

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



Wisconsin Department of Safety and Professional Services Access to the Public Records of the Reports of Decisions

This Reports of Decisions document was retrieved from the Wisconsin Department of Safety and Professional Services website. These records are open to public view under Wisconsin's Open Records law, sections 19.31-19.39 Wisconsin Statutes.

Please read this agreement prior to viewing the Decision:

- The Reports of Decisions is designed to contain copies of all orders issued by credentialing authorities within the Department of Safety and Professional Services from November, 1998 to the present. In addition, many but not all orders for the time period between 1977 and November, 1998 are posted. Not all orders issued by a credentialing authority constitute a formal disciplinary action.
- Reports of Decisions contains information as it exists at a specific point in time in the Department of Safety and Professional Services data base. Because this data base changes constantly, the Department is not responsible for subsequent entries that update, correct or delete data. The Department is not responsible for notifying prior requesters of updates, modifications, corrections or deletions. All users have the responsibility to determine whether information obtained from this site is still accurate, current and complete.
- There may be discrepancies between the online copies and the original document. Original documents should be consulted as the definitive representation of the order's content. Copies of original orders may be obtained by mailing requests to the Department of Safety and Professional Services, PO Box 8935, Madison, WI 53708-8935. The Department charges copying fees. *All requests must cite the case number, the date of the order, and respondent's name* as it appears on the order.
- Reported decisions may have an appeal pending, and discipline may be stayed during the appeal. Information about the current status of a credential issued by the Department of Safety and Professional Services is shown on the Department's Web Site under "License Lookup."

The status of an appeal may be found on court access websites at:

<http://ccap.courts.state.wi.us/InternetCourtAccess> and <http://www.courts.state.wi.us/wscca>

- Records not open to public inspection by statute are not contained on this website.

By viewing this document, you have read the above and agree to the use of the Reports of Decisions subject to the above terms, and that you understand the limitations of this on-line database.

Correcting information on the DSPS website: An individual who believes that information on the website is inaccurate may contact DSPS@wisconsin.gov

STATE OF WISCONSIN
BEFORE THE FUNERAL DIRECTORS EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

ROBERT E. BORTON AND
SMITH FUNERAL CHAPEL LTD.,
RESPONDENTS.

:
:
:
:
:
:

FINAL DECISION AND ORDER

0004844

Division of Legal Services and Compliance Case No. 14 FDR 011

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

Robert E. Borton
2222 London Road
Eau Claire, WI 54701

Smith Funeral Chapel Ltd.
2222 London Road
Eau Claire, WI 54701

Wisconsin Funeral Directors Examining Board
P.O. Box 8366
Madison, WI 53708-8366

Division of Legal Services and Compliance
Department of Safety and Professional Services
P.O. Box 7190
Madison, WI 53707-7190

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 Funeral Directors Examining 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 Robert E. Borton (DOB September 5, 1948) is licensed by the State of Wisconsin as a funeral director, having license number 4038-77, first issued on July 19, 1974 and current through December 14, 2017. Robert E. Borton's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 2222 London Road, Eau Claire, Wisconsin 54701.

2. Respondent Smith Funeral Chapel Ltd. is permitted by the State of Wisconsin as a funeral establishment, having permit number 1108-78, first issued on November 6, 1959 and current through May 31, 2017. Smith Funeral Chapel Ltd.'s most recent address on file with the Department is 2222 London Road, Eau Claire, Wisconsin 54701.

3. At all times relevant to this matter, Respondent Borton is identified in Department records as the funeral director in charge for Respondent Smith Funeral Chapel Ltd.

4. On May 14, 2014, BT's mother passed away. Shortly thereafter, BT made funeral arrangements for his mother with Respondent Borton.

5. At the time of the funeral arrangements, Respondent Borton provided BT with a blank copy of the Statement of Funeral Goods and Services Selected that he customarily provided to his clients because he was unable to determine all of the costs at that time.

6. Respondent Borton did not provide BT with an itemized, written statement of the goods and services selected on the day that the funeral arrangements were discussed.

7. On or about July 1, 2014, the Department received a complaint from BT alleging he had not received a written statement from Respondent Borton showing the cost of goods and services selected for his mother's funeral, even after requesting it several times.

8. In resolution of this matter, Respondents consent to the entry of the following Conclusions of Law and Order.

CONCLUSIONS OF LAW

1. The Wisconsin Funeral Directors Examining Board has jurisdiction to act in this matter pursuant to Wis. Stat. § 445.13, 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, Robert E. Borton and Smith Funeral Chapel Ltd. violated 16 CFR 453.2(b)(5)(i) by failing to give an itemized written statement for retention to each person who arranges a funeral or other disposition of human remains, at the conclusion of the discussion of arrangements.

3. By the conduct described in the Findings of Fact, Robert E. Borton and Smith Funeral Chapel Ltd. engaged in unprofessional conduct pursuant to Wis. Admin. Code § FD 3.02(1) by violating a federal law which is substantially related to the practice of funeral directing.

4. By the conduct described in the Findings of Fact, Robert E. Borton and Smith Funeral Chapel Ltd. engaged in unprofessional conduct pursuant to Wis. Admin. Code § FD 3.02(6) by providing the services of funeral directing in a manner which falls below minimal standards established by statute, rule or practice in the profession.

5. As a result of the above conduct, Respondents Robert E. Borton and Smith Funeral Chapel Ltd. are subject to discipline pursuant to Wis. Stat. § 445.13(1) and Wis. Stat. § 445.105(4).

ORDER

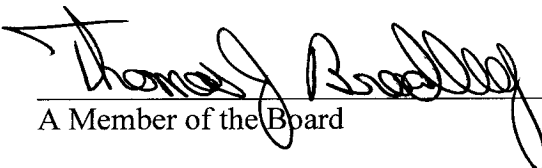
1. The attached Stipulation is accepted.
2. Respondent Robert E. Borton is hereby REPRIMANDED.
3. Respondent Smith Funeral Chapel Ltd. is hereby REPRIMANDED.
4. Within ninety (90) days from the date of this Order, Respondent Robert E. Borton shall pay one-half of the COSTS of this matter in the amount of \$316.00.
5. Within ninety (90) days from the date of this Order, Respondent Smith Funeral Chapel Ltd. shall pay one-half of the COSTS of this matter in the amount of \$316.00.
6. Payment of the forfeiture and costs shall be made payable to the Wisconsin Department of Safety and Professional Services and sent to the Department Monitor at the address below:

Department Monitor
Division of Legal Services and Compliance
Department of Safety and Professional Services
P.O. Box 7190, Madison, WI 53707-7190
Telephone (608) 267-3817; Fax (608) 266-2264
DSPSMonitoring@wisconsin.gov

7. In the event Respondents fail to timely submit payment of the forfeiture and costs as ordered, Respondents' credentials (numbers 4038-77 and 1108-78), or Respondents' right to renew their credentials, may, in the discretion of the Board or its designee, be SUSPENDED, without further notice or hearing, until Respondents have complied with payment of the forfeiture and costs.

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

WISCONSIN FUNERAL DIRECTORS EXAMINING BOARD

by: 
A Member of the Board

8-2-2016
Date

STATE OF WISCONSIN
BEFORE THE FUNERAL DIRECTORS EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

ROBERT E. BORTON AND
SMITH FUNERAL CHAPEL LTD.,
RESPONDENTS.

:
:
:
:
:
:

STIPULATION

0004844

Division of Legal Services and Compliance Case No. 14 FDR 011

Respondents Robert E. Borton and Smith Funeral Chapel Ltd. and the Division of Legal Services and Compliance, Department of Safety and Professional Services stipulate as follows:

1. This Stipulation is entered into as a result of a pending investigation by the Division of Legal Services and Compliance. Respondents consent to the resolution of this investigation by Stipulation.

2. Respondents understand that by signing this Stipulation, Respondents voluntarily and knowingly waive the following rights:

- the right to a hearing on the allegations against Respondents, 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 Respondents;
- the right to call witnesses on Respondents' behalf and to compel their attendance by subpoena;
- the right to testify on Respondents' own behalf;
- 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 Respondents under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and other provisions of state or federal law.

3. Respondents are aware of Respondents' right to seek legal representation and have been provided an opportunity to obtain legal counsel before signing this Stipulation.

4. Respondents agree to the adoption of the attached Final Decision and Order by the Wisconsin Funeral Directors Examining Board (Board). The parties to the Stipulation consent to the entry of the attached Final Decision 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.


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, and the matter shall then be returned to the Division

of Legal Services and Compliance for further proceedings. In the event that the 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.

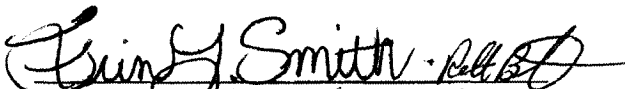
6. The parties to this Stipulation agree that the attorney or other agent for the Division of Legal Services and Compliance and any member of the Board ever assigned as an advisor in this investigation may appear before the Board in open or closed session, without the presence of Respondents, for purposes of speaking in support of this agreement and answering questions that any member of the Board may have in connection with deliberations on the Stipulation. Additionally, any such advisor may vote on whether the Board should accept this Stipulation and issue the attached Final Decision and Order.

7. Respondents are informed that should the Board adopt this Stipulation, the Board's Final Decision and Order is a public record and will be published in accordance with standard Department procedure.

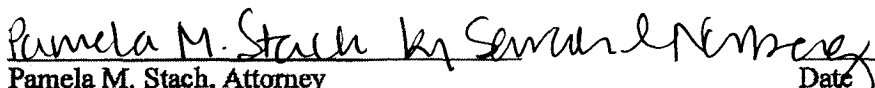
8. The Division of Legal Services and Compliance joins Respondents in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.


Robert E. Borton, Respondent
2222 London Rd.
Eau Claire, WI 54701
License no. 4038-77

1/6/2016
Date


Smith Funeral Chapel Ltd., Respondent
By: Robert E. Borton
2222 London Rd.
Eau Claire, WI 54701
Permit no. 1108-78

1/6/2016
Date


Pamela M. Stach, Attorney
Division of Legal Services and Compliance
P.O. Box 7190
Madison, WI 53707-7190

6.28.16
Date