

**STATE OF CONNECTICUT
CONNECTICUT BOARD OF EXAMINERS
FOR EMBALMERS AND FUNERAL DIRECTORS**

ORIGINAL

Community Funeral Chapels,
Embalmer and Funeral Home
License No. 002535

Petition No. 2008-1215-056-009

PROPOSED MEMORANDUM OF DECISION

Procedural Background

On July 19, 2010, the Department of Public Health (“the Department”) presented the Connecticut Board of Examiners for Embalmers and Funeral Directors (“the Board”) with a Statement of Charges (“the Charges”) brought against license number 000648 of Community Funeral Chapels (“respondent”). Bd. Exh. 1. On July 29, 2010, the Charges, along with the Notice of Hearing, were sent to respondent by certified mail, return receipt requested, and first class mail. Bd. Exh. 3.

On January 18, 2011, respondent filed an Answer to the Charges with four Special Defenses. Bd. Exh. 11.

On December 3, 2010, the Department filed a Motion to Consolidate this hearing with the hearing on a Statement of Charges against Brenda Ortiz in Petition # 2008-1215-030-0009, on the grounds that both cases arose from the same operative facts. Bd. Exh. 7. On December 7, 2010, the first day of hearing, the Motion to Consolidate was denied. Bd. Exh. 7; Tr. 12/7/10, pp. 1, 7. At the hearing, respondent appeared and was represented by David N. Feliu, Esq., of Waterbury, Connecticut; Attorney Diane Wilan represented the Department.

The Board conducted the hearing in accordance with Chapter 54 of the General Statutes (“the Statutes”) and § 19a-9a-1 *et seq.* of the Regulations of Connecticut State Agencies (“the Regulations”). All Board members involved in this decision received copies of the entire record and attest that they have heard the case or read the record in its entirety. This decision is based entirely on the record and the specialized professional knowledge of the Board in evaluating the evidence.

Allegations

1. In paragraph 1 of the Charges, the Department alleges THAT Community Funeral Chapels of Bridgeport is, and has been at all times referenced in the Charges, the holder of Connecticut inspection certificate number 000648 to operate as a funeral home.

2. In paragraph 2 of the Charges, the Department alleges that on or about October 15, 2008, respondent agreed to provide a direct cremation of the deceased M.J. at the request of the Chief Medical Examiner, who had been unable to locate any next of kin after a ten-month search.
3. In paragraph 3 of the Charges, the Department alleges that respondent petitioned the Bridgeport Probate Court for custody and control of the body of M.J., which was granted on or about October 17, 2008.
4. In paragraph 4 of the Charges, the Department alleges that respondent failed to seek authorization from the Bridgeport Probate Court for expenditures made for the funeral services and merchandise purchased for M.J.'s funeral prior to delivery.
5. In paragraph 5 of the Charges, the Department alleges that respondent failed to provide the Bridgeport Probate Court with an itemized list of funeral services and merchandise purchased prior to delivery.
6. In paragraph 6 of the Charges, the Department alleges that respondent failed to provide the Bridgeport Probate Court with a copy of the Community Funeral Chapels General Price List, Casket Price List and Outer Burial Container Price List.
7. In paragraph 7 of the Charges, the Department alleges that on or about October 22, 2008, respondent provided the Bridgeport Probate Court with an invoice containing excessive and unusual charges for M.J.'s funeral services.
8. In paragraph 8 of the Charges, the Department alleges that the above-described facts constitute grounds for disciplinary action pursuant to the Statutes, including but not limited to:
 - a. § 20-227(4)
 - b. § 20-227(5); and/or,
 - c. § 20-230a
 - d. § 20-230b;

Findings of Fact

1. Respondent is, and has been at all times referenced in the Charges, the holder of Connecticut inspection certificate number 000648 to operate as a funeral home. Bd. Exh. 12.
2. Brenda Ortiz is, and has been at all times referenced in the Charges, respondent's funeral home director and authorized to act on behalf of the respondent. Bd. Exh. 11.
3. The evidence does not establish that on or about October 15, 2008, respondent agreed to provide a direct cremation of the deceased M.J. Tr. 2/22/11, pp. 64-65.
4. After the respondent petitioned the Bridgeport Probate Court for the custody and control of M.J.'S body, the Court granted the respondent custody and control of the body on or about October 17, 2008. Dept. Exh. 11.

5. Respondent failed to seek the authorization of the Bridgeport Probate Court for the expenditures made for funeral services and merchandise purchased for M.J.'s funeral prior to the delivery of the services even though she knew of such requirement. Tr. 2/22/11, pp. 72-73.
6. Respondent failed to provide the Bridgeport Probate Court with an itemized list of funeral services and merchandise purchased prior to delivery. Bd. Exh. 11.
7. The Respondent failed to provide the Bridgeport Probate Court with a copy of its General Price List, Casket Price List and Outer Burial Container Price List until December 30, 2008, well after October 24, 2008 when it provided the funeral services in this case. Dept. Exh. 6.
8. On or about October 22, 2008, respondent provided the Bridgeport Probate Court with an invoice of \$63,833.80 for M.J.'s funeral services, which invoice contained unusual charges and far exceeded respondent's average cost of services. Tr. 2/22/11, pp. 97-98; Dept. Exh. 1.

Discussion and Conclusions of Law

The Department bears the burden of proof by a preponderance of the evidence in this matter. *Steadman v. Securities and Exchange Commission*, 450 U.S. 91, 101 S.Ct. 999, *reh'g denied*, 451 U.S. 933 (1981); *Swiller v. Comm'r of Public Health*, No. CV970573367, Superior Court, J.D. Hartford/New Britain at Hartford, February 19, 1998.

Section 19a-10 of the Connecticut General Statutes provides in pertinent part: "Any board . . . , may conduct hearings on any matter within their statutory jurisdiction. Such hearings shall be conducted in accordance with Chapter 54 and the regulations established by the Commissioner of Public Health."

Section 20-227 of the Statutes provides in relevant part:

The . . . Board may take any of the actions set forth in section 19a-17 against a license, registrant or holder of an inspection certificate if it finds the existence of any of the following grounds: . . . (4) incompetency, negligence or misconduct in the carrying on of such business or profession; . . . (5) violation of or noncompliance with the provisions of this chapter or the rules established hereunder. . . .

Except for one allegation, the Department proved the allegations comprising the Charges. to begin with, Respondent admits that, as alleged in paragraph 1 of the charges, it is, and has been at all times referenced in the Charges, the holder of Connecticut inspection certificate number 000648 permitting it to operate as a funeral home, and that Brenda Ortiz is its funeral home director and authorized agent.

Regarding the allegations OF paragraph 2 of the Charges, the Department partially sustained its burden of proof. The preponderance of the evidence establishes that on October 15, 2008 at the

request of the Chief Medical Examiner, who had been unable to locate any next of kin after a ten-month search, respondent agreed to handle the disposition of the body. The evidence is insufficient to establish that respondent agreed to cremate the deceased at such time.

Respondent admits that, as alleged in paragraph 3 of the Charges, it petitioned the Bridgeport Probate Court for the custody and control of M.J.'S body, and that the court granted his petition on or about October 17, 2008.

Concerning the allegations in paragraphs 4 and 5 of the Charges, the Department proved that respondent violated *Conn. Gen. Stat.* § 20-230a.¹ The evidence establishes that the respondent neither sought the Probate Court's approval of the services and merchandise used for M.J.'s funeral before selecting and billing for them nor showed the court an itemized list of merchandize and services before their purchase. While respondent's funeral director claims that she was unaware of this requirement, as a licensed funeral director, she is charged with knowledge of the laws governing her profession. Furthermore, office staff at the Probate Court informed her to go before the Probate Judge for approval, but by her own testimony she failed to meet with the judge.

As for the charges in paragraph 6, the Department proved that the respondent failed to provide the Probate Court with a copy of the respondent's General Price List, Casket Price List and Outer Burial Container Price List, thus violating § 20-230b of the Statutes.² the respondent did not provide the three price lists until December 30, 2008, months after it provided such services on October 22, 2008. Thus, the Department sustained its burden of proof relative to these allegations.

Regarding the allegations in paragraph 7 of the Charges, the evidence establishes that on or about October 22, 2008, respondent submitted to the Probate Court an invoice containing excessive

¹ Section 20-230a of the Statutes provides:

No licensed funeral director or licensed embalmer shall offer to sell services to arrange for or conduct funerals or offer to sell any merchandise used in connection with a funeral without first providing the purchaser of such services or merchandise with an itemized price list of all available services and merchandise and every such purchase shall also be informed by such funeral director or embalmer, prior to entering into any sales agreement, of the right to select only such services or merchandise which the purchaser so desires.

² *Conn. Gen. Stat.* §20-230b provides:

No person engaged in the business of funeral directing and no licensed funeral director or licensed embalmer shall fail to provide the person making funeral arrangements or arranging for disposition of a dead human body, at the time funeral arrangements are completed and prior to the time of rendering service or providing merchandise, a written statement indicating to the extent then known: (1) The price of the service that the person has selected and what is included therein; (2) the price of each supplemental item of service or merchandise requested; (3) the amount involved for each of the items for which the funeral firm will advance money as an accommodation to the family of the deceased; and (4) the methods of payment. No person engaged in the business of funeral directing and no licensed funeral director or licensed embalmer shall bill or cause to be billed any item that is referred to as a "cash advanced" item unless the net amount paid for such item by the funeral firm is the same as is billed by the funeral firm.

and unusual charges for M.J.'s funeral services. The Department's expert witness testified that such an exceptionally high cost for funeral services is atypical in the funeral home industry, stating: "I think you'd be hard pressed to find a funeral home in the state that's had a funeral at that level, dollar level." Tr. 12/7/2010, pp. 65-66. Respondent's funeral director admitted that her average prices were substantially less than the \$30,700 price of the casket in this case, and that the average cost for a casket in these types of cases is \$1,275. Thus, the Department met its burden of proof relative to these allegations.

Based on the above findings, the Board concludes that the respondent's conduct in this case constitutes "incompetency, negligence or misconduct" in the carrying on of the funeral service business or profession and a "violation of or noncompliance with the provisions of this chapter or the rules established hereunder" under § 20-227(4) of the Statutes. consequently, exercising its authority under §§ 19a-17 and 20-227, the Board enters the order below against the respondent's license.

Order

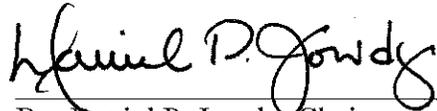
Pursuant to the authority vested in it by. §§ 19a-17 and 20-227 of the Statutes, the Board orders the following in the case of Community Funeral Chapels, the holder of Connecticut funeral home license number 000648, Petition No. 2008-1215-056-009:

1. Respondent shall pay a civil penalty of two-thousand five-hundred dollars (\$2,500) by certified or cashier's check payable to "Treasurer, State of Connecticut." The check shall reference the Petition Number on the face of the check, and shall be payable within thirty days of the effective date of this Decision;
2. The respondent's license funeral director is hereby placed on probation under the following terms and conditions:
 - a. Within one year of the issuance of this order, the respondent's funeral director shall attend and successfully complete a course in ethics, pre-approved by the Board.
 - b. Within thirty days of the completion of the course referenced in 2a, the respondent shall provide the Department with proof, to the Department's satisfaction, of the successful completion of the course. Once the Department determines that the respondent's funeral director has satisfactorily completed the work course, respondent's probation shall terminate.
3. Respondent shall pay all costs necessary to comply with this Decision.

5. This Order shall become effective upon the signature of the Board Chairperson.

Connecticut Board of Examiners for Embalmers,
Funeral Directors

27 Sept. 2011
Date


By: Daniel P. Jowdy, Chairperson
Connecticut of Examiners for Embalmers,
Funeral Directors

CERTIFICATION

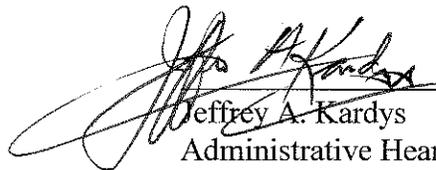
I hereby certify that, pursuant to Connecticut General Statutes § 4-180(c), a copy of the foregoing Memorandum of Decision was sent this 28th day of September 2011, by certified mail, return receipt requested to:

David Feliu, Esq.
182 Grand Street, Suite 411
Waterbury, CT 06702

Certified Mail 91-7108-2133-3932-0556-3245

and via email to:

Matthew Antonetti, Principal Attorney
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410 Capitol Avenue, MS #12LEG
Hartford, CT 06134-0308



Jeffrey A. Kardys
Administrative Hearings Specialist/Board Liaison
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