

Minutes of Meeting
Board of Funeral, Cemetery and Consumer Services
October 10, 2007 - 10:00 A.M. to 5:00 P.M.
Betty Easley Conference Center
4075 Esplanade Way, Room 152
Tallahassee, FL 32399

I. Call to Order and Roll Call

Mr. Jody Brandenburg, Vice Chairman, called the meeting to order at 10:00am. Ms. Diana Marr, Executive Director, called the roll:

PRESENT:

Jody Brandenburg, Vice-Chairman
Pete Ballas
Justin Baxley
Powell Helm
Nancy Hubbell
Tracy Huggins
Ken Jones
Gail Thomas-DeWitt

ALSO PRESENT:

Diana (Evans) Marr, Executive Director
Deborah Louks, Board Counsel
Elizabeth Teegen, Department Counsel
MaryK Surles, Department Counsel
Richard Brinkley, Assistant Director
James Gellepis, Department Staff
LaTonya Bryant, Department Staff
Crystal Grant, Department Staff

ABSENT:

Greg Brudnicki, Chairman
Catherine Zippay

Ms. Marr declared a quorum.

II. Action on the Minutes

A. August 8, 2007

Mr. Chairman confirmed that all Board members had read the draft of the minutes of the previous Board meeting held on August 8th.

MOTION: Mr. Powell Helm moved to adopt the minutes of the meeting. Col. Pete Ballas seconded the motion, which passed unanimously.

B. September 11, 2007- Teleconference

Mr. Chairman confirmed that all Board members had read the draft of the minutes of the previous teleconference meeting held on September 11th.

MOTION: Mr. Ken Jones moved to adopt the minutes of the meeting. Col. Ballas seconded the motion, which passed unanimously.

III. Old Business

A. Application(s) for Preneed License

1. Moming Glory Funeral Chapel of St Petersburg (St Petersburg)

Ms Marr stated that the Department received the application on March 23, 2007. Other than a pending funeral establishment license, no other deficiencies were noted on the application. Fingerprint cards were received by the Department and a background check was completed. Applicant obtained a funeral establishment license on April 21, 2007.

The application was considered at the June 27, 2007 Board meeting and was deferred due to the applicant's financial statements not complying with GAAP requirements. The applicant waived the 90-day right to a determination and re-submitted revised financial statements. At the August 8th Board meeting was again deferred to October 10th, as the statements appeared stated on a cash basis. The Board required statements in accordance with GAAP.

As of September 28, 2007 the Department had not received any further correspondence or documents from the applicant concerning the application.

The Department recommends denial of the application.

MOTION: Mr. Justin Baxley moved to deny the application based upon financial requirements not being met. Mr. Helm seconded the motion, which passed unanimously.

IV. Disciplinary Proceeding(s)

A. A Cremation Center at Horizon Funeral Home, DFS Case No. 8851606FC

Mark E Davis, DFS Case No. 88517-06FC

Mr. Chairman read the following statement into record:

"This is a hearing in the matter of taking disciplinary action against the funeral director license of Mark Davis and the funeral home license of A Cremation Center at Horizon Funeral Home, being held in Tallahassee, Florida on October 10, 2007. The Case Nos are 8851606FC and 88517-06FC.

For the record, my name is Jody Brandenburg, the following members of the Board are present: Justin Baxley, Tracy Huggins, Gail Thomas-DeWitt, Nancy Hubbell, Powell Helm and Ken Jones. Pete Ballas is recused from this matter due to his participation on the Probable Cause Panel. Has any member present not reviewed the complete record in this case? No indication. Let the record reflect that all members participating have read the complete record. Is the Petitioner the Department of Financial Services representative present? "Yes." Is the Respondent present? "Yes he is Mr. Chairman." Are you represented by counsel? If so, please introduce counsel for the record. "Yes, Counsel Garvin Bowden, here in Tallahassee, Florida on behalf of Mr. Davis and Horizon."

This hearing is being conducted pursuant to 120569 and 12057(1), F.S. The purpose of this proceeding is to consider the recommended order issued by the Administrative Law Judge in this case. No new evidence will be admitted. Because this proceeding is not an evidentiary hearing, it must be confined to the record together with the recommended order. The Board may adopt the recommended order as its final order or the Board may reject the Administrative Law Judge's findings of fact or conclusions of law and interpretation of administrative rules over which it has substantive jurisdiction and must state with particularity its reasons for rejecting or modifying such conclusions of law or interpretations of administrative rule and must make a finding that its substituted conclusion of law is a more reasonable one than that which was rejected or modified. However, the Board may not reject or modify the factual findings, unless it determines, from a review of the completed record, that the factual findings were not based on competent, substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law. Rejection or modification of conclusions of law may not form the basis for rejection or modification of findings of fact. The Board may not alter the recommended penalty without a review of the complete record and without stating the peculiarity for reasons thereof citing to the record and justifying the action. Since exceptions have been filed to the findings of facts and conclusions of law, the procedure will be that each party will be allowed a brief opening statement and then the Board will consider the exceptions. Arguments will be made by the parties only upon requests by the Board. Once the exception has been considered, the Board will make the appropriate motion to deal with the conclusions of law in the recommended order. Finally, the Board will consider and resolve the issue of what penalty, if any, is appropriate.'

Mr. Chairman questioned whether there were any questions from either party.

Mr. Bowden responded no.

Mr. Chairman questioned whether Mr. Bowden would like to make an opening statement.

Mr. Bowden stated that the recommended order was issued by Judge Quattlebaum. Essentially Judge Quattlebaum found that there was a violation of one of the counts and there was not a violation of the other count. The final recommendation was a reprimand and a recommendation of an agreement of some sort between the Respondents and the Department for enforcement of some particular arrangements. It is the Respondent's position that based upon the record presented to the Board and the exceptions submitted to the recommended order, the Board is entirely within its authority and would properly dispose of this case with a dismissal. The Respondent is prepared to go through each of the exceptions. A total of 6 exceptions were submitted, the last one of which goes to the sanctions only.

Mr. Bowden questioned whether Mr. Chairman would prefer he address the exceptions now or as the Board considers each of the exceptions, the Respondent would make its position known at that time.

Ms. Deborah Louks questioned whether the Department filed any responses to the exceptions.

Ms. Elizabeth Teegen responded no.

Ms. Louks stated that it may be appropriate to allow Ms. Teegen to make any opening statements and each exception would need to be addressed individually to allow the Respondent the opportunity to make the argument, but since responses were not filed, the Department would not have any further input.

Mr. Bowden stated that he had nothing further for opening.

Ms Teegen stated that the Department did not file any exceptions to the recommended order. Ms Teegen added that she would like to reserve discussion of the penalty once at that point. Other than that, the Department does not have any exceptions to the recommended order.

Mr. Chaiman requested that Mr. Bowden present his arguments to the exceptions.

Mr. Bowden stated that the crux of this case was the Respondents were using a form that was known as a registration form. The form was basically something kept in house and was not sent out as part of a marketing plan. Whenever the Respondent was contacted about preneed services, their response was that they do not make preneed arrangements, as they were not licensed nor had they ever been licensed to provide preneed services. However, the suggestion was always made or often made to those that inquired of the Respondents that if they were interested in putting some information down with the Respondents, they could fill out registration forms. The registration form basically had the vital information of the individual that was inquiring and had some prices for cremation services. It is the Respondents' position and has been all along that these were not preneed contracts. The Department alleges that these were preneed contracts. There was no consideration passed. There was a registration of \$48 paid for each of the registration forms. However, that did not go to any funeral services, merchandise or anything that would be regarded as preneed arrangements. That was the position the Respondents took at the hearing.

Judge Quattlebaum considered one of the Respondents' defenses, which was equitable estoppel. The background to this is significant and probably the most persuasive position the Respondents have and would ask the Board to take up. In 2004, a couple of years or so before this matter was initiated, an investigator for the prior Agency that regulated preneed contracts met with Mr. Davis and retrieved copies of the registration forms. That investigator completed an investigation and ultimately completed an investigative report, which made a determination that the registration forms were not preneed contracts. This determination was made in writing as the investigator completed a report. The report specifically stated that the alleged violation was "unsubstantiated." The other quote from that 2004 report was "Horizon Funeral Home is not selling preneed arrangements without a license and Horizon Funeral Home is collecting a \$48 registration fee for customers who register their cremation wishes with Horizon. If so, Mr. Davis will guarantee today's price if the customer comes back." But again, that report ultimately determined in writing that the allegations of preneed contracting were unsubstantiated. The fact that Mr. Davis did not hear back from the Department after that investigation and the fact that the report made a determination that these were not preneed contracts 2 years before this case was ever brought up, gave the Respondents the impression that they had a very sustainable position that the Department should be estopped or prevented from now, on the same forms, pursuing disciplinary action against the Respondents. The law supports this position. The only factual exception was that the Respondents did not hear back and that report was not received by the Respondents. However, sworn testimony from the Department's investigators basically made it clear that if someone is investigated and they do not hear back on an investigation, it is safe for them to assume that there was no violation.

Mr. Bowden quoted a question proposed to Kurt Schuller, investigator for the Department:

"And if you had been the subject of an investigation like this and hadn't heard back, you would know that's because there was no violation."

Answer: "I would assume that, yes."

Mr. Bowden stated that the question posed to the investigator that did the 2004 investigation was

“But if he got no notice, if he got no notice that there was a violation, is it safe for him to assume that there was no violation?”

Answer: “Yes I would guess.”

Mr. Bowden stated that the case law on equitable estoppel states that you can rely on lack of response or an omission. Even if the Board does not deliver that report to Mr. Davis that states there are no violations, the fact that he does not hear back could be the basis for estoppel. Based upon the testimony of the Department's investigators, it is probably appropriate for these Respondents to believe there is no violation if they do not hear back.

Essentially, this goes to the first and second exception. The Administrative Law Judge (ALJ) made a determination that there was no equitable estoppel and that the facts and the law did not support it. The Respondents maintain with both exceptions that the facts and the law did support it.

Ms Loucks stated that the Board does not do recommended orders very often. On the first exception, the Respondents are excepting to the findings of fact that the ALJ included in paragraphs 12, 15, 40 and 41 of the recommended order. Basically, the Board needs to look at the findings of fact listed in those specific paragraphs and if the Board believes that the ALJ had competent and substantial evidence to make those findings, then the Board would have to reject this exception and leave the recommended order the way that it is. If the Board thinks that the findings of fact are not substantiated by competent and substantial evidence, the Board could accept the exceptions and then request that language be inserted. The conclusion of law and the equitable estoppel would have to be done separately. Ms Loucks asked that the Board review the specific paragraphs and make a motion based on its belief.

Mr. Bowden stated that in exception one, the specific factual determinations the Respondents filed exception to are: (1) the ALJ concluded that the 2004 complaint was not pursued; (2) regulators took no action against the Respondents; (3) there was no credible evidence presented that regulators affirmatively determined after the 2004 investigation that the registration form process did not violate statutes related to preneed contract sales.

Ms Loucks stated that if there are no questions or comments from the Board members, it would be appropriate at this time to make a motion to reject the exception that is being presented by the Respondents or accept the exception.

Mr. Baxley questioned whether the ALJ felt as though there was not a determination made as to whether these forms were legal or appropriate and the Department, by its lack of action, did make a determination.

Mr. Bowden stated not to the lack of action, but specifically there was a report that stated there were no violations.

Mr. Baxley questioned whether the report was generated by the examiner.

Mr. Bowden responded correct.

Ms Loucks stated that the Board is limited to the record that was presented and the findings of the ALJ. The Board is not allowed to reweigh the evidence or the testimony. Basically, the Board must review the paragraph in the findings of fact and determine whether there was evidence to support the findings, the

Board really does not have much discretion to overturn it. If the Board agrees with the arguments that were made in this exception, the Board could accept the exception, but would have to point to things specifically in the record that would support making that finding.

Mr. Chaiman stated that the exceptions being argued are contained in the August 10, 2007 letter from Mr. Bowden.

Mr. Jones questioned whether each exception would be taken one at a time or whether the Board would go through all the exceptions, hear both parties and address them at that point. Mr. Jones questioned the procedure.

Ms. Louks stated that there recently was a change in 12Q.F.S., so procedurally it is better to take each exception individually to ensure that they have all been addressed.

1st EXCEPTION MOTION: Ms. Thomas-Dewitt moved to deny the exception. Mr. Baxley seconded the motion, which passed unanimously.

Ms. Bowden stated that the 2nd exception is more to the legal aspect of it. Even if the Board does not take action on the exception as to the factual findings made by the ALJ, it is clear on the record that this 2004 investigation took place and there was determination made by the investigator that these were not preneed contracts. It is clear from the record that the Respondents relied on not hearing anything more on that 2004 investigation in their continued use of these forms. This is more of a legal argument on the 2nd exception. An Agency can be equitably stopped even when there is not an affirmative representation. This is an attached representation and the Respondents relied upon the fact that there was nothing further heard after that 2004 investigation.

Ms. Louks stated that this is more to the conclusions of law. This Board only has the authority to modify conclusions of law that the Board has substantive jurisdiction over. The equitable estoppel argument is a legal argument that does not fall within this Board's substantive jurisdiction. Mr. Bowden needs to make this exception in the event he wants to appeal this order so that it is preserved for any future appeal. Equitable estoppel is not within this Board's substantive jurisdiction so the Board does not have the authority to accept this exception.

2nd EXCEPTION MOTION: Mr. Jones moved to deny the exception. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

Mr. Bowden stated that regarding the 3rd exception, the ALJ concluded that the registration form clearly constituted a preneed contract. Furthermore, the ALJ concluded that the Respondents sold preneed contracts without proper certification and by engaging in such sale of preneed service contracts, the Respondents violated the applicable statutes. It is clear that the Respondents did not sell any preneed merchandise or services of any kind. The Respondents accepted \$48 fee. The record reflects that \$48 was essentially for overhead and maintenance of the over 400 files. It is clear this was not an actual sale but a unilateral obligation. The customers were not obligated to use the Respondents for the services set forth in the forms. Whenever the need arose for any of these cases, an at-need contract was executed in each and everyone of them.

Ms. Louks stated that this is an exception addressed toward the conclusions of law. In this particular case, the Board does have substantive jurisdiction because it is asking that the Board interpret its preneed contract statutes. The Board needs to look at the paragraphs that the Respondents have taken

exception to and if you believe that the ALJ has accurately interpreted the statute, the appropriate motion would be to deny the exception. If the Board feels that the ALJ has misinterpreted the statute, the appropriate motion would be to accept the exception and then the language would have to be changed to make the findings in the recommended order comply with your interpretation of the statutes.

Mr. Bowden stated that this is interpreted under the pre 2005 statutes. All of these cases were prior to the October 1, 2005 change. Prior to that statutory change, the only prohibited action with regard to a preneed contract was the sale of a preneed contract. The language now is broader and prohibits advertising or offering such a thing. There was no sale with the record presented to the Board because none of the services were paid for until at-need arose and an at-need contract was executed.

3^d EXCEPTION MOTION: Mr. Baxley moved to deny the exception. Mr. Helm seconded the motion, which passed unanimously.

Mr. Bowden stated that the 4th exception is a legal argument on different grounds. The fact that the statute changed effective October 1, 2005 and advertising a sale or making an arrangement for was not a prohibited act prior to the change in statutory language. There is a due process argument here as well. The fact that the Respondents were aware that prior statute only prohibited actual sale of preneed contracts proves that the evidence is insufficient to support this proposed finding.

Ms. Loucks questioned whether the basis for the denial of the previous exception was that the ALJ appropriately interpreted the statutes.

Mr. Baxley responded yes.

Mr. Chairman questioned whether the Board should readress the motion.

Ms. Loucks stated that the vote could be reconsidered with the grounds for denial.

Mr. Chairman reconsidered the vote with the grounds for denial. The motion passed unanimously.

Mr. Baxley questioned whether there is any reason this Board would not have the authority to address the 4th exception.

Ms. Loucks stated that the Board could address the 4th exception. The Board does not have authority to address whether or not that statute needs to go back. Mr. Bowden's comments could be addressed to the extent of the change in statute.

Mr. Bowden stated that the Respondents are asking the Board to interpret the statute that is one the Board has authority to enforce. The Respondents are arguing that prior to October 1, 2005 even if what you are dealing with is a preneed contract, the only prohibited act is the sale of a preneed contract. Now the scope has been broadened of that statute. Given what is in the record, if there is no evidence that there was an actual sale of a preneed contract under that 2005 statute, then that is the only violation. The Board could make a determination based on the law that there was no violation given the record and those facts.

Mr. Baxley questioned whether the Board would be making a determination as to whether use of this registration form constitutes a preneed contract. The Board would be stating whether or not the ALJ was correct in his opinion.

Ms Louks stated that the ALJ based on his conduct of the hearing, taking the testimony from the witnesses, the exhibits and the arguments of the parties, made a finding that the form did constitute a preneed contract. This Board need to look at the finding. If the Board is in disagreement with the ALJ then the Board would have to accept the exception and replace it with other language that you would think is more appropriate.

Mr. Bowden stated that the 3rd exception was already a determination that this was a preneed contract. This exception deals with the act or use of that preneed contract.

4th EXCEPTION MOTION: Ms Tracy Huggins moved to deny the exception based on the ALJ's recommendation. Ms Thomas-DeWitt seconded the motion, which passed unanimously.

Mr. Bowden stated that regarding the 5th exception, the ALJ made a determination that the Probable Cause Panel did properly consider these issues and alleged violations. This case went to the Probable Cause Panel under the post 2005 statutes. The conversations dealt with the post 2005 statutes. Ultimately probable cause was found under the post 2005 statute. Additionally, the statutes for probable cause meetings states if there is a written complaint, the Respondent gets an opportunity to respond to that complaint in writing before the Panel considers the issues. The record clearly shows that the Respondents were given no such opportunity. The Probable Cause Panel was commenced with very little notice and zero notice to the Respondents.

Ms Louks stated that Mr. Bowden is correct. This exception is more a finding of fact. There was testimony presented in the record regarding the Probable Cause Panel. The Board would need to review this exception in the light of whether there was competent substantial evidence to support the finding made by the ALJ.

5th EXCEPTION MOTION: Mr. Helm moved to deny the exception based on the ground that there was competent and substantial evidence. Ms Huggins seconded the motion, which passed unanimously.

Ms Louks questioned whether the 6th exception is solely to the penalty.

Mr. Bowden responded correct.

Ms Louks questioned whether Mr. Bowden would have any objection to Ms Teegen addressing the Board in regard to the penalty.

Mr. Bowden responded no. Judge Quattlebaum suggested that you should additionally require that the Respondents execute a document to be prepared by the Department that specifically obligates the Respondents to provide each of the people on these registration forms with the services on these registration forms. The Respondents maintain that there is no such authority in the administrative code or in the statute to allow the Board to impose this. The Respondent suggests that the reprimand is the only sanction the Board could impose.

Ms Teegen stated that Chapter 497 does not appear to include as a disciplinary option the language the ALJ included in the recommended.

Ms Louks stated that the Board could accept the exception to eliminate the document suggested by the ALJ. The basis for eliminating that letter would be there is no statutory authority for the Board to require that penalty.

EXCEPTION MOTION: Mr. Jones moved to accept the exception to leave the reprimand and a 60-day penalty. Ms. Hubbell seconded the motion, which passed unanimously.

Ms. Loucks stated that the Board would need to make a motion to adopt the findings of fact as set forth in the recommended order.

MOTION: Ms. Thomas-DeWitt moved to adopt the findings of fact as set forth in the recommended order. Mr. Jones seconded the motion, which passed unanimously.

Ms. Loucks stated that the Board would need to make a motion to adopt the conclusions of law as set forth in the recommended order.

MOTION: Mr. Helm moved to adopt the conclusions of law as set forth in the recommended order. Ms. Thomas-DeWitt seconded the motion, which passed unanimously.

Ms. Loucks stated that the Board would need to make a motion to impose the penalty as modified by Exception 6 for a reprimand only.

MOTION: Ms. Thomas-DeWitt moved to impose the penalty as modified by Exception 6 for a reprimand only. Mr. Jones seconded the motion, which passed unanimously.

***B. Derryck Richardson, FDIC, DFS Case No. 83400-05-FC
Richardson Family Funeral, DFS Case No. 83399-05-FC***

Ms. Mary K. Surles stated that Probable Cause was found in this case for violations of Section 497.152.(1)(a), F.S. and Rule 69K-21.007(3), FAC, for the funeral director in charge failing to ensure proper renewal of the funeral establishment's biennially license.

Derryck Richardson is a licensed funeral director in charge for Richardson Family Funeral Care, a licensed funeral establishment which operated with an expired or delinquent license between the period of November 30, 2004 and until August 24, 2005 (9 months). Responsibilities of a funeral director in charge are set forth in Rule 69K-21.007, FAC, and states in part, "Each full-time funeral director in charge shall be responsible for making sure the funeral establishment and all persons employed in the establishment comply with all applicable laws and rules." On May 24, 2005, Respondent wrote a check in the amount of \$555.00 for Richardson Family Funeral Care's biennially license renewal that was drawn on a closed bank account and returned for non-payment to the Dept. On August 24, 2005, Respondent paid the license fee and the non-sufficient fee.

In lieu of filing an Administrative Complaint against Respondent, the Respondent was offered a Settlement Stipulation for Consent Order which has been accepted and is being presented before you today. Should you wish not to accept the Settlement Stipulation then an Administrative Complaint will be filed against the Respondent in this matter. The Department recommends in case #83400-05a Reprimand and an Administrative Fine of \$8000 and in case #83399-05 the Department recommends a Reprimand and an Administrative Fine of \$8000.

Mr. Chairman pointed out that on the 2nd page of the Consent Order, at the bottom, in charge should be removed as there is no such thing as a FDIC license.

Mr. Baxley questioned whether the Department is certain that the licensee is up to date on all other renewals.

Ms Surles stated that to the Department's knowledge they are.

Mr. Brandenburg questioned whether Mr. Richardson's new funeral director license been renewed.

Ms Marr responded yes.

MOTION (83400-05-FC): Mr. Helm moved to accept the order. Mr. Jones seconded the motion, which passed unanimously.

MOTION (83399-05-FC): Ms Nancy Hubbell moved to accept the order. Ms Huggins seconded the motion, which passed unanimously.

C. Leroy Sims, Jr., FDIC, DFS Case Nos 89844-06FC, 89845-06FC,

Ms Surles stated that Probable cause was found in both cases for violations of the Act. Respondent failed to: (a) submit reports by the 20th day of each month for final dispositions handled the preceding month which also contain the method of disposal, name, location, and license number of crematorium facility, when the method of disposal was by cremation; (b) Respondent failed to make full disclosure in the case of funeral or direct disposition with regard to the use of funeral merchandise that is not to be disposed of with the body or obtain written permission from the purchaser regarding disposition of such merchandise, and (c) Respondent committed fraud, deceit, negligence, incompetence, or misconduct in the practice of any activities regulated under Chapter 497.

The Respondent, Leroy Sims, Jr. was the funeral director in charge for Serenity Memorial Funeral and Cremation Services Inc., (hereinafter "Serenity") which was a licensed funeral establishment during the periods of time the violations occurred involving these cases. As the funeral director in charge, the Respondent is responsible for making sure the funeral establishment and all persons employed in the establishment comply with all applicable laws and rules.

In the matter of case #89844-06FC, Rose Evans, daughter of Ms Mattie Crowell, authorized the release of her mother's body to Serenity for funeral arrangements on or about November 8, 2005. Ms Mattie Crowell had a pre-arranged funeral agreement with Burton's Funeral Home located in Tuskegee, Alabama. Serenity received proceeds from this pre-funded funeral arrangement with Burton's Funeral Home and received funds contributed by members of Mattie Crowell's church.

As the funeral director in charge, Respondent signed Serenity's statement of funeral goods and services contract that was provided to Rose Evans, for Ms Mattie Crowell's funeral arrangements which included, but were not limited to, embalming, viewing, casket, airfare, air tray, and cremation. On or about November 14, the contract was changed by Serenity to a cremation locally and included a price for a casket. On November 17, 2005, the body of Mattie Crowell was cremated; however, no casket was incinerated with the body of Mattie Crowell.

Final disposition reports for Serenity were not submitted by the 20th day for final dispositions handled in the months of September and October and the Department did not receive an accurate report from Serenity that contained the method of disposal, name, location, and license number of crematorium facility when the method of disposal was by cremation for the month of November 2005.

In the matter of case #8945-06FC, Ms Cora B Fordham received a final judgment against Leroy Sims, Jr., the Respondent, Leon Thomas, and Serenity Memorial Funeral Home in the amount of \$100000 from the overpayment of proceeds received for the burial of Tikeisha Moore. Mr. Leon Thomas on behalf of Serenity admitted to the receipt of the overpayment, however, Serenity has failed to return any amount of the overpayment to Mrs Cora Fordham.

In lieu of filing an Administrative Complaint against Respondent, the Respondent was offered a Settlement Stipulation for Consent Order which has been accepted and is being presented for the Board's consideration today. Should you wish not to accept the Settlement Stipulation then an Administrative Complaint will be filed against the Respondent in this matter.

The Department recommends Reprimand, 1 year Probation, 3 hours of Continuing Education, pay an Administrative Fine of \$10000 and pay Restitution in the amount of \$10000 to Cora Fordham. Respondent shall pay \$1000 per month toward the Restitution amount during the period of Probation.

Mr. Jones questioned how would the probation work,

Ms Surles stated that the probation would run consecutively.

Mr. Leroy Sims stated that he received a letter dated September 11, 2007 that talks about cases. According to the letter of recommendation, a revised settlement stipulation, Mr. Sims assumed that the cases would be combined. According to the letter, Mr. Sims would be placed on probation for 2 years, complete 9 hours of continuing education, pay fine of \$3500 and pay reimbursement fees of \$200 for restitution totaling \$2,84630.

Ms Surles stated that the letter basically does include all 4 cases presented today and is the totality of the discipline that is being provided in all 4 cases to resolve the matter.

Mr. Chairman questioned whether Mr. Sims understand what Ms Surles explained.

Mr. Sims responded yes, but the Board is considering 2 or 3 separate cases and the letter combines all the cases with a different end result.

Mr. Chairman responded that the end result would be the same if approved.

Mr. Sims stated that he is concerned that the Board is considering 2 separate cases with different end results than what is specified in the letter.

Ms Surles stated that Mr. Sims was provided and he executed the stipulation for consent order to the specific terms as presented to the Board. The letter consolidated all the cases and the totality of the entire discipline.

MOTION: Ms Thomas-DeWitt moved to accept the order. Mr. Baxley seconded the motion, which passed unanimously.

Leroy Sims, Jr., FDIC, DFS Case Nos 8943-06FC, 91358-07-FC

Ms Surles stated that Probable cause was found in both cases for violations of the Act. Respondent: (a) failed to furnish to each purchaser of burial or funeral merchandise or services a written agreement that lists in detail the items and services purchased together with the prices for the items and services purchased; (b) failed to have any licensee responsible for removal of dead human remains to ensure that the remains are identified by a tag or other means of identification that is affixed to the ankle or wrist of the deceased; (c) failed to make full disclosure in the case of funeral or direct disposition with regard to the use of funeral merchandise that is not to be disposed of with the body or obtain written permission from the purchaser regarding disposition of such merchandise; (d) failed to ensure all individuals not licensed under Chapter 497 who intend to be involved in the removal or transportation of human remains on behalf of a funeral establishment, complete one course approved by the licensing authority on communicable diseases; (e) committed fraud, deceit, negligence, incompetence, or misconduct in the practice of any activities regulated under Chapter 497; (f) failing to adopt and implement standards for the proper investigation of claims; failing to acknowledge and act promptly upon communications with respect to claims, and failing to affirm or deny coverage of a claim upon written request of a contract within a reasonable time.

In addition, Respondent has agreed to resolve alleged violations of Sections 497.152(1)(b) and 497.445(5)(c), Florida Statutes, as found in case number 91358-07-FC.

The Respondent, Leroy Sims, Jr. was the funeral director in charge for Serenity Memorial Funeral and Cremation Services Inc., (hereinafter "Serenity") which was a licensed funeral establishment during the periods of time the violations occurred involving these cases

In the matter of case #89843-06-FC, pursuant to a complaint received on March 9, 2006 the Department's investigator conducted an inspection of Serenity Memorial Funeral Home and Cremation Services ("Serenity"). On November 8, 2005, Nathaniel Walters passed away. On November 17, 2005, Howard Simmons passed away.

The investigator discovered that Mr. Andra Walters received two containers of cremains, both purported to contain the remains of his father, Nathaniel Walters. Upon further investigation, it was determined that two crematories had records of cremation for Mr. Walters. Neither body that was delivered by Serenity to either crematory had an identification tag on it at the time of delivery. The funeral services for both contracts listed the purchase of caskets assigned by Serenity's funeral director in charge, Mr. Leroy Sims, Jr. In fact, these caskets were not disposed of with the bodies and no written permission was obtained from either family to deviate from the contract. It was also determined that Mr. Walters was never given a copy of the services agreement for his father's cremation. The inspector also determined that two of the employees was not licensed by the Department, and had not completed a course in communicable diseases as required by Florida Statutes and Department Rules.

In the matter of case #91358-07-FC, on October 21, 2005 a complaint was received from Calvary Catholic Cemetery alleging that Serenity Memorial Funeral Home did not pay \$1,84630 owed to Calvary Catholic Cemetery for a grave space and opening and closing for Ms Caroline Youngblood's deceased son, Antonio Mackero who died on August 3, 2005. Mrs Youngblood completed an assignment of proceeds of insurance on August 3, 2005 which assigned the total amount of proceeds of \$5,00000 from the United Insurance Company of America policy to Serenity. Also, on the 3rd of August, Mrs Youngblood executed an irrevocable assignment between herself, as Beneficiary, and the Funeral Home and Funeral Director, in which the Funeral Home and its Funeral Director and Owner then irrevocably reassigned to "The Funeral Funding Center, Inc."

On August 11, 2005, Serenity Memorial Funeral Home issued check number 1044 made payable to Calvary Catholic Cemetery in the amount of \$1,84630 for Antonio Mackeroy as reflected on the face of the check.

On August 22, 2005, United Insurance Company of America issued a check made payable to Funeral Funding Center, Inc. in the amount of \$5,008.75.

On or about August 29, 2005, a direct deposit was made to Serenity from Funeral Funding Center pursuant to the funeral home irrevocable reassignment form executed by Leon Thomas, Sr. on behalf of Serenity.

On September 9, 2005, SunTrust Bank notified Calvary Catholic Cemetery that check number 1044 was returned unpaid to SunTrust for Insufficient Funds.

In letter dated April 7, 2006 Mr. Leon Thomas, on behalf of Serenity, agreed to the allegations in the complaint. Serenity has failed to pay or make restitution to Calvary Catholic Cemetery for the unpaid check issued by Serenity in the amount of \$1,84630.

In lieu of filing an Administrative Complaint against Respondent, the Respondent was offered a Settlement Stipulation for Consent Order which has been accepted and is being presented here before you today. Should you wish not to accept the Settlement Stipulation then an Administrative Complaint will be filed against the Respondent.

The Department recommends six (6) months Suspension followed by 1 year Probation that is to run consecutive to Probation required in the Consent Order for cases 89844-06FC and 89845-06FC; Complete 6 hours of Continuing Education that is in addition to the 3 hours required in the Consent Order for cases 89844-06FC and 89845-06FC; pay an Administrative Fine in the amount of \$2,500.00 and pay Restitution in the amount of \$1,84630 to Calvary Catholic Cemetery. Respondent shall pay \$10000 per month toward the Restitution amount which shall begin within 60 days from the date of entry of the Consent Order issued in this case.

Ms. Thomas-DeWitt questioned whether that included taking the exam or just completing a course.

Ms. Surles responded that he must take and pass the Florida Laws and Rules examination at his own expense.

Mr. Baxley questioned whether there was any resolution on the mixup of the cremated remains.

Ms. Surles stated that there has been no determination as to which set of cremains is his father's.

Mr. Baxley questioned whether there was any civil suit pending.

Ms. Surles responded that she was not aware of one at this time.

Mr. Baxley questioned whether Mr. Simson owns the funeral home.

Mr. Simson responded no.

Mr. Baxley questioned whether the Administrative Complaint would be filed against the FDIC or would it be possible to take action against the establishment, if the Board did not accept the Consent Order.

Ms Surles stated that the establishment is closed. Previously at the August Board meeting, there were 2 final default orders issued for revocation of Serenity.

Ms Thomas-DeWitt stated that the establishment closed in St Petersburg but they reopened in Crystal River. Ms Thomas-DeWitt questioned whether it would be possible to pursue him at the Crystal River location.

Ms Surles stated that he temporarily resided in Crystal River. There is not a Serenity open where Mr. Thomas is the owner of the establishment.

Ms Thomas-DeWitt questioned whether the Department has investigated that.

Ms Surles stated the investigator assured that there was no business being conducted in Crystal River. Ms Surles advised that she would investigate further if the Board would like.

Ms Thomas-DeWitt asked that Ms Surles investigate further.

Ms Surles questioned whether this is under Serenity or a different name, perhaps New Serenity.

Ms Thomas-DeWitt stated possibly New Serenity.

Ms Surles stated that Mr. Thomas does not own that facility. These cases dealt with Serenity Memorial Funeral Services and Cremation, which is a different entity.

Ms Thomas-DeWitt questioned whether the Department researched both locations to ensure that this was not just a name change with the same owner.

Ms Surles stated that New Serenity has filed an application for funeral establishment and is not the same entity as the funeral establishment presented in these cases.

Ms Thomas-DeWitt questioned whether Leon Thomas is associated with the Crystal River location.

Ms Surles stated that in reviewing the application for New Serenity, Mr. Thomas is represented as the chaplain for that funeral establishment, but he is not listed as the owner. Mr. Thomas is not licensed.

Ms Thomas-DeWitt questioned whether Mr. Sim is FDIC at the location in Crystal River.

Mr. Sims responded no.

MOTION: Ms Huggins moved to accept the order. Mr. Baxley seconded the motion, which passed unanimously.

D. Premier Funeral Services & Cremations Inc., DFS Case No. 85919-07-FC

Ms Teegen stated that there was an inspection by the Department in December 2005. There were several deficiencies noted, in that inspection, relating to no prices being displayed for the casket, the funeral

director did not have his photo displayed on the wall and there was a finding that the FDIC was actually the FDIC at 2 locations. Probable Cause was found against Premier Funeral Services and Cremations, Inc. and an Administrative Complaint was filed. The licensee requested a formal hearing, but it is being presented to the Board today as a settlement stipulation. Premier signed the settlement stipulation consent order. The discipline being recommended by the Department is an administrative fine of \$250.

Mr. Baxley questioned whether there has been previous discipline against this licensee.

Ms Teegen stated that she was unsure. Premier is represented by counsel who is not here today. Counsel asserts that the 2 locations for which Mr. Knapik was listed as the FDIC are actually the same location. Treasure Coast Crematory is just a d/b/a. The crematory is actually located at the funeral home. Premier indicated that they were directed by Department to apply and pay for 2 different licenses for the crematory and the funeral home, but they are co-located.

Mr. Chairman stated that the Board could accept, modify or reject the settlement stipulation.

Ms Loucks stated if the Board wants to modify the stipulation, it should reject this stipulation and put together a counter offer since the other party is not present. It could be presented in the form of an order. If they accept the terms of that order, a final order would be issued. If they did not accept the terms of the counter offer, then it would go back to the administrative complaint and then they could proceed with the formal hearing.

MOTION: Col. Ballas moved to accept the order. Mr. Jones seconded the motion, which passed with one dissenting vote.

E Sara Lynn Fredericks Collision Family Funeral Home & Crematory, DFS Case No. 89175-07-FC

Ms Teegen stated that this case arose when the Department conducted a routine inspection of the facility where Ms Fredericks was employed. It was determined that her temporary license as a funeral director was expired and that there had been 2 contracts executed during the period of expiration. Ms Fredericks qualified for a temporary license in November 2005. The license is considered to be good for 60 days. There are rules on the book that state that the license is in effect until 60 days after the date of the next exam. That rule also states that the exam is to be given in January and July, which is an outdated rule. Exams are now given on demand. Ms Fredericks did not realize that her temporary license had expired. The Department came in during an inspection a couple of months later and found these contracts that had been executed after her license expired. Ms Fredericks was advised of this and she went back to Department and got another temporary license that was also good for 60 days. During that 60 day period, Ms Fredericks took the July Florida Laws and Rules exam and passed it. Since then, Ms Fredericks has received her permanent license. Ms Fredericks has asked for an informal hearing on this case. Probable Cause was found for the contracts that were executed while the license was expired. The informal hearing has been abated pending approval of this settlement agreement. The recommended discipline at this point by the Department is a letter of reprimand regarding the violations cited in the administrative complaint.

MOTION: Ms Thomas-DeWitt moved to accept the order. Ms Hubbell seconded the motion, which passed unanimously.

DISCUSSION: Ms Huggins questioned whether there was any discipline against the location, the establishment and the FDIC for having a non licensed funeral director.

Ms Teegeen stated that probable cause was not found against them.

Ms Huggins stated that it appears to be a violation of 69K-21.007, F.S.

Ms Teegeen stated that the Department would look into this

**F. *Sonji Coney Ford, FDIC, DFS Case No. 83397-05-FC
Coney Brothers Funeral Home***

Ms Surles stated that the Administrative Complaint in this case alleges violations of the Act for: failing to renew a funeral establishment license biennially; failing to assure that the funeral establishment and its employees comply with all applicable rules and laws, and for failing to have the price of any casket offered for sale clearly marked on or in the casket.

The circumstances of this case are: Sonji Coney Ford is a licensed funeral director in charge of Coney Brothers Funeral Home. A routine inspection was conducted on March 15, 2005 which found the funeral establishment had been operating with an expired or delinquent license since November 4, 2004. During the inspection it was found that casket prices were not properly marked.

An Administrative Complaint was filed against the Respondent on June 14, 2007, and a Settlement Stipulation for Consent Order has been accepted by the Respondent for the Board's consideration to resolve this matter.

The Department recommends a Reprimand and an Administrative Fine of \$1000.00

MOTION: Ms Huggins moved to accept the order. Mr. Helm seconded the motion, which passed unanimously.

V. *Application(s) for Funeral Establishment*

A. *Recommended for Approval*

1. *McKinney-Watkins Funeral Home (Jacksonville)*

Ms Marr stated that the application was submitted on August 13, 2007. The fingerprint cards for all principals were submitted and returned without criminal history. The Funeral Establishment passed its inspection on September 24, 2007.

Mr. Helm questioned whether there was an agreement on refrigeration.

MOTION: Col. Ballas moved to approve the application; license issuance contingent upon receipt of refrigeration agreement. Mr. Baxley seconded the motion, which passed unanimously.

2. *Muller-Thompson Funeral Chapel (Naples)*

Ms Marr stated that the application was submitted on May 24, 2007. The application was incomplete when submitted and a deficiency letter was sent. All deficient items were completed on September 21, 2007. The fingerprint cards for all principals were submitted and returned without criminal history. The Funeral Establishment passed its inspection on September 25, 2007.

MOTION: Col. Ballas moved to approve the application. Mr. Helm seconded the motion, which passed unanimously.

3. Nassau Funeral Home (Callahan)

Ms Marr stated that the application was submitted on June 22, 2007. The application was incomplete when submitted and a deficiency letter was sent. All deficient items were completed on September 20, 2007. The fingerprint cards for all principals were submitted and returned without criminal history. The Funeral Establishment passed its inspection on September 24, 2007.

MOTION: Col. Ballas moved to approve the application. Mr. Baxley seconded the motion, which passed unanimously.

4 Neptune Management Corp d/b/a Neptune Society (Kissimmee)

Ms Marr stated that the application was submitted on August 17, 2007. The application was complete when submitted and the fingerprint cards for all principals were submitted and returned without criminal history. The Funeral Establishment passed its inspection on August 30, 2007.

MOTION: Mr. Jones moved to approve the application. Col. Ballas seconded the motion, which passed unanimously.

5. Professional Funeral Services of Northwest Florida d/b/a Davis Watkins Funeral Home and Crematory (Defuniak Springs)

Ms Marr stated that the application was submitted on September 7, 2007. The application was complete when submitted and the fingerprint cards for all principals were submitted and returned without criminal history. The Funeral Establishment is scheduled for its inspection on October 1, 2007.

MOTION: Col. Ballas moved to approve the application. Ms Thomas-DeWitt seconded the motion, which passed unanimously.

VI. Application(s) for Removal Service

A. Recommended for Approval

1. Executive Removal Service Inc (Wilton Manor)

Ms Marr stated that the application was submitted on July 23, 2007. A background check was completed and no criminal history was found. The Removal Service passed its inspection on September 13, 2007.

Staff is recommending approval of the application.

MOTION: Col. Ballas moved to approve the application. Ms Huggins seconded the motion, which passed unanimously.

2. Professional Removals of South Florida (Miami)

Ms Marr stated that the application was submitted on August 7, 2007. The fingerprint card for the principal was submitted and returned without criminal history. The Removal Service is scheduled for an inspection on October 1, 2007.

MOTION: Mr. Helm moved to approve the application. Ms Huggins seconded the motion, which passed unanimously.

VII. Application(s) for Preneed Sales Agent

A. Recommended for Approval - See Addendum A

Ms Marr presented the applicants for approval.

Ms Huggins disclosed her affiliation with The Simplicity Plan.

Mr. Chaim and disclosed his affiliation with SCI Funeral Services of Florida, Inc.

MOTION: Ms Thomas-DeWitt moved to approve the remaining applications. Mr. Helm seconded the motion, which passed unanimously.

B. Recommended for Consideration

1. Arnold, Bruce (Appointing Entity: Naples Memorial Gardens, Inc)

Ms Marr stated that on the application received by the Department on August 6 2007, the applicant incorrectly answered "No" to Applicant Background Question #4 "Has the PSA applicant ever been convicted or entered a plea in the nature of no contest, (a) regardless of whether adjudication was entered or withheld by the court in which the case was prosecuted, and (b) regardless of whether the criminal conduct occurred inside or outside the state of Florida, and (c) regardless of whether the criminal prosecution occurred in a Florida state court or the courts of another state, the United States, or foreign country, of or to any of the following crimes (3) Any other crime, whether a misdemeanor or felony, committed within the 5 years immediately preceding the date of this on-line application?" On the application the applicant did disclose his criminal background. However, the representative for the appointing entity incorrectly selected "No" to all questions in section 4 of the application.

The applicant has submitted documentation in response to Applicant Background Questions as follows

Case #: 99-1145-CFA-WLD, County Court, Collier County, FL
June 3, 1999
Offense: Drug Possession/Resisting officer with violence, Felony
December 28, 1999
Pled: Adjudication Withheld
Sentence: One year state probation, 40 hours community service, Random drug test and Court Costs
Disposition: Probation completed on August 7, 2000

Mr. Bruce Arnold stated that he moved to Naples and was sober for approximately 7 years and was working for Lexus in Naples. Mr. Arnold had to have surgery and the providing care physician was going to take a month and a half to operate. Mr. Arnold was on pain medication from the time he was diagnosed to the time the surgery occurred, so Mr. Arnold became re-addicted to pain medication. On the night in question, the applicant was pulled over and was arrested for possession of cocaine. The violence was not really so violent. It was a matter of one officer saying empty your pockets and the other saying do not go into your pockets. The event was really unfortunate. Since then, Mr. Arnold has been back in AA and has provided a letter from United Way Big Brother Big Sister. From the time that Mr. Arnold

was in AA since 1993, he started a young offenders group in his town, work United Way Big Brother Big Sister, started an underage consumption alcohol course at the University. This was all disclosed in the application and his employer was apprised of this when he was hired.

Mr. Helm questioned how someone might mistakenly answer no.

Ms. Corinne Olvey stated that she submits all the applications online. Mr. Arnold wrote in on the application the cocaine incident, but he also circled no. Ms. Olvey did not notice that he had written in the criminal charge, so she circled no on the online application. Ms. Olvey admits this was her error.

MOTION: Mr. Jones moved to approve the application. Col. Ballas seconded the motion, which passed unanimously.

VIII. Application(s) for Preneed License Branch

A. Recommended for Approval

1. A B Coleman Mortuary, Inc d/b/a Holmes Funeral Directors Inc (Jacksonville)

Ms. Marr presented the application.

MOTION: Mr. Baxley moved to approve the application. Ms. Thomas-DeWitt seconded the motion, which passed unanimously.

*****BREAK: 11:45a – 12:00p*****

IX. Application(s) for Monument Establishment Builder

A. Helm Vault Service Inc (Bradenton)

Ms. Marr stated that the Department received the application on August 15, 2007. A deficiency letter was sent by the Department on September 7, 2007. Applicant responded to all deficiencies by September 28, 2007. Fingerprint cards were received by the Department and a completed background check revealed no criminal history.

The Applicant's financial statements as of June 30, 2007 reflect the following:

Reported Net Worth = \$ 333,966

Applicant's Monument Retail Sales Agreement was approved by the Board on April 11, 2007.

MOTION: Mr. Baxley moved to approve the application. Col. Ballas seconded the motion, which passed unanimously.

X. Application(s) for Florida Laws and Rules Examination

A. Recommended for Approval - Addendum B

1. Funeral Director and Embalmer- Internship

a. Boyd-Elliott, Mary L

b. Comas, Monica

c. Kimbrough, Kimberly

2. Funeral Director and Embalmer- Endorsement

- a. *Hayes, James V*
- b. *Whyte, Michael C*

M s Marr presented the Applicant(s) for the Florida Laws and Rules Exam .

MOTION: Mr. Jones moved to approve the application(s). Col. Ballas seconded the motion, which passed unanimously.

B. Recommended for Consideration

1. Johnson, Melanie K

M s Marr stated that the application was received on August 13, 2007. The application was complete; therefore no deficiency letter was needed. The Department received four satisfactory quarterly reports on Intern Training, from her supervisor, Samuel Odom . The fourth quarter report, received on August 31, 2007 was rescinded and replaced with a new report that was received on October 1, 2007. Mr. Odom , FDIC, also attached a letter addressing incidents that occurred during her internship. Mr. Odom stated his concern that M s Johnson lack good character and trustworthiness in business and professional matters as required in Section 497.373(1)(c), F. S.

Mr. Baxley stated that it is interesting that the original 4th quarter report was satisfactory and then it was not.

MOTION: Mr. Jones moved to approve the application. Col. Ballas seconded the motion, which passed unanimously.

2. Webster, Norman E

M s Marr stated that Mr. Webster initially made an application for a Funeral Director/Embalmer by Endorsement License on August 1, 2006 and his application appeared before the board for consideration on February 7, 2007. The board requested Mr. Webster withdraw his application because he did not meet the education requirements. Mr. Webster has since went back to school and obtained his Associate of Applied Science Degree as of September 21, 2007.

The application was received on September 12, 2007. The application was complete and a deficiency letter was not sent. The applicant answered "Yes" to Section 11, in Criminal History Questions - "Have you, the applicant herein, ever plead guilty, been convicted, or entered a plea in the nature of no contest, regardless of whether adjudication was entered or withheld by the court in which the case was prosecuted, in the courts of Florida or another state or the United States or a foreign country, regarding any crime indicated below."

Date: 1997
 Location: Kentucky
 Case #: 98-105
 Offense: Mail Fraud
 Pled: Guilty
 Sentence: 4 months home detention; 2 years probation (reduced to 1 year); \$20,000 restitution; \$100 assessment fine
 Disposition: Guilty

The applicant also answered "Yes" to Section 10, Adverse Licensing History Questions (a) - Have you ever had any license to practice embalming, funeral directing, direct disposing, or any other regulated profession, revoked, suspended, fined, reprimanded, or otherwise disciplined, by any regulatory authority in Florida or any other state or jurisdiction?

In April of 2001 the applicant's Kentucky Funeral Director and Embalmer license was revoked because of failure to pay a fine of \$5000

In July of 2001, the Indiana Professional Licensing Agency placed the applicant's Funeral Director license under probation for a year for failure to inform the board that he had a felony conviction.

Mr. Norman Webster stated that in February, the Board advised him to get additional education, which he has accomplished.

Ms Thomas-DeWitt questioned whether the applicant falls under endorsement or whether he should be applying as a new applicant not being licensed previously.

Ms Louks questioned the status of 2 licenses that Mr. Webster currently holds

Mr. Webster stated that his license is active in Indiana and the Kentucky license has been revoked since he refused to pay the \$5000 fine.

Ms Louks questioned whether the Indiana license is on probation.

Mr. Webster responded no.

Ms Louks stated if Mr. Webster has a clear and active license in another jurisdiction then he could use the endorsement route.

MOTION: Mr. Jones moved to approve the application. Ms Hubbell seconded the motion, which passed unanimously.

- XI. Application(s) for Internship**
 - A. Funeral Director and Embalmer**
 - 1. Cheryl Eline**
 - B. Funeral Director**
 - 1. Jannasch, Elissa A**

Ms Marr presented the Application(s) for Internship

MOTION: Ms Thomas-DeWitt moved to approve the application(s). Col. Ballas seconded the motion, which passed unanimously.

- XII. Application(s) for Embalmer Apprentice**
 - A. Recommended for Approval**
 - 1. Campbell, Michael C**

Ms Marr presented the Application(s) for Embalmer Apprentice.

MOTION: Ms Thomas-DeWitt moved to approve the application(s). Col. Ballas seconded the motion, which passed unanimously.

- XIII. Continuing Education Course Approval(s)**
A. Recommended for Approval – See Addendum C
1. Florida Mortician Association #133
2. Selected Independent Funeral Homes #137

Ms Marr presented the course(s) for approval.

MOTION: Col. Ballas moved to approve the applications. Ms Thomas-DeWitt seconded the motion, which passed unanimously.

- XIV. Application(s) to Become a Continuing Education Provider**
A. Celebriant Foundation & Institute

Ms Marr presented the course(s) for approval.

MOTION: Mr. Helm moved to approve the applications. Col. Ballas seconded the motion, which passed unanimously.

- B. Florida Gulf Coast University**

Ms Marr presented the course(s) for approval.

MOTION: Mr. Jones moved to approve the applications. Ms Thomas-DeWitt seconded the motion, which passed unanimously.

- C. Meadow Hill Co.**

Ms Marr presented the course(s) for approval.

MOTION: Ms Thomas-DeWitt moved to approve the applications. Col. Ballas seconded the motion, which passed unanimously.

- XV. Consumer Protection Trust Fund Claims**
A. Recommended for Approval - See Addendum D

Ms Marr presented the claims for approval.

Mr. Baxley disclosed his affiliation with Hiers-Baxley Funeral Services

MOTION: Mr. Jones moved to approve the claims. Mr. Helm seconded the motion, which passed unanimously.

- B. Recommended for Consideration**
1. American Family Cremation Society, Inc. (Beneficiary: Kathleen Davis)

Ms Marr stated that the following Consumer Protection Trust Fund Proof of Claim and Disbursement Request are being presented to the Board for consideration.

Purchaser:	Davies, Kathleen
Beneficiary:	Davies, Kathleen
Claimant:	Keith Davies
Contract Amount:	\$ 408.00
Amount Paid on Contract:	\$ 408.00
Amount Disbursed:	\$ 288.00
Portion of payments retained a non-trust:	\$ 0.00
Amount Requested by Claimant:	\$ 408.00

On September 25, 1995, Kathleen Davies purchased a preneed contract from American Family Cremation Society, Inc. in the amount of \$408.00. American Family Cremation Society, Inc. has since gone out of business. Ms Davies passed away on May 9, 2007 and Keith Davies, son, paid for an at-need contract with Bradford-O'Keefe Funeral Homes, Inc.

On August 23, 2002, Bob Shannon falsified a certification of delivery and requested \$288 from trust for fulfillment of Ms Davies contract and Funeral Services, Inc. disbursed this amount to Mr. Shannon. The request was made prior to the beneficiary's death.

Mr. Davies is now seeking full restitution from the Pre-need Funeral Contract Consumer Protection Trust Fund. All necessary documents have been enclosed for your review.

Staff recommend consideration of the above referenced claim.

MOTION: Mr. Jones moved to approve the request. Ms Huggins seconded the motion, which passed unanimously.

DISCUSSION: Mr. Helm questioned whether there would be any action taken against Mr. Shannon.

Ms Marr stated that there has been a lot of action taken against Mr. Shannon and At Peace.

C. Recommended for Denial

1. American Family Cremation Society, Inc. (Beneficiary: Max E Wood)

Ms Marr stated that the following Consumer Protection Trust Fund Proof of Claim and Disbursement Request is being presented to the Board for denial.

Purchaser:	Wood, Max E.
Beneficiary:	Wood, Max E.
Claimant:	Wood, Patricia M.
Amount of Contract:	\$ 445.00
Amount Paid on Contract:	\$ 445.00
Amount Trused:	\$ 445.00
Portion of payments retained a non-trust:	\$ 0.00
Amount Requested by Claimant:	\$ 445.00

On April 25, 1995, Max E. Wood purchased a pre-need contract from American Family Cremation Society, Inc., in the amount of \$445.00. On June 29, 2007, Mr. Wood passed away. Veterans Funeral Care fulfilled the contract.

After reviewing Mrs. Patricia M. Wood's request, our office contacted Funeral Services, Inc. and confirmed that funds are available in the trust fund for Mr. Wood's contract upon request.

Staff recommend denial of the above referenced claim in the amount of \$445.00.

MOTION: Mr. Helm moved to deny the request. Ms. Huggins seconded the motion, which passed unanimously.

DISCUSSION: Ms. Marr stated that staff would be in touch with Ms. Wood to advise she needs to submit her request to FSI, the trustee.

XVI. Contracts or Other Related Forms

A. Cemetery Purchase Agreement Retail Installment Contract Cemetery Interment Rights Merchandise & Services

1. The Simplicity Plan, Inc., d/b/a – See Addendum E

Ms. Marr stated that the contract is the result of the separation by The Simplicity Plan, Inc. of its formerly combined funeral and cemetery agreements into two separate agreements. The cemetery entities that will be using the proposed agreement are found on Addendum E to this agenda.

Staff recommend approval of the above contract, contingent upon the following revision being completed within 45 days of Board meeting date:

- ?? Provide on the signature page, clearly and conspicuously in bold faced 10-point type or larger, the following:
 1. The words "purchase price."
 2. The amounts to be trusted.
 3. The amount to be refunded upon contract cancellation.
 4. A statement that the purchaser shall have 30 days from the date of execution of contract to cancel the contract and receive a total refund of all moneys paid.
- ?? Amend page 3 disclosure to read "Department of Financial Services, Division of Funeral, Cemetery & Consumer Services"
- ?? Terms and Conditions
 3. Substitutions: Please clarify how substitution policy applies to generic vs brand merchandise.
 8. Property Under Construction: The temporary space provided by the Seller must meet with the Purchaser's approval.
- ?? 18. & 19. The statute states that the Seller may only cancel the contract if the Purchaser is 90 days past due in making payments, provided a 30-day notice of the Seller's intent is given the Purchaser. Clause #18 appears to be in conflict with the statute. Clause #19 requires a 30-day notice.
- ?? 24. Inability to Perform: The language "any other unforeseen contingency, or because of mistake" is too vague. Please clarify or remove.

Compliance with other State and Federal regulations is the responsibility of the Certificate-holder.

Mrs Huggins disclosed her affiliation with the Simplicity Plan.

Mrs Lisa Cone stated that the revisions have been discussed with Mrs Marr and Mr. Jim Gellepis and all would be easily accomplished and Mr. Gellepis would have a revised contract that meets his approval within 10 days.

MOTION: Mr. Jones moved to approve the contract contingent upon revisions being completed within 10 days. Col. Ballas seconded the motion, which passed unanimously.

B. Statement of Funeral Goods & Services Selected and Funeral Retail Installment Contract
1. The Simplicity Plan, Inc., d/b/a – See Addendum F

Mrs Marr stated that the contract is the result of the separation by The Simplicity Plan, Inc. of its formerly combined funeral and cemetery agreements into two separate agreements. The funeral home that will be using the proposed agreement are found on Addendum F to this agenda.

Staff recommend approval of the above contract, contingent upon the following revision being completed within 45 days of Board meeting date:

- ?? Provide on the signature page, clearly and conspicuously in bold faced 10-point type or larger, the following:
 1. The words "purchase price."
 2. The amounts to be trusted.
 3. The amount to be refunded upon contract cancellation.
 4. A statement that the purchaser shall have 30 days from the date of execution of contract to cancel the contract and receive a total refund of all moneys paid.
- ?? Amend page 3 disclosure to read "Department of Financial Services, Division of Funeral, Cemetery & Consumer Services"
- ?? Terms and Conditions
 3. Substitutions: Please clarify how substitution policy applies to generic vs brand merchandise.
- ?? 10 Inability to Perform: The language "'any other unforeseen contingency, or because of mistake'" is too vague. Please clarify or remove.
- ?? 6 & 21. The statute states that the Seller may only cancel the contract if the Purchaser is 90 days past due in making payments provided a 30 day notice of the Seller's intent is given the Purchaser. Clause #6 requires a 30 day notice. Clause #21 appears to be in conflict with the statute.

Compliance with other State and Federal regulations is the responsibility of the Certificate-holder.

Mrs Huggins disclosed her affiliation with the Simplicity Plan.

Mrs Cone assured that Board that all revisions would be corrected and submitted to Mr. Gellepis for approval prior to going to print

MOTION: Col. Ballas moved to approve the contract contingent upon revisions being completed within 10 days. Mrs. Thomas-DeWitt seconded the motion, which passed with 2 dissenting votes.

C. Memorial Order Form
1. The Simplicity Plan, Inc. (Altamonte Springs)

Ms Marr stated that the form provides a contract addendum, a description of merchandise for the Simplicity Plan Cemetery Purchase Agreement that appears on this agenda. The cemeteries that will be using the addendum appear on Addendum E of this agenda.

Staff recommend approval of this contract addendum.

Ms Huggins disclosed her affiliation with the Simplicity Plan.

MOTION: Col. Ballas moved to approve the form. Mr. Baxley seconded the motion, which passed with 2 dissenting votes.

D. Monument Order Form

1. The Simplicity Plan, Inc. (Altamonte Springs)

Ms Marr stated that the form provides a contract addendum, a description of merchandise for the Simplicity Plan Cemetery Purchase Agreement that appears on this agenda. The cemeteries that will be using the addendum appear on Addendum F of this agenda.

Staff recommend approval of this contract addendum.

Ms Huggins disclosed her affiliation with the Simplicity Plan.

MOTION: Mr. Helm moved to approve the form. Col. Ballas seconded the motion, which passed unanimously.

E. Monument Establishment Retail Sales Agreements

1. Anthony M. Houser d/b/a Seaside Monument Company (Panama City)

Ms Marr stated that the agreement was submitted in compliance with Section 497.553, Florida Statutes, that requires monument establishment sales agreement forms be filed with and approved by the Board.

Staff recommend approval of the agreement.

MOTION: Col. Ballas moved to approve the agreement. Mr. Baxley seconded the motion, which passed unanimously.

2. Custom Memorials Inc (Auburndale)

Ms Marr stated that the agreement was submitted in compliance with Section 497.553, Florida Statutes, that requires monument establishment sales agreement forms be filed with and approved by the Board.

Staff recommends approval of the agreement pending Department receipt within 45 days of two print-read agreements.

MOTION: Mr. Baxley moved to approve the agreement pending Department receipt within 45 days of two print-read agreements. Col. Ballas seconded the motion, which passed unanimously.

3. M & M Quality Monuments Inc. (Apalachicola)

Ms Marr stated that the agreement was submitted in compliance with Section 497.553, Florida Statutes, that requires monument establishment sales agreement form be filed with and approved by the Board.

Staff recommend approval of the agreement.

MOTION: Col. Ballas moved to approve the agreement. Mr. Helm seconded the motion, which passed unanimously.

4 National Memorials (Lakeland)

Ms Marr stated that the agreement was submitted in compliance with Section 497.553, Florida Statutes, that requires monument establishment sales agreement form be filed with and approved by the Board.

Staff recommends approval of the agreement pending Department receipt within 45 days of two print-read agreements.

MOTION: Ms Hubbell moved to approve the agreement pending Department receipt within 45 days of two print-read agreements. Ms Thomas-DeWitt seconded the motion, which passed unanimously.

5 The Casket Store (Jacksonville)

Ms Marr stated that the agreement was submitted in compliance with Section 497.553, Florida Statutes, that requires monument establishment sales agreement form be filed with and approved by the Board.

Staff recommends approval of the agreement pending Department receipt within 45 days of two print-read agreements.

MOTION: Col. Ballas moved to approve the agreement pending Department receipt within 45 days of two print-read agreements. Ms Hubbell seconded the motion, which passed unanimously.

XVII. Trust Transfer(s)

A. Perpetual Care Master Trust Agreement (Forethought Federal Savings Bank) to FSI Master Care & Maintenance Trust Agreement (BB&T)

1. Pinecrest Memorial Gardens, Inc (Marianna)

Ms Marr stated that the Applicant requests approval for the transfer of the Perpetual Care Master Trust Agreement of Pinecrest Memorial Gardens, Inc from Forethought Federal Savings Bank as Successor Trustee to Sun Trust Bank, Central, FL to the BB&T (Branch Banking & Trust Co.)/Funeral Services, Inc. Master Care and Maintenance Trust Agreement.

Staff recommends approval of the above referenced request contingent upon certification of the transfer being received by the Department within 60 days of the Board meeting date.

Compliance with other State and Federal regulations is the responsibility of the Certificate-holder.

MOTION: Mr. Baxley moved to approve the request. Mr. Jones seconded the motion, which passed unanimously.

B. Preneed Trust Transfers

1. ***Eternal Rest Memories Park and Funeral Home, Inc. (Dunedin)***
 - a. ***Abbey Park Lawn Funeral Home Inc. Preneed Funeral Trust (Sun Bank of Volusia County) to Independent Funeral Directors of Florida (IFDF) 1993 Master Trust Fund***
 - b. ***Park Lawn Memory Gardens Inc. Preneed Cemetery Trust (Sun Bank of Volusia County) to Independent Funeral Directors of Florida (IFDF) 1993 Master Trust Fund***
 - c. ***American Burial and Cremation Services Inc. Preneed Direct Disposal Trust (Sun Bank of Volusia County) to Independent Funeral Directors of Florida (IFDF) 1993 Master Trust Fund***

Ms Marr stated that Eternal Rest Memories Park and Funeral Home, Inc. requests the transfers of preneed funds in connection with the transfer of its preneed establishment license from Clearwater Funeral Home. All funds and trust fund agreements are under the trusting requirements of Ch. 497.417.

Staff recommend approval of the above referenced requests contingent upon certification of the transfers being received by the Department within 60 days of the Board meeting date.

Compliance with other State and Federal regulations is the responsibility of the Certificate-holder.

MOTION: Col. Ballas moved to approve the requests contingent upon certification of the transfers being received by the Department within 60 days. Ms Thomas-DeWitt seconded the motion, which passed unanimously.

2. ***The Simplicity Plan, Inc. d/b/a Terrace Oaks Funeral Home (Temple Terrace)***
 - a. ***Funeral Services Inc. (FSI) 1993 Trust Agreement (BB&T) to Simplicity Plan 1997 Master Preneed Trust (Sun Trust Bank)***
 - b. ***Funeral Services Inc. (FSI) 1988 Trust Agreement (BB&T) to Simplicity Plan 1988 Master Preneed Trust (Sun Trust Bank)***
 - c. ***Funeral Services Inc. (FSI) Master Trust Agreement (BB&T) to Simplicity Plan 1987 Master Preneed Trust (Sun Trust Bank)***
 - d. ***Forethought Federal Savings Bank 2005 Funeral Planning Master Trust to Simplicity Plan 1997 Master Preneed Trust (Sun Trust Bank)***

Ms Marr stated that Stewart Enterprises Inc. requests the transfer of preneed trust fund stemming from its acquisition of Terrace Oaks Funeral Home in December 2006. The transfers include both Ch. 497.417 and Ch. 689 funded accounts.

Staff recommend approval of the above referenced requests contingent upon certification of the transfers being received by the Department within 60 days of the Board meeting date.

Compliance with other State and Federal regulations is the responsibility of the Certificate-holder.

Ms Huggins disclosed her affiliation with the Simplicity Plan.

MOTION: Col. Ballas moved to approve the request contingent upon certification of the transfer being received by the Department within 60 days. Mr. Jones seconded the motion, which passed unanimously.

Ms Marr stated that the Continuing Education sign out sheet would be placed on the hand out table at this time and licensees should sign out in order to receive credit for today's meeting.

Mr. Chairman questioned the status of the license renewals.

Ms. Marr stated that the license renewal report is improving. The licenses up for renewal were the embalmer, funeral director, funeral director and embalmer, direct disposal and direct disposal establishment. All but 7 of the direct disposal establishments have submitted a renewal. Staff is in the process of writing letters to those 7 advising them that they can not conduct business until they renew. Copies of these letters will be sent out to our field offices. Staff is still receiving continuing education from providers. Of the funeral director and embalmer group, there may still be a little less than 500 that have not renewed; either they have not paid or they have not submitted CEUs.

Mr. Brandenburg questioned whether the Department has heard back from them.

Ms. Marr stated that some of them have not responded. The Department's Accounting Section provided a report of licenses that have not paid as of the first of September. About 25% of what has been checked on the list have subsequently paid during the month of September. The report is being reconciled and letters will be sent to the remaining licenses that have not responded.

Mr. Brandenburg stated that at the last Board meeting the Board approved a motion to extend the time for license renewals and inspections.

Ms. Marr stated that was to say no late fee imposed until October 1 and that no one would be disciplined if they were questioned within that 30 day period and had submitted a renewal. As of October, those who have not fully renewed are being asked to pay a late fee of \$50.

Ms. Marr stated it appears some of the licenses are weighing the fact that there is a \$50 late fee if you are a month late, 2 weeks late or 2 years late. In the meantime they should not be conducting business, but it is possible that some of them will be. The Department's intention is to identify the people who have done absolutely nothing and make sure they understand they are not allowed to conduct business.

Mr. Baxley questioned whether the Department is still getting inquiries from licenses advising they never received a renewal notice.

Mr. Gellepis stated that the Division is not receiving many of those anymore. Now it is mostly a continuing education issue or payments pending. Everyone should have been noticed by now.

XVIII. Administrative Report

The Administrative Report was submitted to the Board on the Agenda.

XIX. Disciplinary Report

	Issued Since Last Meeting (August, 2007)	Issued Since January 1, 2007
Notice of Non-Compliance	0	1
Letters of Guidance	0	20
Citations	0	0

XX. Chairman's Report (Oral)

None

XXI. Attorney Report (0 ral)

None

XXII. Executive Director's Report (0 ral)

A. Report from Richard Baldwin – Examiner for Menorah Gardens May '07 – August '07

The Board members received copies of the report from Richard Baldwin for the month of May '07 – August '07. Mr. Baldwin continues to assist consumers

B. Report on Budget Cuts

Ms Marr stated that the legislators are in the cooling off period for the new budget. The Division has not been notified how this would affect us. We were asked to plan on a 10% cut, which was made from the reserve that we had for additional positions. Instead of have \$800k plus, now we have \$600k, which will fund the positions that we want.

C. Staffing Report

Ms Marr stated that Aldon Asher left for about 5-6 weeks, but has since returned. Luckily, his position had not been filled. Mr. Asher is a great guy and the Division is fortunate to have him back as an examiner. On Monday, the North Florida Examiner Supervisor will be starting. Her name is Karen Dühring and will be introduced at the next Board meeting held in Tallahassee. There is only one vacancy left in the Tampa office for an examiner.

Mr. Brandenburg questioned where Ms Dühring would be based.

Ms Marr responded Tallahassee.

D. Update on Computer Project

Mr. Baxley questioned whether the paper related problem in the Accounting office has been resolved.

Ms Marr stated that was the reason she received the accounting report. Some licensees have advised that they do not intend to renew. There was a little confusion where some licensees are over 70 and not required to have continuing education but the computer system did not pick up that this was not an impediment. Some of the records that included date of birth and socials that we received from DBPR were not good.

Mr. Baxley stated that there are rumors circulating about going back to the old numbering system for licenses.

Ms Marr stated that the Department is willing to discuss with the programmers the possibility of using the old numbers. The Department will continue to use the new numbers.

XXIII. Adjournment

At 12:40pm., the meeting was adjourned.