

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE CEMETERY BOARD

| | | |
|----------------------------------|---|--------------------------|
| IN THE MATTER OF | : | |
| DISCIPLINARY PROCEEDINGS AGAINST | : | |
| | : | FINAL DECISION AND ORDER |
| STEWART ENTERPRISES INC. AND | : | |
| S.E. CEMETERIES OF WI INC. | : | |
| RESPONDENTS. | : | ORDER 0000905 |

Division of Enforcement Case File Number 09 RLC 007

The parties to this action for the purpose of Wis. Stat. § 227.53 are:

Wisconsin Memorial Park Co.
Stewart Enterprises Inc. and S.E. Cemeteries of WI Inc.
13235 W. Capitol Drive
Brookfield, WI 53005

Wisconsin Cemetery 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 disposition of this matter, subject to the approval of the Cemetery Board (Board). The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Respondents Stewart Enterprises Inc. and S.E. Cemeteries of WI Inc. (formerly known as Wisconsin Memorial Park Co.) is licensed in the State of Wisconsin as a Cemetery Authority, license number 95-101 and a Cemetery Pre-Need Seller, license number 101-185. The Cemetery Authority license was granted on 12/19/96; expired from January 2, 2009 through March 17, 2009; and is current through 12/14/12. The Cemetery Pre-Need Seller license was granted on 8/10/93; expired from January 2, 2009 through March 17, 2009, and is current through 12/14/12.

2. The most recent business address on file with the Wisconsin Department of Regulation and Licensing (Department) for the Respondents is 13235 W. Capitol Drive, Brookfield, Wisconsin 53005.

3. On August 27, 2009, the Department received a consumer complaint alleging that Respondents did not comply with a contract that their family had entered into for a mausoleum space. The case was subsequently opened for investigation.

4. On September 14, 2004, the Complainant's family signed a contract for a mausoleum space in the Eternal Life section of the Respondent's cemetery. The contract was drafted by Jeff Fuchs, a sales representative who was not licensed as a pre-need salesperson.

5. The purchase price of the mausoleum space was \$3960.00. At the time the contract was signed, the family wanted to purchase space in the unfinished construction of the Veterans Mausoleum. The family purchased the mausoleum space in the Eternal Life section with the understanding that when the new construction was completed in the Veterans mausoleum, there would be no additional charge once the construction was completed and that the transfer of space would happen. The terms relating to the transfer from the Eternal Life section to the Veterans Mausoleum were only reduced to writing with the following statement "vet maus" and appeared to give the impression that space would be available for the Complainant's family.

6. On April 16, 2009, the Complainant's family member passed away. By this time, the Veterans mausoleum construction had been completed and filled. Upon inquiring about the mausoleum space, the Complainant's family was notified by the Respondents that their deceased family member would not be able to be buried in the mausoleum due to space issues. Between September 14, 2004 and April 16, 2009, the Complainant's family had not been notified of any issues affecting their contract for a burial at the Veterans Mausoleum.

7. During the course of the investigation, the Respondents fully refunded the decedent's family for the mausoleum space they had originally contracted for.

8. In resolution of this matter, Respondents Stewart Enterprises and S.E. Cemeteries of WI Inc. consents to the entry of the following Conclusions of Law and Order.

CONCLUSIONS OF LAW

1. The Wisconsin Cemetery Board has jurisdiction to act in this matter pursuant to Wis. Stat. § 440.93, and is authorized to enter into the attached Stipulation pursuant to Wis. Stat. § 227.44(5).

2. By the conduct described in paragraph four (4) of the Findings of Fact, Respondents Stewart Enterprises Inc. and S.E. Cemeteries of WI Inc. have violated Wis. Stat. § 440.92(1) by permitting an unlicensed sales representative to draft and enter into a pre-need sales contract.

3. By the conduct described in paragraphs five through six (5-6) of the Findings of Fact, Respondents Stewart Enterprises Inc. and S.E. Cemeteries of WI is subject to discipline pursuant to

Wis. Stat. §§ 440.92(2)(j) and 440.93(1)(c) for failing to properly reduce the terms of the contract to writing and failing to notify the decedent's family of any changes associated with the contract.

4. As a result of the violations described in paragraphs two through three (2-3) of the Conclusions of Law, Respondents Stewart Enterprises Inc. and S.E. Cemeteries of WI is subject to discipline pursuant to Wis. Stat. § 440.93(1)(g).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. Respondents Stewart Enterprises Inc. and S.E. Cemeteries of WI be, and hereby are, **REPRIMANDED**.

IT IS FURTHER ORDERED that:

2. Respondents Stewart Enterprises Inc. and S.E. Cemeteries of WI shall pay **COSTS** in the amount of **SIX HUNDRED DOLLARS (\$600.00)** within 90 days of the date of this Order.

3. Payment of the costs shall be made to the Wisconsin Department of Regulation and Licensing and sent to:

Department Monitor
Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935, Madison, WI 53708-8935
Telephone (608) 267-3817, Fax (608) 266-2264

4. Violation of any of the terms of this Order may be construed as conduct imperiling public health, safety and welfare and may result in a summary suspension of Respondents licenses. The Board in its discretion may in the alternative impose additional conditions and limitations or other additional discipline for a violation of any of the terms of this Order. In the event the Respondents fails to timely submit payment of the costs as ordered and as set forth above, then Respondents licenses (numbers 95-101 and 101-185) may, in the discretion of the board or its designee, be **SUSPENDED**, without further notice or hearing, until Respondents have complied with payment of costs and forfeiture.

5. This Order is effective on the date of its signing.

Dated this 20th day of June, 2011.

WISCONSIN CEMETERY BOARD

By: 