



CHIEF FINANCIAL OFFICER
JEFF ATWATER
STATE OF FLORIDA

FILED

MAY 26 2015

Docketed by EU

IN THE MATTER OF:

CASE NO. 167790-14-FC

HERITAGE CREMATION PROVIDER, L.L.C.,
LEGACY FUNERAL SERVICES L.L.C.,
ANTHONY JOSEPH (A.J.) DAMIANO AND JOSEPH
DAMIANO

ADMINISTRATIVE COMPLAINT

COMES NOW JEFF ATWATER, in his capacity as Chief Financial Officer of the State of Florida or his designee, pursuant to sections 120.569(2), 120.57, and 497.157(3) Florida Statutes, and Rules 28-106.501 and 28-106.2015, *Florida Administrative Code*, and issues this Administrative Complaint against Heritage Cremation Provider, L.L.C., Legacy Funeral Services, L.L.C., Anthony Joseph (A.J.) Damiano, and Joseph Damiano which is within the purview of the Department of Financial Services, and alleges as follows:

GENERAL ALLEGATIONS

1. Pursuant to section 20.121, Florida Statutes and chapter 497, Florida Statutes, and chapter 69K, *Florida Administrative Code*, the Department of Financial Services is the state agency charged with the regulation of funeral establishments and funeral establishment personnel in this state.
2. Heritage Cremation Provider, L.L.C. (hereinafter "Heritage") is a Florida limited liability corporation whose record address is 3526 N. Federal Highway, Ft. Lauderdale, Florida

33308 and whose mailing address is P.O. Box 26806, Ft. Lauderdale, Florida 33320. Legacy Funeral Services L.L.C. (hereinafter "Legacy") is a Colorado limited liability corporation doing business as Legacy Funeral and Cremation at 9800 Mt. Pyramid Court Ste. 400, Denver, Colorado 80112. Both the Florida and Colorado limited liability corporations are managed and owned by Joseph Damiano and Anthony Joseph (A.J.) Damiano and the corporate names are used interchangeably in funeral and cremation sales transactions.

3. Heritage is not currently licensed and never has been licensed in this state as a funeral establishment or as a direct disposer. Legacy is not currently licensed and never has been licensed in this state as a funeral establishment nor as a direct disposer under chapter 497, Florida Statutes.

4. At no time relevant to the allegations of this administrative complaint was either Heritage or Legacy licensed in this state as a funeral establishment pursuant to section 497.380, Florida Statutes, or as a direct disposer establishment pursuant to section 497.604, Florida Statutes.

5. At no time relevant to the allegations of this administrative complaint was Joseph Damiano or Anthony Joseph (A.J.) Damiano licensed as a funeral director in this state pursuant to section 497.372, Florida Statutes.

6. At all times pertinent, Heritage and Legacy have conducted funeral related services in this state which require a valid Florida license. At no point did either corporation possess a valid Florida license.

7. Upon information and belief, Heritage and Legacy operate in multiple jurisdictions under various aliases, including Heritage Cremation Provider, Legacy Funeral and

Cremation Services, and Funeral Services Provider. The names and aliases are often used interchangeably, even in the same transaction.

8. Funeral establishments and direct disposition are governed by chapter 497, Florida Statutes, and chapter 69K-5, *Florida Administrative Code*.

9. An investigation of Respondents Heritage, Legacy, Anthony Joseph (A.J.) Damiano, and Joseph Damiano was conducted in 2013 and 2014 pursuant to consumer complaints.

COUNT I

10. The above General Allegations are hereby realleged and fully incorporated herein by reference.

11. On or about June 14, 2014, Heritage did hold itself out to Thomas A. Nicolette of Cooper City, Florida, a licensed funeral director in charge of John Hanks Memorial Services of Miami Springs, a Florida licensed funeral establishment, as a licensed funeral establishment and did contract (or subcontract) for fourteen funeral and cremation services to be performed by John Hanks Memorial Services on behalf of the Florida funeral customers of Heritage. As part of this transaction, Heritage provided to Thomas A. Nicolette false and fraudulent documentation purporting to imply that Heritage was licensed and authorized in this state to receive and handle human remains for cremation.

IT IS THEREFORE CHARGED that Heritage, Legacy, Anthony Joseph (A.J.) Damiano and Joseph Damiano have violated or are accountable under the following provisions of chapter 497, Florida Statutes, which constitutes grounds for discipline:

(a) Section 497.157, Florida Statutes, provides, in pertinent part, that no person shall engage in activity for which a license is required under this chapter without holding a license in good standing.

(b) Section 497.372, Florida Statutes, in pertinent part, provides that the practice of funeral directing shall be construed to consist of the following functions which may only be performed by a licensed funeral director:

(1)(a) Selling or offering to sell funeral services on an at-need basis.

(1)(b) Planning or arranging, on an at-need basis, the details of a funeral service with the family or friends of the decedent or any other person responsible for the service.

(1)(c) Making, negotiating, or completing the financial arrangements for a funeral services on an at- need-basis.

(1)(g) Using in connection with one's name or employment the words or terms "funeral director," "funeral establishment," "undertaker," "mortician," or any other word, term, title, or picture, or combination of any of the above, that when considered in the context of which it was used would imply that such person is engaged in the practice of funeral directing or that such person is holding himself out to the public as being engaged in the practice of funeral directing.

(c) Section 497.380(3), Florida Statutes, in pertinent part, provides that no person may conduct, maintain, manage, or operate a funeral establishment unless a funeral establishment operating license has been issued under this chapter for that funeral establishment.

(d) Section 497.380(7), Florida Statutes, in pertinent part, provides that each licensed funeral establishment shall have a one full time funeral director in charge and shall have a licensed funeral director reasonable available to the public during normal business hours for the establishment.

(e) Section 497.604, Florida Statutes, in pertinent part, provides that no person may open or maintain an establishment at which to engage in or hold itself out as engaging in the

practice of direct disposition unless such establishment is licensed pursuant to [section 497.601, Florida Statutes].

COUNT II

12. The above General Allegations are hereby realleged and fully incorporated herein by reference.

13. On or about May 16, 2013, Heritage and/or Legacy held themselves out to Gee & Sorenson Funeral Home of St. Petersburg, Florida as a licensed funeral establishment and did contract (or subcontract) for seven funeral and cremation services to be performed by Gee & Sorenson Funeral Home on behalf of the Florida funeral customers of Heritage and Legacy. As part and parcel of this transaction, Heritage and Legacy provided to Gee and Sorenson Funeral Home false and fraudulent documentation purporting to imply that Heritage and/or Legacy were licensed and authorized in this state to receive and handle human remains for cremation.

IT IS THEREFORE CHARGED that Heritage, Legacy, Anthony Joseph (A.J.) Damiano and Joseph Damiano have violated or are accountable under the following provisions of chapter 497, Florida Statutes, which constitutes grounds for discipline: sections 497.157; 497.372(1)(a)(b)(c) and (g); 497.380(3); 497.380(7) and 497.604(1), Florida Statutes, as more particularly alleged in Count I above.

COUNT III

14. The above General Allegations are hereby realleged and fully incorporated herein by reference.

15. On or about September 17, 2014, Heritage did hold itself out via a website to be a licensed funeral establishment to Kristen Smith-Rodriguez of Titusville, Florida, who desired to make funeral and cremation arrangements on behalf of her deceased uncle, John Joseph Smith.

As a result of the website, Kristen Smith-Rodriguez was operating under the premise that Heritage was a Florida licensed funeral establishment.

16. Heritage did enter into a contract with Francis Smith, the personal representative of the estate of John Joseph Smith, for funeral and cremation services for John Joseph Smith.

IT IS THEREFORE CHARGED that Heritage, Legacy, Anthony Joseph (A.J.) Damiano, and Joseph Damiano have violated or are accountable under the following provisions of chapter 497 which constitutes grounds for discipline: sections 497.157; 497.372(1)(a)(b)(c) and (g); 497.380(3); 497.380(7) and 497.604, Florida Statutes, as more particularly alleged in Count I above.

WHEREFORE, the Department respectfully requests the entry of an Order ordering the Respondents to cease and desist from the violations of chapter 497 as alleged above and imposing a fine of \$10,000.00; assessment of costs associated with investigation and prosecution and imposition of any and all other penalties delineated within section 497.157, Florida Statutes.

DATED and SIGNED this 26th day of May, 2015.



J. Paul Whitfield
J. Paul Whitfield
Deputy Chief Financial Officer

NOTICE OF RIGHTS

Heritage Cremation Provider, L.L.C, Legacy Funeral Services L.L.C., Anthony Joseph Damiano, and Joseph Damiano have the right individually to request a proceeding to contest this action by the Florida Department of Financial Services, Board of Funeral, Cemetery and Consumer Services ("Board") pursuant to sections 120.569 and 120.57, Florida Statutes, and Rule 28-106, *Florida Administrative Code*. The proceeding request must be in writing, signed

by you, and must be filed with the Florida Department of Financial Services ("Department") within twenty-one (21) days of your receipt of this notice. Completion of the attached Election of Proceeding form and/or a petition for administrative hearing will suffice as a written request. The request must be filed with the Agency Clerk, at the Florida Department of Financial Services, 612 Larson Building, 200 East Gaines Street, Tallahassee, Florida 32399-0333. Your written response must be received by the Department no later than 5:00 p.m. on the twenty-first day after your receipt of this notice. Mailing the response on the twenty-first day will not preserve your right to a hearing.

FAILURE TO RESPOND IN WRITING WITHIN TWENTY-ONE (21) DAYS OF YOUR RECEIPT OF THIS NOTICE WILL CONSTITUTE A WAIVER OF YOUR RIGHT TO REQUEST A PROCEEDING ON THE MATTERS ALLEGED HEREIN AND A FINAL ORDER WILL BE ENTERED AGAINST YOU.

If Heritage, Legacy, Joseph Damiano and Anthony Joseph Damiano request a proceeding, information must be provided that complies with the requirements of Rule 28-106.2015, *Florida Administrative Code*. As noted above, completion of the attached Election of Proceeding form conforms to these requirements. Specifically, your response must contain:

(a) The name, address, and telephone number, and facsimile number (if any) of the respondents (for the purpose of requesting a hearing in this matter, Heritage, Legacy, Joseph Damiano and Anthony Joseph (A.J.) Damiano are the "respondents").

(b) The name, address, telephone number, facsimile number of the attorney or qualified representative of the respondents (if any) upon whom service of pleadings and other papers shall be made.

(c) A statement requesting an administrative hearing identifying those material facts that are in dispute. If there are none, the petition must so indicate.

(d) A statement of when the respondents received notice of the administrative complaint.

(e) A statement including the file number of the administrative complaint.

If a hearing of any type is requested, each party has the right to be represented by counsel or other qualified representative at your expense, to present evidence and argument, to call and cross-examine witnesses, and to compel the attendance of witnesses and the production of documents by subpoena.

If a proceeding is requested and there is no dispute of material fact, the provisions of section 120.57(2), Florida Statutes, apply. Each party may submit oral or written evidence in opposition to the action taken by the Department or a written statement challenging the grounds upon which the Department has relied. While a hearing is normally not required in the absence of a dispute of fact, if respondents feel that a hearing is necessary, one will be conducted in Tallahassee, Florida, or by telephonic conference call upon your request.

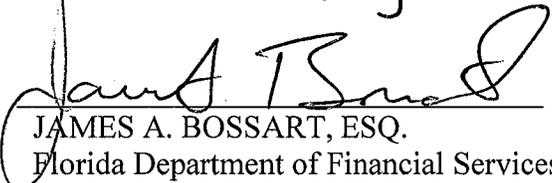
However, if Heritage, Legacy, Joseph Damiano, and/or Anthony Joseph Damiano dispute material facts which are the basis for the Department's action, they must request an adversarial proceeding pursuant to sections 120.569 and 120.57(1), Florida Statutes. These proceedings are held before a State Administrative Law Judge of the Division of Administrative Hearings. Unless the majority of witnesses are located elsewhere, the Department will request that the hearing be conducted in Tallahassee, Florida.

Failure to follow the procedure outlined with regard to any response to this notice may result in the request being denied. All prior oral communication or correspondence in this matter shall be considered freeform agency action, and no such oral communication or correspondence shall operate as a valid request for an administrative proceeding. Any request for an administrative proceeding received prior to the date of this notice shall be deemed abandoned unless timely renewed in compliance with the guidelines as set out above.

Mediation of this matter pursuant to section 120.573, Florida Statutes, is not available. No Department attorney will discuss this matter with any respondent during the time frame in which respondents have a right to request a hearing.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Administrative Complaint has been provided to the Respondents at 3526 N. Federal Highway, Ft. Lauderdale, Florida 33308, P.O. Box 28606, Ft. Lauderdale, Florida 33308, and 9800 Mt. Pyramid Court, Ste. 400, Denver, Colorado 80112, by U.S. Certified Mail on this 26th day of May, 2015.


JAMES A. BOSSART, ESQ.
Florida Department of Financial Services
Division of Legal Services
200 East Gaines Street
Tallahassee, Florida 32399-0333
(850) 413-4125
Attorney for Department

STATE OF FLORIDA
DEPARTMENT OF FINANCIAL SERVICES
DIVISION OF LEGAL SERVICES

IN THE MATTER OF:

CASE NO.: 167790-14-AG

HERITAGE CREMATION PROVIDER, L.L.C.,
LEGACY FUNERAL SERVICES L.L.C.,
ANTHONY JOSEPH (A.J.) DAMIANO AND JOSEPH
DAMIANO

ELECTION OF PROCEEDING

I have received and have read the Administrative Complaint filed by the Florida Department of Financial Services ("Department") against me, including the Notice of Rights contained therein, and I understand my options. I am requesting disposition of this matter as indicated below. **(CHOOSE ONE)**

1. I do not dispute any of the Department's factual allegations and I do not desire a hearing. I understand that by waiving my right to a hearing, the Department may enter a final order that adopts the Administrative Complaint and imposes the sanctions sought, including suspending or revoking my licenses and appointments as may be appropriate.

2. I do not dispute any of the Department's factual allegations and I hereby elect a proceeding to be conducted in accordance with section 120.57(2), Florida Statutes. In this regard, I desire to **(CHOOSE ONE)**:
 - Submit a written statement and documentary evidence in lieu of a hearing; or
 - Personally attend a hearing conducted by a department hearing officer in Tallahassee; or
 - Attend that same hearing by way of a telephone conference call.

3. I do dispute one or more of the Department's factual allegations. I hereby request a hearing pursuant to section 120.57(1), Florida Statutes, to be held before the Division of Administrative Hearings. I have attached to this election form the information required by rule 28-106.2015, Florida Administrative Code, as specified in subparagraph (c) of the Notice of Rights. Specifically, I have identified the disputed issues of material fact.

TO PRESERVE YOUR RIGHT TO A HEARING, YOU MUST FILE YOUR RESPONSE WITH THE DEPARTMENT OF FINANCIAL SERVICES WITHIN TWENTY-ONE (21) DAYS OF YOUR RECEIPT OF THE ADMINISTRATIVE COMPLAINT. THE RESPONSE MUST BE RECEIVED BY THE DEPARTMENT NO LATER THAN 5:00 P.M. ON THE TWENTY-FIRST DAY AFTER YOUR RECEIPT OF THE ADMINISTRATIVE COMPLAINT.

The address for filing is: Julie Jones, DFS Agency Clerk, Florida Department of Financial Services, 612 Larson Building, 200 East Gaines Street, Tallahassee, Florida 32399-0333.

Signature Print Name

Date: _____

Date Administrative
Complaint Received: _____

**If you are represented by an attorney or qualified
representative, please attach to this election form his
or her name, address, telephone and fax numbers**

Address: _____

Phone No.: _____

Fax No.: _____

E-mail: _____