

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN
BEFORE THE CEMETERY BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

RIENZI CEMETERY and
RIENZI CEMETERY ASSOCIATION,
RESPONDENTS.

:
:
: FINAL DECISION AND ORDER
:
:
: ORDER 0001415

Division of Enforcement Case No. 10 RLC 001

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

Rienzi Cemetery
N6101 Highway K
Fond du Lac, WI 54937

Rienzi Cemetery Association
N6101 Highway K
Fond du Lac, WI 54937

Wisconsin Cemetery Board
P.O. Box 8935
Madison, WI 53708-8935

Division of Enforcement
Department of Safety and Professional Services
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 Wisconsin 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, Conclusions of Law and Order.

FINDINGS OF FACT

1. Respondent Rienzi Cemetery is licensed in the State of Wisconsin as a cemetery authority, having license number 95-86, first issued on 10/4/1993 and current through 12/14/2012. Respondent Rienzi Cemetery Association is licensed in the State of Wisconsin as a cemetery preneed seller, having license number 101-239, first issued on 10/26/1994 and current

through 12/14/2012. Respondents' most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is N6101 Highway K, Fond du Lac, WI 54937.

2. On November 25, 2009, the Department initiated an audit of Rienzi Cemetery.
3. At the time of the audit, Respondents had no care fund deposit records.
4. At the time of the audit, Respondents were not making required cemetery lot care fund deposits.
5. At the time of the audit, Respondents were not making required preneed care fund deposits.
6. At the time of the audit, Respondents were not making required mausoleum care fund deposits.
7. Through 2011, Respondents deposited only 5% of net sales to the Chapel Mausoleum care fund. This has resulted in a shortfall of \$53,660 in the care fund as of December 31, 2011.
8. Prior to September 2009, Respondents regularly withdrew principal from the care fund to pay operational expenses. As of December 31, 2009, the shortfall resulting from underfunding and withdrawals combined was \$131,857 in addition to the shortfall described in Finding of Fact 7.
9. Starting in 2010, Respondents have made care fund deposits over and above minimum trusting requirements from ongoing sales. As of December 31, 2011, the total remaining shortfall resulting from underfunding and withdrawals combined was \$70,920.

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, Respondents Rienzi Cemetery and Rienzi Cemetery Association violated:
 - a. Wis. Stat. §§ 157.62(3), 157.62(4) and 440.92(6)(g) by failing to maintain required records;
 - b. Wis. Stat. § 157.11(9g)(c) by failing to deposit 15% of each payment of principal into a care fund;
 - c. Wis. Stat. § 440.92(3) by failing to make required deposits into preneed trust funds;

- d. Wis. Stat. § 157.12(3)(a) by failing to deposit at least 25% of each payment of principal received from the sale of a space in the Chapel Mausoleum into a care fund; and
- e. Wis. Stat. § 157.11(9g)(a)2 by withdrawing principal from the care fund.

3. As a result of the above violations, Respondents Rienzi Cemetery and Rienzi Cemetery Association are 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. Respondents Rienzi Cemetery and Rienzi Cemetery Association are hereby REPRIMANDED.
3. The cemetery authority license of Rienzi Cemetery (license no. 95-86) and the preneed seller license of Rienzi Cemetery Association (license no. 101-239) are LIMITED as follows:
 - a. Respondents shall provide monthly reports to the Department. At a minimum, these reports shall contain the following information:
 - Monthly 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 month for (i) cemetery merchandise and (ii) undeveloped space;
 - The amount owed to the care fund that was paid pursuant to paragraph 4 of this Order below;
 - 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 Division of Enforcement Auditor on April 30, 2012, with each subsequent report due one month following the due date of the previous report. The reports shall be sent to the Division of Enforcement Auditor at the following address:


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

- b. Following the receipt of three monthly reports that are acceptable to the Division of Enforcement Auditor and the Board's monitoring liaison, reporting may move to a quarterly basis. The Department Monitor shall notify Respondents if a change to quarterly reporting is approved. The first quarterly report shall be due three months following the due date of the latest monthly report, with each subsequent report due every three months following the due date of the previous report.
 - c. This limitation shall remain in place for at least three 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.
4. a. Respondents shall pay into their care fund \$70,920 in fifteen equal annual installments of \$4728. Payments shall be due every year on June 30, with the first payment of \$4728 due on June 30, 2012 and the final payment of \$4728 due on June 30, 2026.
- b. In addition to the above amounts, Respondents shall pay into the care fund at least 25% of each payment of principal received from the sale of a mausoleum space in the Chapel Mausoleum following the date of this Order, until the care fund amount attributed to the mausoleum equals 25% of the cost of constructing the Chapel Mausoleum.
 - c. The payments required under paragraph 4.b. may cease when the total of all payments made under paragraphs 4.a. and 4.b. equal or exceed \$53,660. The annual payments required under paragraph 4.a. shall continue until the additional sum of \$17,260 has been paid, such that the total payments required under paragraphs 4.a. and 4.b. shall be \$70,920.
 - d. In addition to the above amounts, Respondents shall pay into the care fund all payments required by statute or administrative rule for all sales occurring after the date of this Order.
5. 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 Respondents fail to timely submit the monthly/quarterly reports as ordered, Respondents' licenses (nos. 95-86 and 101-239) may, in the discretion of the Board or its designee, be SUSPENDED, without further notice or hearing, until Respondents have complied with submission of the reports.

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

WISCONSIN CEMETERY BOARD

by:



A Member of the Board

Date

3/12/12