

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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controlled between \$175,000 and \$225,000 that should have been deposited into the Association's operating and trust accounts.

3. In June 2009, the Association's board questioned why there was an excessive amount of account receivables on the Association's balance sheet and worked with the Association's certified public accountant to research and collect the account receivables.

4. As a result of the efforts to verify and collect the Association's outstanding account receivables, the Association's certified public accountant discovered on or about July 13, 2009 the existence of the Chase bank account controlled solely by the Association's office manager. This bank account had never been disclosed in the Association's financial records.

5. As soon as the Association's board was informed by its certified public accountant that the office manager had taken Association funds for her own use, the office manager was immediately fired and discharged as an Association employee on or about July 15, 2009.

6. The existence and use of the Chase bank account controlled by the office manager was never disclosed to or known of by the Association's board of directors, nor was it ever authorized by the Association's board of directors.

7. The Association has filed a civil lawsuit against the office manager seeking recovery of the Association's funds. This case is on file in the Kenosha County Circuit Court as Case No. 2010 CV 2045.

8. The Association has also filed a criminal complaint with the City of Kenosha Police Department. That complaint is still being investigated and, according to the assistant district attorney who is assigned to the complaint, should lead to criminal charges filed by the Kenosha County District Attorney's office.

9. On September 9, 2009, following notification of theft of Association funds, the Department initiated an audit of Kenosha Cemetery Association.

10. Between January 1, 2005 and November 3, 2009, the Association sold lots, but did not employ at such time a licensed cemetery salesperson or preneed seller.

11. On January 16, 2007, the Association changed its perpetual care fund trustee without Wisconsin Cemetery Board approval. The change was disclosed on or about September 17, 2009.

12. During the audit, the Association was unable to provide sales records, contracts or trust deposit reports to verify sales, deposits or preneed sales because of its former office manager's poor office and organization skills. Since the audit, the Association has located many of the requested records, which are now readily available for review.

13. At the time of the audit, the Association neglected to make required cemetery lot care fund deposits.

14. At the time of the audit, the Association neglected to make required mausoleum/niche care fund deposits.

15. At the time of the audit, the Association neglected to make all preneed care fund deposits.

16. Prior to the time of the audit, the Association periodically withdrew principal from the perpetual care funds. During the former office manager's tenure, the office manager withdrew funds from the trust account without the knowledge or approval of the Association's board of directors. In 2007, the amount of principal withdrawn exceeded \$80,000.

17. Since the firing of the office manager, the Association has deposited required funds into the various trust accounts.

18. Since the firing of the office manager, the Association has placed in operation additional and more secure procedures for the deposit and withdrawal of funds from trust accounts and from the Association's operating accounts.

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 the Findings of Fact, Kenosha Cemetery Association violated:

- a. Wis. Stat. § 440.91(2) by allowing unlicensed individuals to sell lots on its behalf;
- b. Wis. Stat. § 440.92(1)(a) by selling cemetery merchandise or undeveloped spaces under preneed sales contracts through an employee or employees who were not licensed as cemetery preneed sellers;
- c. Wis. Stat. § 157.19(2)(b) by failing to obtain written approval from the Board before changing the trustee of a care fund or preneed trust fund;
- d. Wis. Stat. §§ 157.62(3)(b), 157.62(4) and 440.92(6)(g) by failing to maintain required records;
- e. Wis. Stat. § 157.11(9g)(c) by failing to deposit 15% of each payment of principal into a care fund;
- f. Wis. Stat. § 157.12(3) by failing to make required deposits into a care fund for its mausoleum;
- g. Wis. Stat. § 440.92(3) by failing to make required deposits into preneed trust funds; and

h. Wis. Stat. § 157.11(9g)(a)2 by withdrawing principal from care funds.

3. As a result of the above violations, Kenosha Cemetery Association is subject to discipline pursuant to Wis. Stat. §§ 440.93(1)(c) and (g).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The attached Stipulation is hereby accepted.

2. The cemetery authority license of Kenosha Cemetery Association (license number 95-44) and the cemetery preneed seller license of Kenosha Cemetery Association (license number 101-273) are LIMITED as follows:

a. Kenosha Cemetery Association shall provide quarterly reports to the Department. At a minimum, these reports shall contain the following information:

- Quarterly sales revenue for (i) lots; (ii) crypts; (iii) preneed cemetery merchandise as defined in Wis. Stat. § 157.061(3); (iv) preneed undeveloped space as defined in Wis. Stat. § 157.061(17); and (v) other sales that require a trust account deposit;
- The number of preneed contracts fulfilled in the quarter for (i) cemetery merchandise and (ii) undeveloped space;
- Account information for each bank account, CD, investment fund, etc., including: name of account; account number; name of financial institution; purpose of account (perpetual care, alternative investment for perpetual care, preneed, etc.); type of account (checking, savings, money market, CD, mutual fund, etc.); market balance – beginning of period; period begin date; earnings, market gains & losses, etc.; total amount withdrawn; and market balance – end of period; period end date.

The first report shall be due to the Department auditor within three months following the date of the Order, with each subsequent report due every three months following the due date of the previous report.

b. This limitation shall remain in place for at least three calendar years from the date of this order. This limitation shall only be lifted upon a successful petition to the Board for removal of this limitation.

3. The reports required in paragraph 3 above shall be sent to the Division of Enforcement Auditor at the address below:

DOE Auditor
Division of Enforcement

Department of Safety and Professional Services
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 Respondent's 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 Respondent fails to timely submit reports as ordered, Respondent's licenses (nos. 95-44 and 101-273) may, in the discretion of the Board or its designee, be SUSPENDED, without further notice or hearing, until Respondent has complied with submission of the reports.

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

WISCONSIN CEMETERY BOARD

by: 
A Member of the Board

12/6/11
Date