the sale of the prearranged funeral plan.
8. Respondent Molten-Bell & Son Funeral Home has by permitting Paul Handzel to act as an agent for the sale of burial agreements funded by a life insurance policy without completing his subject application, and when he was not registered by the Board, violated, aided or abetted the violations of secs. INS 23.35 (1)-(2), Wis Adm Code. (1) No insurance intermediary may represent that he or she is affiliated with or representing a funeral operator or funeral establishment unless he or she is an authorized agent of the funeral director or funeral

establishment under sec. 445.125 (3m), stats., and (2)an insurer shall establish reasonable procedures to prevent violations of sub. (1).

9. Respondent has by permitting Paul Handzel to act as an agent for the sale of burial agreements funded by a life insurance policy without completing his subject application, and when he was not registered by the Board, violated, aided or abetted the violations of secs. 445.1 25(3m)(a)(1).4.(b)1 .(b).2.a.b.(c)1., Wis. Stats., BURIAL AGREEMENTS FUNDED WITH PROCEEDS OF LIFE INSURANCE POLICIES.

ORDER

NOW, THEREFORE, IT IS ORDERED THAT:

1. Respondent Molten- Bell & Son Funeral Home is reprimanded and shall pay forfeitures in the amount of \$2500.00.

2. The \$2500.00 forfeitures shall be payable by cashiers 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 (the effective date of the Board’s Order is the date the Final Decision and Order is signed by the Board’s chairperson or his designee); and submitted to the 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