

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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2004
99FDR005
99FDR026

STATE OF WISCONSIN
BEFORE THE FUNERAL DIRECTORS EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST:

✓ AMY DUCHARME [FORMERLY KNOWN AS
(F/K/A), AMY HEIMANN];
✓ CHURCH AND CHAPEL FUNERAL
SERVICES (# 078-0001944 and 078-0002345);
TED LARSEN;
LARSEN BROTHERS NEW
BERLIN FUNERAL HOME (# 078-0002019);
THOMAS B. HOLTZ;
MICHELLE CHURCH WAGNER;
LYNN ZAIS; AND
T.G. PERSINGER,

LS 0310311 FDR

RESPONDENTS.

FINDINGS AND ORDER

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

Amy M. Ducharme (f/k/a Amy M. Heimann)
12630 West Marquette Drive
New Berlin, Wisconsin 53151
License No. 4816-077

Church & Chapel Funeral Services, Inc.
15250 West National Avenue
New Berlin, Wisconsin 53151
License No. 2353-078

Ted Larsen
Church & Chapel Funeral Services, Inc.
15250 West National Avenue
New Berlin, Wisconsin 53151
Unlicensed

Larsen Brothers New Berlin Funeral Home
15250 West National Avenue
New Berlin, Wisconsin 53151
License No. 2019-078

Thomas P. Holtz
Church & Chapel Funeral Services, Inc.
15250 West National Avenue
New Berlin, Wisconsin 53151
License No. 3081-077

Michele Church Wagner
Church & Chapel Funeral Services, Inc.
15250 West National Avenue
New Berlin, Wisconsin 53151
License No. 4905-077

Lynn M. Zais
1556 South 63rd Street
West Allis, Wisconsin 53214
License No. 5151-077

T.G. Persinger
Church & Chapel Funeral Services, Inc.
15250 West National Avenue
New Berlin, Wisconsin 53151
License No. 4186-077

Funeral Directors Examining Board
P.O. Box 8935
Madison, Wisconsin 53708-8935

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

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of the matter, subject to the approval of the Funeral Directors Examining Board ("Board"). The Board has reviewed the Stipulation attached to these Findings and Order, and considers it acceptable. Accordingly, the Board adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

Count I (Ted Larsen; Church & Chapel Funeral Services, Inc.)

1. Between July 15, 1999 and July 22, 1999, the United States Department of Labor, Occupational Safety and Health Administration ("OSHA"), conducted an inspection of the premises of Church & Chapel Funeral Services, Inc. ("Church & Chapel"). The inspection led to citations being issued by OSHA to Church & Chapel for failing to adequately monitor its employees for exposure to formaldehyde, among other things.

2. Church & Chapel admitted to the violations, paid a penalty of \$4,620, and certified that all violations had been corrected.

3. Ted Larsen was one of the owners of Church & Chapel at the time of the OSHA inspection.

4. FD 3.02(1), Wis. Admin. Code, provides that it is "unprofessional conduct by a licensed funeral director, registered apprentice funeral director or owner of a funeral establishment" to violate "any state or federal law substantially related to the practice of funeral directing."

Count II: (Amy M. Ducharme, f/k/a Amy M. Heimann)

5. On one or more occasions between 1993 and 1999, Amy M. Ducharme, f/k/a Amy M. Heimann ("Ducharme"), failed to ensure that apprentices employed by Church & Chaple were adequately supervised while they were performing embalming or otherwise preparing dead human bodies for burial or transportation.

6. Ducharme was the funeral director in charge of record for Church & Chapel during this period of time.

7. FD 2.06(1), Wis. Admin. Code, provides that licensed apprentices may

engage in “embalming and other preparing of dead human bodies for burial or transportation”
“only when under the personal supervision of a licensed funeral director.”

8. FD 2.02(3), Wis. Admin. Code, defines “personal supervision” as
“immediate availability to continually coordinate, direct and inspect at first hand the practice of
another.”

CONCLUSIONS OF LAW

1. The Wisconsin Funeral Directors Examining Board has jurisdiction to act
in these matters pursuant to § 458.26, Wis. Stats.

2. The Wisconsin Funeral Directors Examining Board has authority to enter
into this stipulated resolution of this matter pursuant to § 227.45(5), Wis. Stats.

3. Church & Chapel, by and through acts of omission or commission by Ted
Larsen, violated 29 C.F.R. § 1910.1048, and thereby violated FD 3.02(1), Wis. Admin. Code, in
connection with the 1999 OSHA inspection, thereby subjecting Larsen and Church & Chapel to
discipline under § 445.13(1), Wis. Stats.

4. Ducharme committed one or more violations of FD 2.06(1), Wis. Admin.
Code, in connection with her supervision of licensed apprentices from 1993 to 1999, and thereby
violated FD 3.02(1), Wis. Admin. Code, thereby subjecting her to discipline under § 445.13(1),
Wis. Stats.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. Church & Chapel is reprimanded for the conduct of its owner and licensed
funeral director as set forth above. Additionally, Church & Chapel shall, within 90 days of the
date of this Order, pay to the Department of Regulation and Licensing partial costs of this

proceeding in the amount of \$7,000, pursuant to § 440.22(2), Wis. Stats. No other party to this matter shall be liable for any costs except as provided for in this paragraph.

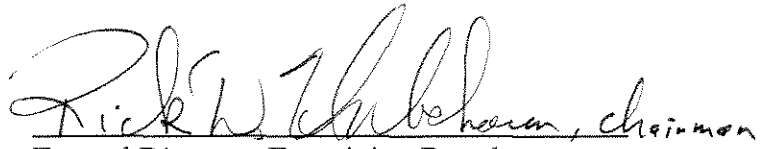
2. All payments required by this order shall be mailed or delivered to:

Department Monitor
Department of Regulation and Licensing
Division of Enforcement
1400 East Washington Avenue
P.O. Box 8935
Madison, Wisconsin 53708-8935

3. The license of Amy M. Ducharme, f/k/a Amy M. Heimann, is suspended for a period of six months from the date of this order. Additionally, Ducharme may not be employed in any position with any funeral establishment which requires her to supervise apprentices until she has completed at least 10 hours of continuing education relating to ethics or apprentices in addition to her normal continuing education requirements. All 10 hours shall be earned outside of any continuing education courses she takes at Church & Chapel, and a written statement verifying attendance and successful completion shall be obtained from the instructor.

4. Violation of any term or condition of this order may constitute grounds for revocation of any Respondent's license as a funeral director or funeral establishment in Wisconsin.

Dated this 20th day of July, 2004.


Rick W. Chuberman, chairman
Funeral Directors Examining Board

STATE OF WISCONSIN
BEFORE THE FUNERAL DIRECTORS EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST:

AMY DUCHARME [FORMERLY KNOWN AS
(F/K/A), AMY HEIMANN];
CHURCH AND CHAPEL FUNERAL
SERVICES (# 078-0001944 and 078-0002345);
TED LARSEN;
LARSEN BROTHERS NEW
BERLIN FUNERAL HOME (# 078-0002019);
THOMAS B. HOLTZ;
MICHELLE CHURCH WAGNER;
LYNN ZAIS; AND
T.G. PERSINGER,

LS 0310311 FDR

RESPONDENTS.

SETTLEMENT AGREEMENT

It is hereby stipulated and agreed by and between Amy M. Ducharme (f/k/a Amy M. Heimann), Church & Chapel Funeral Services, Inc., Ted Larsen, Larsen Brothers New Berlin Funeral Home, Thomas P. Holtz, Michele Church Wagner, Lynn M. Zais and T.G. Persinger, Respondents, and Mark A. Herman, attorney for Complainant, State of Wisconsin, Department of Regulation and Licensing, Division of Enforcement, as follows:

1. This Stipulation is entered into for the purpose of resolving the above-captioned case relating to Amy M. Ducharme (f/k/a Amy M. Heimann), Church & Chapel Funeral Services, Inc., Ted Larsen, Larsen Brothers New Berlin Funeral Home, Thomas P. Holtz, Michele Church Wagner, Lynn M. Zais, and T.G. Persinger, Respondents. Respondents consent to the resolution of this matter pursuant to the terms of this Stipulation and the attached Findings and Order.

2. Respondents understand that by signing this Stipulation they voluntarily and knowingly waive their rights, including: the right to a hearing on the allegations against them, at which time the State has the burden of proving those allegations by a preponderance of the evidence; the right to confront and cross-examine the witnesses against them; the right to call witnesses on their behalf and to compel their attendance by subpoena; the right to testify themselves; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to them under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes and the Wisconsin Administrative Code.

3. Respondents are aware of their right to seek legal representation regarding these matters and the legal implications of this Stipulation, and have in fact done so prior to signing this Stipulation.

4. Respondents voluntarily and knowingly waive their rights set forth in paragraph 2 above, on the condition that all of the provisions of this Stipulation are approved by the Board. Respondents waive all rights to any appeal of the Board's order, if adopted in the form attached.

5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation or the proposed Findings and Order, nor shall Respondents be deemed to have made any admissions by entering into this Stipulation. The matter shall then be returned to the Funeral Directors Examining Board for further proceedings. In the event that this Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.

6. The parties to the Stipulation consent to the entry of the attached Findings and Order without further notice, pleading, appearance or consent of the parties. Respondents waive all rights to any appeal of the Board's order, if adopted in the form as attached.

7. The parties to this Stipulation agree that the attorney for the Division of Enforcement in this investigation may appear before the Board for the purposes of speaking in support of this agreement and answering questions that the Board may have in connection with their deliberations on the Stipulation.

8. Respondents are informed that should the Board adopt this Stipulation, the Department's Findings and Order is a public record and will be published in the monthly *Report of Decisions* issued by the Department; as well as on the Department's website. A summary of the Order will be published in the Wisconsin Regulatory Digest issued semiannually by the Department, as well as on the Department's website. This is the standard Department procedure and in no way is specially directed at Respondents.

9. Respondents admit to the allegations contained within the attached Findings and Order, but specifically deny all other allegations contained in the Complaint.

10. The Department hereby agrees to the dismissal with prejudice of all allegations contained in the Complaint not specifically addressed in the attached Findings and Order.

11. The Division of Enforcement joins Respondents in recommending that the Board accept this Stipulation and issue the attached Findings and Order.


Dated: _____

7/1/04



AMY M. DUCHARME (F/K/A AMY M.
HEIMANN)
Respondent


Dated: 6-23-04


**CHURCH & CHAPEL FUNERAL SERVICES,
INC.**
BY: ITS OWNER, TED LARSEN
Respondent


Dated: 6-23-04


TED LARSEN
Respondent

Dated: 6-23-04


**LARSEN BROTHERS NEW BERLIN
FUNERAL HOME**
BY: ITS OWNER, TED LARSEN
Respondent

Dated: 6/23/04


THOMAS P. HOLTZ
Respondent

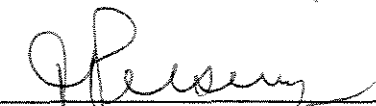
Dated: 6-23-04


MICHELE CHURCH WAGNER
Respondent

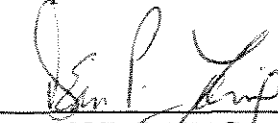
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LYNN M. ZAIS
Respondent

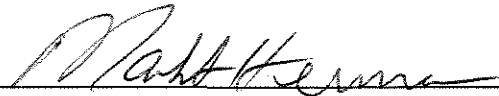
Dated: 6-23-04


T.G. PERSINGER
Respondent

Dated: 6/24/04


DEAN P. LAING
State Bar No. 1000032
O'NEIL, CANNON, HOLLMAN, DEJONG, S.C.
Attorneys for Respondents

Dated: 7/6/04



MARK A. HERMAN

State Bar No. 1031310

WISCONSIN DEPARTMENT OF REGULATION

AND LICENSING, DIVISION OF ENFORCEMENT

Attorney for Complainant