

**BEFORE THE TENNESSEE STATE BOARD OF FUNERAL DIRECTORS AND
EMBALMERS**

2014 DEC 16 PM 1:33

IN THE MATTER OF:

**LEGACY FUNERAL SERVICES A/K/A
LEGACY FUNERAL & CREMATION
SERVICES
9800 MOUNT PYRAMID COURT
SUITE 400
ENGLEWOOD, CO 80112-2669
(Unlicensed)**

SECRETARY OF STATE

**Docket No. 12.21-128153A
Case No. L12-FUN-RBS-2012011351
L12-FUN-RBS-2012017131**

NOTICE OF DEFAULT AND FINAL ORDER

This matter was heard on December 9, 2014 before the Tennessee State Board of Funeral Directors and Embalmers and Administrative Judge, the Honorable D. Kim Summers, Administrative Judge, assigned by the Secretary of State, Administrative Procedures Division, in Nashville, Tennessee (hereinafter "Petitioner"). The Petitioner was represented by B. Denard Mickens, Assistant General Counsel for the Division of Regulatory Boards, Department of Commerce and Insurance. Neither the Respondent, Legacy Funeral Services, nor an attorney appearing on its behalf, was present at the hearing.

14 DEC 23 AM 10:45
FCCS DIVISION

NOTICE OF DEFAULT

The Respondent was declared to be in default by the Court pursuant to TENN. CODE ANN. § 4-5-309 and the Department of State's rules upon proper motion made by the Petitioner due to the failure of Respondent or its representative to appear at the scheduled hearing, after receiving proper notice thereof.

The Petitioner filed a Notice of Hearing and Charges wherein the Respondent Legacy Funeral Services was informed of the formal hearing to take place on December 9, 2014 in room 1-B of the Davy Crockett Tower, Nashville, TN. The Petitioner moved to hold the Respondent in Default. Evidence was introduced at the hearing of this cause demonstrating that Petitioner served Respondent with a copy of the Notice of Hearing and Charges by Certified Mail Return Receipt Requested, No. 7012 1010 0003 2376 0252 at the address listed with the Colorado Secretary of State for Respondent's registered agent for service of process, namely 9800 Mount Pyramid Court, Suite 400, Englewood, Colorado 80112, on October 31, 2014, and a signed Return Receipt was received by the Petitioner on November 12, 2014. Evidence was introduced that the 9800 Mount Pyramid Court address is the most current address on file for Respondent with the Colorado Secretary of State. Evidence was introduced that Respondent failed to respond to any other mailings from Petitioner.

The Court concluded that the Petitioner's service of the Notice of Hearing and Charges to the Respondent was proper and in accordance with the provisions of TENN. CODE ANN. § 4-5-307 and the Department of State's Rules. The Court held the Respondent in **DEFAULT** and Petitioner was permitted to proceed on an uncontested basis.

FINAL ORDER

The subject of this hearing is the proposed assessment of civil penalties and costs and a cease and desist order for Respondent's unlicensed practice of providing funeral directing and funeral services in Tennessee due to Respondent's failure to register as a funeral establishment with the Tennessee State Board of Funeral Directors and

Embalmers. Upon consideration of the testimony of witnesses, exhibits filed in this matter, and upon the entire record, it is the determination of this Administrative Judge that the Petitioner's request for civil penalties, costs and a cease and desist order shall be **GRANTED**. This decision is based upon the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Respondent is a business entity licensed as a funeral home in the State of Colorado, holding license # FH.0000706.
2. Respondent's Registered Agent is Joseph Damiano. Respondent's address for service as listed with the State of Colorado is 9800 Mount Pyramid Court, Suite 400, Englewood, Colorado 80112.
3. At all times pertinent, Respondent has conducted funeral related services in the State of Tennessee without possessing a valid Tennessee license.
4. Respondent is not licensed currently and has never been licensed in the State of Tennessee despite conducting funeral related services within the state since at least 2012 and despite being a registered funeral home in Colorado since 2013.
5. Upon information and belief, Respondent operates in multiple jurisdictions under various aliases, including Legacy Cremation Services, Legacy Funeral and Cremation Services, and Funeral Services Provider, LLC.
6. On or around May 14, 2012, the Board received a complaint from James Safewright alleging that the Respondent was offering cremation services in the State of Tennessee via a website, at <http://www.legacycremationservices.com>.

7. Mr. Safewright is a duly licensed funeral director pursuant to TENN. CODE ANN. § 62-5-303 (2014).

8. Complainant Safewright believed that the website referencing the Respondent was deceptive and misleading because Respondent held itself out to the public as if it were operating a brick-and-mortar funeral establishment in the State of Tennessee; however, the Respondent is not nor has ever been licensed in the State of Tennessee. Further, it does not operate a physical facility within the state's borders.

9. The website referencing the Respondent advertises cremation services ranging in price from six hundred ninety-five dollars (\$695) to one thousand three hundred ninety-five dollars (\$1,395).

10. On or around July 27, 2012, the Board received a separate complaint from Complainant Chad A. Correll, alleging that the Respondent contacted him and asked him to provide cremation and transfer services on behalf of the Respondent.

11. Mr. Correll is a duly licensed funeral director pursuant to TENN. CODE ANN. § 62-5-303 (2014).

12. Complainant Correll was informed that the body to be picked up was then located at Oak Hill Funeral Home in Kingsport, Tennessee.

13. Having never conducted business with Respondent, Complainant Correll conducted internet research on Respondent and discovered the same website with the same information described in Allegations of Fact #6 above, at <http://www.legacycremationservices.com>.

14. Upon information and belief, the website discovered by both Complainants and describing services alleged to be offered by the Respondent is still active and in operation as of the date of the instant filing.

15. On or about October 12, 2012, the Board's representative sent Respondent a Cease and Desist Notice, notifying Respondent that the scope and reach of its website constituted an offer to engage in funeral directing within the State of Tennessee without first obtaining an establishment license.

16. Respondent, by and through counsel, refused to comply with the Board's Cease and Desist Notice.

17. The Board's representatives continue to receive complaints about Respondent's unlicensed activities.

18. Upon information and belief, Respondent continues to operate in the State of Tennessee without a valid funeral establishment license as of the date of the instant filing.

19. Disciplinary action is required by the Board against the Respondent in order to protect the welfare and interests of the public.

CONCLUSIONS OF LAW

1. In accordance with TENN. COMP. R. AND REGS. 1360-4-1-.02(7), Petitioner bears the burden of proof in proving by a preponderance of the evidence that the facts alleged in the Petition are true and that the issues raised therein should be resolved in its favor. The Court hereby concludes that the State met that burden in this case.

2. Respondent's acts and conduct, as set out in the foregoing Findings of Fact, constitute violations of TENN. CODE ANN. § 62-5-101(6)(A)(ii), (iv), (v) (2014),

which provides that funeral directing includes holding out to the public that one is a funeral director or engaged in a practice described in the aforementioned subdivision.

3. Respondent's acts and conduct, as set out in the foregoing Findings of Fact, constitute violations of TENN. CODE ANN. § 62-5-303(a)(2), (b) (2014), which provides that no establishment shall engage in or hold themselves out as engaging in the business of funeral directing without first registering with the State Board of Funeral Directors and Embalmers.

4. Respondent's acts and conduct, as set out in the foregoing Findings of Fact, constitute violations of TENN. CODE ANN. § 62-5-309(b), which provide that it is unlawful for any unlicensed person, partnership, firm, association or corporation to engage in the operation of a funeral establishment.

5. Respondent's violations constitute grounds for disciplinary action against Respondent, including the imposition of civil penalties against Respondent and the assessment of investigatory and hearing costs, pursuant to TENN. CODE ANN. §56-1-308(a), and the assessment of investigatory and hearing costs pursuant to TENN. CODE ANN. § 56-1-311(a) (2014), and TENN. COMP. R. & REGS. 0780-5-11-.01(1) (2014).

6. The Petitioner has met its burden of proof by a preponderance of evidence, by showing that Respondent provided funeral directing services to customers in Tennessee in violation of the rules and regulations of the Tennessee State Board of Funeral Directors and Embalmers.

JUDGMENT

WHEREFORE, it is hereby **ORDERED, ADJUDGED AND DECREED** as follows:

1. The Respondent is **ASSESSED and shall pay a civil penalty to the State of Tennessee in the amount of Eight Thousand Dollars (\$8,000.00)**, as prayed for by the State, representing a penalty of One Thousand Dollars (\$1,000.00) per occurrence for each of the following eight (8) illegal acts by Respondent:
 - a) **Two (2)** counts of unlawfully holding out to the public that it is a funeral director or engaged in a practice as defined in Tennessee rules and regulations;
 - b) **Two (2)** counts of engaging in the business of funeral directing without first registering with the State Board of Funeral Directors and Embalmers;
 - c) **Two (2)** counts of unlawful unlicensed operation of a funeral establishment; and
 - d) **Two (2)** counts of violating Tennessee rules and regulations governing funeral directing.

2. Respondent is **ASSESSED \$478.75** of investigatory, prosecutorial and hearing costs incurred in this matter pursuant to TENN. CODE ANN. § 56-1-311(a) and TENN. COMP. R. & REG. 0780-5-11-.01 [ASSESSMENT OF INVESTIGATORY AND HEARING COSTS]. Respondent shall pay civil penalty and assessed costs within thirty (30) days after the State files and serves Respondent with its Itemized Assessed Bill of Costs, attached hereto as **Exhibit A**, for which execution may issue, if necessary.

3. Respondent is hereby **ORDERED TO CEASE AND DESIST** from providing any funeral directing services in the State of Tennessee, unless and until Respondent is duly registered with the Tennessee State Board of Funeral Directors and Embalmers to provide said services.

4. This Final Order shall take effect upon its filing with the Administrative Procedures Division of the Office of the Secretary of State.

POLICY STATEMENT

It is the policy of the Tennessee State Board of Funeral Directors and Embalmers to uphold the laws of Tennessee concerning funeral services and uphold the standards, morals, and ethics of the current license holders and to protect them as well as the public against unlawful acts.

REVIEW OF FINAL ORDER

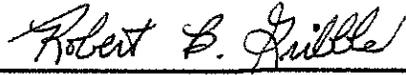
Within fifteen (15) days after the effective date of the Final Order, any party may petition the Tennessee Board of Funeral Directors and Embalmers for reconsideration of the Final Order. If no action is taken within twenty (20) days of the filing of the petition, it is deemed denied.

Any party may petition the Board for a stay of the Final Order within seven (7) days after the effective date of the Final Order.

Any party may seek judicial review of the Final Order by filing a petition for review in Chancery Court having jurisdiction within sixty (60) days after the effective date of the Final Order. A petition for reconsideration does not act to extend this sixty (60) day period; however, if the petition is granted, then this sixty (60) day period commences from the effective date of the Final Order disposing of the petition.

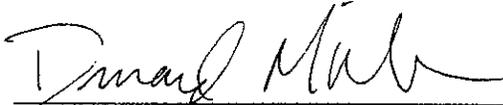
Any petition relative to a review of the final order or petition to stay the judgment of a final order is to be filed with the Administrative Procedures Division, Office of the Secretary of State, and the Board of Funeral Directors and Embalmers.

This Final Order ENTERED and EFFECTIVE this 15th day of December,
2014.



Robert Gribble, Executive Director
Tennessee State Board of Funeral Directors and
Embalmers

APPROVED FOR ENTRY:



B. Denard Mickens, BPR No. 025033
Assistant General Counsel
Office of Legal Counsel
500 James Robertson Parkway
Nashville, Tennessee 37243
(615) 741-3072 Fax: (615) 532-4750

Filed in the Administrative Procedures Division, Office of the Secretary of State
this 16th day of December, 2014.



J. Richard Collier, Esq., Director *unc*
Administrative Procedures Division

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Default and Final Order has been sent to the following via regular mail:

Legacy Cremation Services
c/o Joseph Damiano, Registered Agent
9800 Mount Pyramid Court
Suite 400
Englewood, Colorado 80112

On this 18th day of December, 2014.



B. Denard Mickens, Esq.

EXHIBIT A



STATE OF TENNESSEE
OFFICE OF THE SECRETARY OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

CERTIFICATE OF COSTS

CASE Legacy Funeral Services

DOCKET # 12.21-128153A

I, J. Richard Collier, Director, Administrative Procedures Division, Tennessee Secretary of State, do hereby certify that the attached represents the actual costs associated with the aforementioned matter, as accumulated during the regular course of business and recorded in the division's case management system.

This 15th day of December 2014.

J. Richard Collier

J. Richard Collier
Director



Revised 9/15/2000

Department of State
312 Rosa L. Parks Avenue
Nashville, TN 37243

Invoice submitted to:

December 09, 2014

File # 12.21-128153A
Re: Legacy Funeral Services vs.
COMMERCE AND
INSURANCE

Professional Services

<u>Date</u>	<u>Billor Name</u>	<u>Activity</u>	<u>Hours Worked</u>	<u>Hours Billed</u>	<u>Rate</u>	<u>Total</u>
10/06/2014	ie12mie	Initial Docketing Fee	0.00	2.00	\$100.00	200.00
		Initial Docketing Fee				
11/05/2014	Kim Summers	Order Preparation	0.30	0.00	\$100.00	0.00
12/08/2014	Kim Summers	Prehearing Preparation	0.20	0.00	\$100.00	0.00
12/09/2014	Kim Summers	Travel	0.30	0.00	\$100.00	0.00
12/09/2014	Kim Summers	Hearing	2.30	1.10	\$100.00	110.00
For Professional Services Rendered:			3.10	3.10		\$310.00

Total Amount of this Bill: \$310.00

INVOICE

DATE: 12/15/14

FROM: Patsy Norman
LCR #410
5120 Hilson Road
Nashville, TN 37211

TO: TN Dept of Commerce & Insurance
Board of Funeral Directors
500 James Robertson Pkwy
Davy Crockett Tower
Nashville, TN

Appearance ½ day 12/9/14	\$150.00
Transcript – Policy Statement	<u>18.75</u>
	\$168.75

THANK YOU
EIN #45-2630770
EDISON #0000038507