

MINUTES
BOARD OF FUNERAL, CEMETERY AND CONSUMER SERVICES
October 2, 2014 - 10:00 A.M.
Embassy Suites - Tampa/Brandon
10220 Palm River Road
Tampa FL 33619

THIS MEETING IS OPEN TO THE PUBLIC

1. Call to Order, Preliminary Remarks and Roll Call

Mr. Jody Brandenburg, the Chair, called the meeting to order at 10:00 am.

Mr. Doug Shropshire made the following prefatory comments for the record:

My name is Doug Shropshire. I am Director of the Division of Funeral, Cemetery, and Consumer Services. Today is October 2, 2014; the time is approximately 10:00am. This is a public meeting of the Board of Funeral, Cemetery and Consumer Services. Notice of this meeting has been duly published in the Florida Administrative Register. An agenda for this meeting has been made available to interested persons. The meeting is occurring at the Embassy Suites – Tampa/Brandon in Tampa FL. My Assistant, Ms LaTonya Bryant, is recording the meeting and will be preparing minutes of the meeting.

Persons speaking are requested to identify themselves for the record each time they speak. Participants are respectfully reminded that the Board Chair, Mr. Brandenburg, runs the meeting. Persons desiring to speak should initially ask the Chair for permission. Participants are requested to keep in mind the necessary protocol that only one person may speak at a time.

Mr. Shropshire took the roll and the following members were present:

Joseph "Jody" Brandenburg, Chairman
Keenan Knopke, Vice Chair
Jean Anderson
Andrew Clark
Lewis "Lew" Hall
Powell Helm
Ken Jones
Richard "Dick" Mueller
Vanessa Oliver

ABSENT:

James "Jim" Davis

Mr. Shropshire advised the Chair that there was a quorum present and the Board may proceed to address the matters on the agenda.

Ms. Deborah Loucks questioned whether Mr. Davis' absence is approved.

Mr. Shropshire responded, "Yes."

Also noted as present:

Deborah Loucks, Board Legal Advisor
Ellen Simon, Assistant Director
LaTonya Bryant, Department Staff
Linje Rivers, Department Counsel
Jasmin Richardson, Department Staff
Kurt Schuller, Department Field Staff

The Chair confirmed that the Board members had received their packets in a timely manner.

2. Action on the Minutes

A. September 4, 2014

The Chair confirmed that all Board members had read the draft of the minutes of the previous Board meetings held on September 4, 2014.

MOTION: Mr. Keenan Knopke moved to adopt the minutes of the meeting. Mr. Dick Mueller seconded the motion, which passed unanimously.

3. Old Business

A. Application for Cinerator Facility

(1) Recommended for Denial

(a) Crystal Drive Services LLC d/b/a Ft Myers Crematory Services (Fort Myers)

An application for a Cinerator Facility was received on July 23, 2014. The application was incomplete when submitted. All deficient items were returned on August 13, 2014. The fingerprint cards for all principals were returned without criminal history. The Funeral Director in Charge will be Kenneth Crosby (F045258).

The application was placed on the September agenda; however it was removed because we received information from our inspector, Chris McMurray that listed several findings of violation of Chapter 497.

Examiner McMurray conducted an inspection on August 27, 2014, in relation to this proposed change of ownership. The facility was in operation when Examiner McMurray conducted the August 27, 2014 inspection. The change of ownership had been accomplished and operations under the new owners had commenced without Board approval, in violation of 497.606(7). Examiner McMurray found that the facility was operating without a licensed FDIC properly supervising, in violation of 497.606(8), in that the FDIC was one Kenneth Crosby, who lives approximately 250 miles away and who acknowledged he had not been on the premises for approximately 2 months. The previous routine annual inspection of the facility on July 3, 2014 had noted related problems. All inspection documents are attached.

Subsequent to the August 27, 2014 inspection, the Applicant sent Examiner McMurray the attached email dated September 12, 2014, advising they were terminating operations until they were in compliance with Chapter 497.

The application is recommended for denial.

The Chair questioned whether there was anyone present representing the Applicant.

Mr. Shropshire requested that the representative raise his right hand to be sworn in. "Do you solemnly swear that the testimony you are about to give in this matter will be the truth, the whole truth and nothing but the truth so help you God?"

Mr. Randy Lee Grewell answered, "I do." Mr. Grewell is the registered agent for Crystal Drive Services LLC. Upon the acquisition of Ft Myers Crematory Services, we employed the previous owner as a consultant for a six (6) month period to be at the office every day and help guide us through the process as we have never owned a crematory in the State of Florida before. The previous owner did not inform the State of the change in ownership and in turn did not truly inform us that we need to submit a change of ownership application. We were running the crematory under the guise, under our impression that the license would be good until it expires and then it would change into our name. Having just been in Florida for seventeen (17) months and just starting to meet some people in the state of Florida, a young man came up to me and advised that he had not seem my change of ownership for the crematory in Ft Myers through the association function. It really set my thinker going so I started doing some research and realized we had gravely erred by relying on someone else who did not inform us of what we needed to do. In hindsight we should have taken the initiative to do it on our own. At that time, we initiated the licensing process and brought everything up to standard. We invested heavily in training, functionality, cleaning the facility up and bringing it to a reasonable level. We are not there yet, but we do want to be an outstanding facility. After the August 27th inspection, with some of the decisions that had been made prior to August 27th, I had requested, with my fellow members of Crystal Drive Services, that I gain complete and utter control of the facility. At which time, I chose to shut and cease operations at Ft Myers Crematory, Crystal Drive Services. We have farmed out all of the cremations that our

normal customers do to a Caloosa Crematory in Labelle with all paperwork being directed to that crematory. We have laid off one employee and depending on the decision here today, we may have to lose two (2) long term employees. We know we started off on the wrong foot, but we want to make it right. We want to do the right thing going forward. I am asking for a conditional approval of our license with inspections at any time or place, at our expense. I am hoping that if we can do this moving forward, in twelve (12) months from now you can look back and say that on October 2nd in Tampa we made the right decision by approving this license on a probationary status. This is Marvin Smith, another managing member of our Crystal Drive Services.

Mr. Shropshire requested that the representative raise his right hand to be sworn in. "Do you solemnly swear that the testimony you are about to give in this matter will be the truth, the whole truth and nothing but the truth so help you God?"

Mr. Marvin Smith responded, "Yes sir." I am another member of Crystal Drive Services LLC and I know not knowing the law is no excuse. We have invested heavily in the facility, time and treasure. We purchased the facility, cleaned it up, staffing and rebuilt both retorts. We have a member on our staff that just got her direct disposer license and is there every day from 7a – 3p. We want to be a quality service provider to the funeral community here in Florida and we want to comply with the State law. Please allow us the ability to prove our entity by giving this conditional approval or allow us to operate.

Mr. Powell Helm disclosed his affiliation with Florida Wilbert and stated that it would not affect his decision to remain fair and impartial in this matter.

Mr. Knopke stated that the Applicant has been operating without a license since acquiring the business.

Mr. Grewell concurred.

Mr. Knopke questioned whether the Applicant has operated a crematory anywhere else before, in any other state.

Mr. Grewell stated that he personally has not been involved in the operation of any crematories anywhere, however, there are some officers within the Wilbert organization that have some crematories in other states, but I do not know where they are.

Mr. Smith stated that they have crematories in New York, Missouri and Colorado.

Mr. Knopke questioned whether this is a Wilbert operation or is this Crystal Drive Services LLC.

Mr. Smith stated that Crystal Drive Services LLC was formed in an effort to comply with the law.

Mr. Knopke questioned whether this was done after they purchased the crematory or before.

Mr. Smith responded that it was after.

Mr. Knopke stated that the Applicant purchased the crematory but no one looked at the law to see what the requirements were when they were purchasing it.

Mr. Smith stated that they felt that the licensure of the previous owner would roll to our ownership so we failed to notify the Division of the change of ownership.

Mr. Knopke questioned whether the Applicant did any due diligence beforehand.

Mr. Smith answered, "No sir." The licensure of the previous owner is still in effect even though he does not own it, so I guess it is no longer valid.

Mr. Knopke questioned how Mr. Crosby became involved from a licensing standpoint.

Mr. Grewell stated that Mr. Crosby is employed by Florida Wilbert as a salesperson and he is a licensed funeral director within the state of Florida. Until we had gotten the person onsite to go through the classes for the direct disposer and to

finally pass the examination, we had wanted to place Ken in as funeral director in charge. On September 25th, Melanie Sue Barnard was our full time employee, has passed her direct disposer test and has been issued her license number.

Mr. Knopke questioned when the Applicant found out that they were not in compliance.

Mr. Grewell stated that it was probably the end of June. It is hard to pin it down to a date because when it happened it was pretty traumatic.

Mr. Knopke questioned whether Mr. Crosby was asked to be the FDIC when the Applicant determined they were not in compliance.

Mr. Grewell answered, "Yes."

Mr. Smith stated that at that point in time the previous owner had fulfilled his six (6) month obligation and he retired so we needed a direct disposer while Melanie worked to get her license.

Ms. Vanessa Oliver questioned whether the Applicant has been in operation since August 27, 2014 or if they stopped operating at that point.

Mr. Grewell stated that the operations were ceased the day after that. Any bodies that were being refrigerated at our facility were transported to Caloosa Crematory in Labelle, a division of Akin-Davis Funeral Home. That was the end of it and we have not lit the candle since.

Mr. Helm stated that he realizes the Applicant has done wrong and the Division wants to deny the application. Mr. Helm questioned where the Applicant goes from there.

Mr. Shropshire questioned whether the Applicant would be willing to stipulate here to a payment of a substantial fine and probation, just in case the Board was so inclined to approve the license.

Mr. Grewell answered yes and stated that the probationary status and the fines are nearly to be expected.

Mr. Shropshire stated that if the application is denied the Applicant has the right to appeal the Board's decision to a 120 Administrative Law Judge Hearing and if that is not favorable to the District Court of Appeal. The Applicant could also sell the premises to some other person and that person could make an application for licensure. Those are among the options.

Mr. Helm questioned the amount of the fine that would make the Division comfortable.

Mr. Shropshire stated that would be up to the Board.

Mr. Ken Jones questioned whether there has been confirmation that the Applicant stopped operations the day after.

Mr. Shropshire stated that Chris McMurray was the inspector but he is not present. Mr. Shropshire added that he called Mr. McMurray and questioned whether he had any reason to believe that the Applicant was back in operation and Mr. McMurray answered no.

Mr. Knopke questioned whether the Applicant has any direct contact with the public.

Mr. Grewell answered, "No, we are just wholesale."

Mr. Clark questioned whether the Applicant is working to get someone else licensed to become the FDIC.

Mr. Grewell stated that they have a fulltime employee who was granted her direct disposer license on September 25th. It is present on the wall and we are waiting to have her name placed at the front of the establishment.

Mr. Shropshire questioned whether a direct disposer can be the FDIC of a cinerator facility or does it have to be a funeral director.

Ms. Jasmin Richardson stated that it can be a direct disposer.

MOTION: Mr. Jones moved for a fine of \$6000 to be paid within 90 days of this meeting, 2 years probation and the establishment must pass an onsite inspection by a member of Division staff. Mr. Knopke seconded the motion, which passed unanimously.

B. Monument Establishment Retail Sales Agreement
(1) Recommended for Approval with Conditions
(a) Bronze Memorials Monuments & Markers, LLC (F080153) (Port St Lucie)

This monument establishment retail sales agreement below was presented at the July 10, 2014 Board teleconference meeting and was denied based upon the reasons as set forth in the attached Board minutes from the July 10, 2014 meeting. In response to concerns expressed by the Board, Jim Savage, principal of the Licensee, has provided a revised sales agreement, and has also provided a written response to address the question regarding of delivery of monuments.(please see attached response) Bronze Memorials and Monuments, LLC submits a monument retail sales agreement for approval. If the form is approved, it is to be used for the sale of monuments through its monument retailer establishment whose application was previously approved subject to conditions at the July 10, 2014 Board teleconference meeting. All conditions of approval were satisfied and a monument establishment retailer license was issued as of July 25, 2014.

The Division recommends approval subject to the condition that two full sized print-ready copies of each contract are received by the Department within 60 days of this Board meeting.

Mr. Shropshire requested that the representative raise his right hand to be sworn in. "Do you solemnly swear that the testimony you are about to give in this matter will be the truth, the whole truth and nothing but the truth so help you God?"

Mr. James Savage, president and owner, responded, "I do." Mr. Savage apologized for not attending the last meeting as he was out of the country. Mr. Savage stated that he has worked with Ms. Lashonda Morris on multiple occasions to try and get the contract exactly the way the Board would want it to be. My intention is to comply with each and every guideline and rule proposed. We sell bronze markers now on the internet nationally. It is our intent to sell the big stuff, not necessarily upright monuments, but mausoleums and big granite positions at some point in the future. That is our intent. We do not have an installation process on the premises and are not planning to have one. We are a sales organization and the people who provide the monuments for us will provide installation for the particular items. That was one of Ms. Morris' concerns.

Mr. Knopke stated that proposed revised contract indicates that "Transportation Fees and Restocking Fees are all at No Charge to the Owner (NC)." Just below that there is a section for "Shipping and Install." Mr. Knopke questioned whether transportation fees are different than shipping fees.

Mr. Savage answered, "No." It should be changed to install fees. There is an "Install Fee" that may be incurred to the owner of the property based upon any contractor that may be required, but there is no way to know that in advance because everything that is going to be installed at these large facilities is going to be required to be done by a contractor and licensed and permitted. Concrete slabs are going to have to be poured and permits are going to have to be pulled. Regardless of the location in the United States, there is going to be a different price. Normally, all of our pricing structures that we provide to the consumer is free to the destination and separate installation fees. Once it is on the truck, it is sitting on a semi at the property free to the consumer, but once it leaves the truck, at the facility, there is an installation fee.

Mr. Knopke clarified that the word "Shipping" should be deleted as referenced above.

Mr. Savage concurred and indicated that he was crossing it out.

The Chair questioned whether Mr. Savage has an approved sales agreement in other states where he operates.

Mr. Savage stated that he does not at this time because he has not established a relationship with each individual state. Normally at the purchase of the mausoleum, the contractor who delivers it normally has that done for me. We have not done any of this yet. I would not do anything without approval from the State, so I am in the process of applying for that on an as needed basis.

The Chair questioned whether Mr. Savage has made any sales or installations in Florida.

Mr. Savage answered, "No, I have not. I would not do such a thing without Board approval of all my licenses and agreements."

Mr. Knopke stated that Mr. Savage has a pretty extensive website.

Mr. Savage stated that he has been in the bronze product business selling bronze plaques for the last 37 years in the state of Florida. We have been selling bronze grave markers on the internet for the last fifteen (15) years, all over the United States. We are one of the largest bronze suppliers in the United States if not the largest bronze supplier of bronze plaques and grave markers.

Mr. Knopke stated that the firm is that large but Mr. Savage is not selling them in Florida.

Mr. Savage stated that he sells bronze markers in Florida but not granite.

Mr. Knopke questioned whether Mr. Savage is selling bronze markers to be installed in cemeteries in Florida.

Mr. Savage answered, "Yes and the cemetery does the installation."

Mr. Knopke questioned whether that would require approval of an agreement. Mr. Knopke questioned whether Mr. Savage has been in violation of the law if he has been selling bronze markers in Florida, whether he installs them or if someone else installs them.

Mr. Shropshire stated that it sounds like Mr. Savage would have been using a sales agreement that was not approved by the Board as required. Mr. Shropshire questioned whether Mr. Savage has been selling bronze markers to the public in Florida since his license was approved.

Mr. Savage stated that he has sold more than one (1) bronze marker over the last year or so in the state of Florida. Mostly my sales are outside of the state of Florida.

Mr. Shropshire questioned whether Mr. Savage realizes that selling bronze markers to the public is not exempt from the licensure requirement.

Mr. Savage stated that he has an occupational license in his county to sell bronze products and bronze markers. I ship bronze markers all over the United States from my suppliers in Wisconsin.

Mr. Shropshire questioned whether Mr. Savage is selling to the public or if he is wholesaling to someone.

Mr. Savage indicated that he does both. Mr. Savage stated that he has sold a bronze marker to a consumer in Florida to be delivered to a cemetery in Florida. I was unaware that I would have to have a contract or approval from this Board to sell bronze grave markers. I thought I would only need approval from this Board to sell granite.

Mr. Shropshire stated that that is incorrect.

Mr. Savage stated that he had been licensed with all of the facilities that he was aware of that he needed to be licensed with to this point.

Mr. Helm stated that the "Upright Granite Memorial Granite Design #" section indicates that the drawing will be approved. That is a part of the sales agreement that also needs to be approved. Mr. Helm questioned whether Mr. Savage accepts down payments.

Mr. Savage stated that he does not sell upright monuments.

Mr. Helm questioned whether Mr. Savage accepts down payments when he sells monuments.

Mr. Savage answered, "Yes I do."

Mr. Helm stated that this is not listed on the contract.

Mr. Savage stated that Mr. Helm is speaking of a deposit, but he does not take deposits.

Mr. Helm questioned whether the monuments are paid in full.

Mr. Savage responded that they are because there is a 100% guarantee on everything. We are an internet company and it is modeled to where when you order over the internet, everything is paid in full. Rarely do we accept deposits.

Mr. Shropshire stated that one way the Board may handle this would be to rule on the merits of the form presented, but based on what the Applicant herein, who already holds a monument establishment license, has said there is probably grounds for the Division to open an investigation and to look into the allegation or possibility that they sold markers without a proper contract and quite possibly before they were licensed but that would be a separate matter that would have to be processed through those usually disciplinary and investigation channels.

Mr. Knopke questioned whether the Division could confirm that the Applicant has a monument establishment license at this point.

Mr. Shropshire stated that the license was issued on July 25, 2014.

Mr. Knopke questioned whether Mr. Savage, who has been in business for 37 years, did not have a license prior to that.

Mr. Shropshire stated that that is his understanding.

Mr. Savage stated that for 37 years he did not sell grave markers as he had a retail sign company in Miami and in Ft Lauderdale he sold bronze plaques. That is his primary business. Our primary function is bronze plaques, not only in the United States but all over the world. In the last fifteen (15) years we have been able to on and off sell grave markers. The actuality is only in the last twelve (12) months have we been full force into selling bronze grave markers nationally, and in that last year, I would take a guess maybe three (3) to five (5) sales have been in the state of Florida. We very rarely have sales directly into the state of Florida. That is one (1) of the reasons why, since we are a national company, that I just did not even consider getting a license for granite markers in the State of Florida because my primary business is outside the state of Florida. When we decided to sell granite it was to my attention to get a Florida license to become a monument dealer. It is my impression that I think is a misimpression that a monument dealer focuses on granite and that was why I needed a monument dealer's license, not to sell bronze markers, which a different product completely.

The Chair questioned whether Mr. Savage has read the statute or the rules.

Mr. Savage stated that he has read some of the statutes and they did not apply to anything that he was doing, so that is why he did not apply for licensure before. I have applied for every license in the state of Florida for every business that I have ever gone in to. My primary focus in business is to make sure that I comply with all guidelines and laws before I go into business and that is why I have not sold any granite markers or granite products before now, before I am licensed and approved by every guideline in every state. I have been approved for every stated license that I have ever applied for because I comply with the law completely and exactly and I do not try and skirt the law in any way possible.

Mr. Shropshire stated that just to be clear though, the sale of a bronze plaque put on a grave, regardless of size, is a monument and it requires a monument license in this state.

Mr. Savage stated that now that he is aware of that he will comply with that completely without question.

Mr. Clark questioned whether Mr. Savage focuses on online sales.

Mr. Savage answered, "That is correct."

Mr. Clark questioned how the installation fee would be determined for a contract.

Mr. Savage stated that the installation fee is determined by the cemetery. We contact the cemetery and they determine what the setting fees or any installation fees would be. That fee is then told to the consumer and they pay that fee. Nothing is ever shipped to the cemetery or to the end user without signed approvals not only by the consumer who bought it but by the cemetery that is going to receive and install it. At any nothing is ever made until all those approvals are done and the consumer at any point in time can receive 100% refund if they are not satisfied.

Mr. Clark stated that Mr. Savage had mentioned that there may be times when he would use a contractor for an install. Mr. Clark questioned whether Mr. Savage would wait to find out what the cost would be on the install, whether it be from the cemetery or a contractor, then put it on the contract and then have the family sign it.

Mr. Savage stated that is correct or by an addendum that they would agree to. The consumer would know all costs before they approve or pay for anything.

Mr. Clark questioned whether that would all be done by email or fax.

Mr. Savage answered, "Yes."

The Chair questioned whether Mr. Savage has an example of one of the sales agreements used to sell the bronze memorials that were sold in Florida.

Mr. Savage stated that he has not sold any bronze grave markers in the state of Florida under this contract.

The Chair questioned whether Mr. Savage has sold any memorials and if he has a copy of the sales agreement for those.

Ms. Loucks stated since that is not a part of this sales agreement, the Chair may want to leave that for an investigation that Mr. Shropshire has suggested because that would involve an issue that is separate from what is before the Board today.

Mr. Hall stated that there seems to be a lot of confusion between flat markers, upright, granite or bronze and Mr. Savage stated that he rarely accepts down payments. Mr. Hall questioned whether the Division recommends that this item be tabled until the investigation is completed.

Mr. Shropshire stated that this would be acceptable to the Division and think perhaps a prudent course although we might ask the Applicant to agree to that, in view of a deemer issue. Mr. Shropshire questioned whether Mr. Savage would agree to tabling this matter today to allow the Division to conduct some investigation into the extent of the sales of bronze markers to consumers to see if the investigation confirms Mr. Savage's representations here to the Board as to the numbers that were sold and the conditions.

Mr. Savage stated that he would be more than happy to comply with any of the Board's guidelines.

Mr. Shropshire questioned whether Mr. Savage would agree to a delay to having this tabled.

Mr. Savage stated that he is willing to not only agree to a delay but will also appear before the Board whenever the item is addressed. Mr. Savage stated that he does not have a copy of the agreement that he uses because it is a plaque agreement as

that is 99.9% of his sales. I have not used this contract for granite sales because I do not sale granite at this point in time and I would not have sold granite without the Board's approval of this contract.

Mr. Clark stated that he feels tabling this item would probably be best. There are still some revisions that need to be made to this contract. While we are delaying this, I would like to make sure the revisions are getting cleaned up as well. Mr. Clark questioned whether Mr. Savage has seen samples of other contracts that are currently being used in the state of Florida.

Mr. Savage answered, "No."

Mr. Clark questioned whether the Division could provide Mr. Savage with some samples.

Mr. Shropshire instructed Mr. Savage to contact Ms. Morris again and ask her to provide you with some samples that have been approved by the Board, she would do that.

MOTION: Mr. Hall moved to defer the item to allow the Division time to investigate further. Mr. Jones seconded the motion, which passed unanimously.

Mr. Helm questioned whether Mr. Savage agrees to the deemer.

Mr. Shropshire stated that Mr. Savage agreed to the delay.

Mr. Helm questioned whether that should be included.

Ms. Loucks stated that when Mr. Savage agreed to table, under Florida Statutes, the Board has to take action on an application that is complete within 90 days of it being deemed complete. By agreeing to table, Mr. Savage is waiving his right to challenge the Board for not complying with the 90 days. Ms. Loucks questioned whether Mr. Savage is aware of this and whether this was part of his understanding when he agreed to table it.

Mr. Savage stated that he did not fully understand and questioned what he is agreeing to if he agrees to table.

Ms. Loucks stated that Mr. Savage is waiving the Board's statutory requirement to rule on the application, either to approve it or deny it, within 90 days.

Mr. Savage stated that he is willing to waive that.

Mr. Shropshire acknowledged Mr. Kurt Schuller and requested that he stand to be recognized. Mr. Shropshire requested that Mr. Schuller get with Thurman Lowe and have an investigation opened on this matter.

Mr. Schuller concurred.

C. Pershing-Vista

Mr. Shropshire stated that this case has previously been before the Board on several occasions as indicated in the materials provided to the Board. The Division is presenting to the Board a revised, proposed Settlement Stipulation for the Board's consideration. The Division is recommending approval of that Settlement Stipulation. The Division understands that Pershing-Vista and their representatives are here today.

Mr. John Rudolph, representing Pershing-Vista, stated that he has reviewed the Stipulation and all nine (9) of the Board's recommendations were placed into it. I also notice that there are two (2) provisions that were put into it that were not required by the Board. The first was a waiver of the statute of limitations on the criminal penalties. That was achieved and done by my client. The second is in the event this is not paid in full by December 2017, the Board and the Division has the ability to require my client to sell their cemetery and funeral home within ninety (90) days, also to require the trustee to take possession of the administration building and the lots in North Carolina. That effectively would be able to terminate or transfer the ownership of this cemetery that has been owned by my client's family for roughly \$3.5-4 million, when the

appraisals that they have had on their property have come to \$40 million. Mr. Rudolph thanked the Division and Mr. Shropshire. When I first read this, it was very well drafted by Mr. Shropshire. It gives this Board and the consumer protection in the event that my client does not follow through will all the provisions of this settlement. I cannot be the restitution trustee as I am the lawyer for Vista and that would be a conflict of interest. It is my understanding that Mr. Robert Yaffe has now been put on the list.

Mr. Shropshire stated that one (1) of the attachments to the proposed Settlement Stipulation listed the choices for trustee of the restitution trust. As Mr. Rudolph indicated there were two (2) people listed, John Rudolph and another attorney from Miami. If it pleases the Board, the Division and the Respondent have agreed to add a third trustee choice who would be Robert Howard Yaffe, an attorney with a law firm in Miami located at 12000 Biscayne Blvd #609. Mr. Yaffe specializes in real property, probate and trust law. Mr. Yaffe attended Vassar College and has a law degree from the University of Miami. The proposed settlement as submitted to the Board should be considered amended to include Mr. Yaffe on that list.

Mr. Knopke questioned whether Mr. Rudolph's name should be deleted from the trustee list.

Mr. Shropshire responded that it should.

Mr. Hall stated that he told Mr. Shropshire that he appreciates the way he laid this item out for the Board's understanding as well as the hours put into this. Mr. Hall stated that he still has concerns on this case. We are talking about a case that took \$4.5 million out of preneed. It was not a one-time decision. It was made on a daily basis for several years. They made decision to keep the funds when a consumer came in their facility. After that, they pledged property. After the closing statement, it took six (6) months to make those deposits back to the Carolina property, which the Board did not approval. The money was put back into trust six (6) months later and according to the closing statement there was a half million dollars missing somewhere, because we got a \$1.9 million on the net figure. The promissory note promised to us is a .86%, which is unbelievable to me. My concern is protection for the consumer. Seniors have gone into this place and trusted them with their preneed funds and the money has been taken so how has the Board protected the consumer and what have we done in this agreement to come in to say the principals are still in place who took your money for several years in a row. We have not done anything to clean that up.

Mr. Rudolph stated that you have a funeral home and a cemetery that have been providing services and merchandise throughout this entire time and taking care of the customers and they will continue to do that. This is an opportunity and I think there is a very high penalty if they do not comply with this, if they do not fill the trust, there is an extremely high penalty. You could take these properties, tell the trustee and deed them into your name. If you do not foreclose the mortgage on that thing, get it into your name, credit the appraised value against the promissory note, take whatever properties in North Carolina that have not been sold and do the same thing, credit the properties, appoint a receiver and then you can run it and sell it to someone who is going to be getting a gold mine. Mr. Rudolph questioned why his client would want to do that.

Mr. Hall stated that he does not think that the Division wants to run it. The Division does not want to be in the business. The Board wants the hole filled and the Respondent has had opportunities for the last couple of years to do that and now they want us to stretch it out two (2) more years and leave management in place that made a conscious decision to make this money. I am surprised, in all honesty that our State Attorney's Office has failed in this to this point. We have had individuals that have removed \$30k - \$40k from a preneed fund and went to jail. This is \$4.5 million.

Mr. Rudolph stated that when the State Attorney looked at it, saw what the Division was doing, and when they looked at the first proposed settlement the State Attorney felt that the one (1) thing they wanted to see happen is that the funds get put back into the trust. Personal assets of these principals have been pledged to be sold or to be mortgaged so that this money can be put back into the trust. The Board does not want the Division running the establishment but it also does not want my clients running it so how would that happen. Right now, they have been running this cemetery and funeral home and providing the merchandise and services for people, taking care of their cemetery and doing everything thing they are supposed to.

Mr. Hall stated that he understands that in years past they had a stellar reputation, but he cannot say that now looking at what has been presented to the Board. Mr. Hall questioned whether it is Board's job to protect the consumer.

Mr. Rudolph stated that the Board is protecting the consumer by this Settlement Stipulation. The Respondent is being provided with a chance to bring these trust funds complete. They are paying a huge fine. After one (1) year they have to pay a fine every month that this thing is not fulfilled. By December 2017, if it has not been filled then the Board can shut them down and take their cemetery away from them. The Board has the ability, if they see some drastic change in the financial situation of Vista, to do a summary suspension. These are things that they have signed and agreed to. We have worked with the Division and the Division is recommending approval of this.

Mr. Hall questioned what would be a reasonable rate for a commercial loan today, on an administrative building.

Mr. Rudolph stated that he does not look at the commercial rates right now but he knows that the analysis that Mr. Shropshire did on the interest rate from the trust fund is an accurate analysis.

Mr. Hall stated that the Respondent would not go and get a loan before because they did not like the percentage they got. Now they come back to the Board requesting less than 1% rate on the promissory note, .86%.

Mr. Rudolph stated that that is the rate that the funds in the trust are earning and that is how you tie that rate in. You do not do it on a commercial rate.

Mr. Hall stated that this is being tied back to the administrative building.

Mr. Rudolph stated that there is a mortgage on the administrative building. Mr. Rudolph questioned whether Mr. Hall is referring to the interest rate on the mortgage.

Mr. Hall questioned why the Respondent did not take the money from the home, take the money that they could receive on the mortgage and just wipe this out and clean it up. Mr. Hall questioned why the Respondent took the money from the home sale and pay off the Carolina property. In your answer last meeting you stated it gave us a stronger asset to hold. The Board does not want to hold property in North Carolina we want the money put back into trust for the families.

Mr. Rudolph stated that he understands. When the property was sold, and this was their personal residence, first they had to pay off the mortgage that was on something that was already pledged in North Carolina. It was probably the most valuable asset they had up there. So that increased the value of that asset to where it does not have a mortgage and then the remainder was put back into trust of the \$1.5 million. I can get Les Klein to explain how all the money was handled.

Mr. Hall questioned what happened to the other half million on the closing statement.

Mr. Shropshire requested that the Respondent raise his right hand to be sworn in. "Do you solemnly swear that the testimony you are about to give in this matter will be the truth, the whole truth and nothing but the truth so help you God?"

Mr. Les Klein responded, "Yes I do." Mr. Klein stated that the residence at 9530, Bal Harbour Island, was a primary residence of Mr. Revitz as he inherited the property from his father. The tax basis on that house was very, very low. Therefore, upon the sale, there was a tremendous amount of tax implications that occurred. That alone was probably around \$300k. Mr. Revitz had to stay in that facility until he found another residence to live in, so again he had to pay rent to the person that purchased the house. When he did find a new house he had to pay expenses: three (3) months of rent upfront, moving expenses, painting, security, and there was also a health issue with one of their relatives that they had to take care of.

Mr. Hall stated that he is hard for him to be sympathetic to the fact that Mr. Revitz sold his \$5 million home and he has additional expenses when the Respondent made a conscious decision not to pay when seniors were walking into the facility giving money for preneed. Now counsel is asking that the Board trust them for the next two (2) years so that they can fill this hole. Nothing you have told the Board yet has happened that way.

Mr. Klein stated that as Mr. Rudolph indicated, in this stipulation, one of the big items is if they do not make the trust they have ninety (90) days to sell the cemetery and funeral home, which again is appraised at approximately \$30-\$40 million. The Revitzs are pledging to sell this huge asset to pretty much cover \$2 million and that alone should show how much they want to work this out and get it taken care of. The consumer would be covered by far above the money.

Mr. Hall stated that the Board has seen what the appraisal done in North Carolina re the inability to sell that property even though that was back in 2011. The appraisal that is on the cemetery may be harder to market to a firm today knowing the problems that we have shown here and the firm having to trust that the preneed funds that we are telling them are there and everything has been handled properly because they are going to assume the liability of that cemetery. So that could affect the marketing ability of that property.

Mr. Klein stated that the cemetery is one of the only independents out in Miami. It is a hot commodity with some of the conglomerates that are out there. It is something that they will go and do the due diligence no matter when they come out to purchase. So even if you estimate \$30-\$40 million and they say okay \$25 million that is pretty much a fire sale. You are more than covered. Again, this cemetery has been in the family for many, many years. They want to get this thing taken care of. They do not want to sell the cemetery and funeral home. If it is the consumer that you are worried about, they are more than covered ten (10) times fold that this money will be in there.

Mr. Hall questioned what assurances the Board has from Mr. Klein because he is the money guy.

Mr. Klein stated the pledge to sell the cemetery within ninety (90) days.

Mr. Hall stated that his point is if Mr. Revitz comes back to Mr. Klein and states he has had health issues or problems in the family, what assures me that you would not continue to make money to make that happen.

Mr. Klein stated that the stipulation calls for annual audits.

Mr. Rudolph added that there would also be monthly trust statements.

Mr. Klein stated that the Division would receive copies of any withdrawals made.

Mr. Rudolph stated that there are a number of safeguards that have been put into place by the Division that would alert the Division, alert the Board if there is a problem and then the Board or the Division has the ability to come in and shut it down. That is the thing that this stipulation does. When I first saw it I was concerned but then my client signed it. I really think that it will protect the consumers more so than anything else.

Mr. Knopke stated that if he remembered correctly, the problem started with the hurricane. The Respondent found that the insurance did not cover what they thought it might cover. I will state this for everyone in the room. If you think that you have hurricane coverage, you do not. In this case, they could have filed bankruptcy seeing the amount of money they were spending for clean up, and we would not be sitting here talking about this today. It could have been put into receivership and a receiver could have run it any way they wanted. Mr. Knopke questioned whether the Division has received any complaints about property or services and merchandise not being delivered.

Mr. Shropshire stated that the Division has received no complaints whatsoever about them not honoring or delays honoring preneed. The full complaint history, we just have not had any problems with complaints on these facilities but I want to be very specific. In 2013, we received a complaint that alleges Vista Funeral Home allowed a distant relative to make decisions on the burial arrangements without attempting to contact the legal next of kin. The complainant also alleges the establishment when confronted tried to cover up their mistake by refusing to release documents. The Division investigated and the complaint was not substantiated. The Division received another complaint in 2013. The complainant alleges that they were informed at the time of purchase that they could relocate the purchased burial plots if they lived elsewhere at the time of need through the lot exchange plan. The complainant has made several attempts to contact the facility but have been unable to get a return call or email response. The Division looked into the complaint but could not substantiate any violation. Another complaint received earlier this year alleges that when entering the cemetery to conduct the funeral of their grandmother they were stopped and blocked by an employee of the cemetery and informed that they would have to go to the office and pay fees due in order to proceed. The family was aware that the fee was due and had previously agreed to make the payments after the service was complete. The complainants were upset that they were treated this way. The Division looked into it and found out that it was not entirely as the complainant indicated and yes the Licensee wanted to be paid. No violation was substantiated. Those are the only three (3) complaints we have had in the 2013-2014 whatsoever against these establishments

and frankly I would classify them as typical types of complaints that any business would receive and has to deal with occasionally.

Mr. Knopke stated that during this time period they continued with not putting the money in and deliver as required, from all indications.

Mr. Shropshire concurred.

Mr. Knopke stated that the fact that they put the business in jeopardy from sale into 2017, the personal knowledge that I have of the business itself, it is a first class property. Probably and from all indications they are continuing to give first class service even through these difficulties. I have the concerns that Mr. Hall has and you have to acknowledge that they exist, but the reality is to put up a \$15-\$20 million asset for \$3-\$4 million is a fire sale and you could find financing for it fairly easily.

Mr. Helm questioned the amount of money that the Respondent needs to make up of the \$4 million that went missing.

Mr. Klein stated that the calculations would probably be around \$130k.

Mr. Helm questioned that is all the interest that would be made off of \$4 million in four (4) years.

Mr. Klein stated that that calculation was based upon what the trusts were earning at that time net of tax and net of fees. That number is based upon the rate that would actually be achieved in the trust at that time if the \$4 million was put into trust.

The Chair stated that this is where the .86% figure comes at.

Mr. Rudolph stated that was after 2012.

Mr. Hall questioned the number of contracts missing that should have been reported during that period of time. Families came in, paid for preneed and the monies were not put into trust. Mr. Hall questioned whether the fees were paid back to the Division for the preneed contracts.

Mr. Knopke questioned whether Mr. Hall is referring to the Consumer Protection Trust Fund.

Mr. Hall questioned whether the fees on the contracts that were not reported to the Division.

Mr. Klein stated that the contracts were included.

Mr. Shropshire responded, "Yes they were." In the exam, examiner Helms did determine that those were paid. To Mr. Helm's point and to the Board, I would say I was flabbergasted when I looked into this and found initially that this trust only earned .76%. I was incredulous. I expected a significantly higher number so I invested quite a bit of work on that. In my experience, they have a very unusual practice of only investing in interest bearing and dividend paying investments in their preneed trust and not in gross equity investments, which surprises me but I have verified through looking at their actual trustee reports that it is and has been their practice for a very long time and they plan to continue it. I am confident that this .76% number is accurate. It seems remarkably low but it is what they earned.

Ms. Oliver stated that she is new to this Board, a consumer member and does not know very much about the funeral industry but is an attorney, familiar with trust accounts and what the obligations are. The Respondent stole \$4.5 million and wants the Board to enter into a Settlement agreement giving them another three (3) years to pay this back at less than 1% interest. For the record, the legal rate of interest for 2013-2014 is 4.75%, 2010-2011 it was 6%, 2009 it was 8% and 2007 it was 11%. Ms. Oliver stated that she is flabbergasted that the Board would even consider entering into this stipulation with people who have proven time and time again. My only experience with you is that you have stolen money, you wrote up a contract that you did not abide by and you have not paid it back. I would like to see the CFO address a letter to the State Attorney's office, request prosecution of these principals, state that the Division would not object to probation or a suspended sentence so that they do not go to prison so long as the money is paid back and they will probation early. They have a right to demand restitution for this \$4.5 million that was stolen. This is such a major violation and there is someone further down on the

Agenda, Ronald Noble that we are talking about taking his license away for having stolen his employer's \$200k or \$300k. Yet we are going to allow these people to continue to operate a funeral home, no criminal record and basically just get away with a slap on the wrist and I am outraged by it and I would definitely recommend denial of this Settlement Agreement.

Mr. Mueller thanked Mr. Hall and the Division for all the good work they have put in on this trying to solve this sad situation. While I have nothing but respect for Mr. Revitz and Mr. Klein, who I have known for years and sympathize with the situation that got them there but I have no sympathy whatsoever for the manner in which they decided to try to remedy their plight. I do not like this proposal and I will be voting against it.

Mr. Hall questioned how the money is addressed with the IRS. Mr. Hall questioned whether there was tax paid on this \$4.5 million when it was taken out or is the IRS going to come in at some point.

Mr. Klein stated that the tax implications, for example the \$4 million was reported as taxable income. There is no issue with the IRS.

Mr. Rudolph stated that there were reasons why they did not pay the money in the trust and the reasons were detailed in June. This has already been referred to the State Attorney and the State Attorney has looked at it and he has looked at the Settlement Stipulation and they agreed to a waiver of the statute of limitations. My client has agreed to that so if they do not pay this then the State Attorney can begin prosecution of them criminally. Everything in this stipulation points to them fulfilling these preneed contracts, putting the money into trust and if they do not put it into the trust their personal assets will be putting it into trust. This is the best way that you have for bringing those trust current and for continuing to have the people their contracts fulfilled and my client has been fulfilling those preneed contracts. I understand Ms. Oliver and Mr. Mueller's positions but at this point, this is a stipulation that they have agreed to and this is a very hard stipulation to agree to because it takes a property where they could make \$20 - \$30 million on a sale to where they do not have that money and they are destitute on the street and in jail. What better way could you have to get somebody to fix this situation instead of the State taking over the property with a receiver, which may be what you have to do; but first we would have to go to an administrative hearing. We would go to an administrative hearing and argue that these were legitimate expenses. If this Board does not agree to it, we will still do every single thing in this stipulation, putting the monies into trust, getting the receiver, doing everything we can to comply with this and get this money paid in full to the trust before the end of that hearing. I am sorry but I am personally affiliated with these people. I have known them for a long time. They are very honorable people.

Ms. Oliver stated that Mr. Rudolph has done a wonderful job for his clients. They could not ask for a better attorney. It is just that you are working with a terrible set of facts. I am sympathetic that bad things come up, hurricanes happen. I understand that but I do not understand how the extra \$500k from the sale of the parent's house did not immediately get put back into the trust. I do not understand how you let this go on for four (4) years and then immediately before you know you are going to get caught is when you decide to sit down with the Division; you do not report it to them beforehand. I do not understand how you could wait until that time and then expect leniency from this Board. I do not understand how this Board does not want to immediately put this into receivership. I do not see how any of these individuals are trustworthy and how this is a good deal for the Division in any way, shape or form. I think it is a great deal for the Respondent, as they get to stay out of jail, have no criminal record for committing all of those felonies every time they did not do what they were supposed to do and deposit those monies. That is another felony that they committed. I think it is a great deal for them because they get less than 1% interest on a commercial loan, which is what this promissory note is going forward. I just do not see how this is a good deal for the consumers of this state.

Mr. Rudolph stated that the certificate holder gets the interest when they fulfill the preneed contract. The fact that they have been earning less interest on their preneed contracts means they get less money when they fulfill a contract, but they have been doing that because it is the easiest way to protect the money instead of putting it into equities. When the equities go bad, you lose money, you lose principal in it. They are very conservative in the way that they invest in their preneed contracts. That is why, under the law, it has to be that interest rate because ultimately it belongs to them or to whoever takes it over. The Division was the one who put this together. We signed it and we agree with the Division that this is the one thing that will best protect the consumers. It will be the most egregious thing if they do not do it. It provides a wonderful opportunity for this thing to get fixed and for this company to continue to run as the only independent in that area.

MOTION: Mr. Knopke moved to accept the Settlement Stipulation and that the preneed licenses be renewed. Mr. Jones seconded the motion, which failed with a majority of dissenting votes.

Mr. Knopke questioned the Division's next step.

Mr. Shropshire stated that the exam reports will be referred to our Legal Department for formal prosecution.

Mr. Rudolph stated that they would file a formal petition.

4. Disciplinary Proceedings:
A. Settlement Stipulation(s) (Probable Cause Panel B)

Ms. Jean Anderson recused herself from the following cases as she served on Probable Cause Panel B.

(1) Stevens, Roderick: Case No. 145032-13-FC; Division #ATN-20260 (F029163)

Mr. Linje Rivers stated that the Division alleges that the Licensee sold caskets to customers while making arrangements in his capacity as funeral director in charge but failed to list the sale of the caskets on the statement of funeral goods and services. The Division proposed a Settlement Stipulation to the licensee to resolve the administrative complaint. The Licensee agreed to pay an administrative fine of \$2,000. The initial payment of \$1000 is due thirty (30) days after the execution of this Consent Order and four (4) \$250 payments by the 15th of each month. The terms of the settlement stipulation are reasonable under the facts and circumstances of this case. The Department requests that the Board approve the settlement and issue the Consent Order to conclude this matter.

Ms. Loucks questioned whether Mr. Stevens is present.

The Chair stated that there were no indications that Mr. Stevens or anyone representing him was present.

Mr. Mueller stated that the Memorandum presented to the Board cites a fine of \$1000.

The Chair stated that the information appears to be misspoken on the Memorandum.

Mr. Knopke stated that in May, Mr. Stevens sent in an Election of Proceedings form indicating that he disputed one or more of the Department's factual allegations.

Mr. Rivers stated that through his attorney, Mr. Stevens selected to enter into this Settlement Agreement as opposed to going to a formal hearing.

The Chair stated that the Settlement Stipulation was signed in July by Mr. Stevens.

Mr. Rivers added that Mr. Stevens' attorney signed the agreement as well.

Mr. Knopke questioned whether that supersedes what is in the packet.

Mr. Rivers responded, "Correct."

MOTION: Mr. Knopke moved to approve the Settlement Stipulation as recommended by the Department. Mr. Hall seconded the motion, which passed unanimously.

(2) Stone Funeral Home: Case No. 144429-13-FC; Division #ATN-20713 (F065839)

Mr. Rivers stated that the Division alleges that Stone Funeral Home entered into a preneed contract without the proper licensure. On March 19, 2013, the check payable to Stone Funeral Home in the amount of \$5770 was given to the funeral home by Leonarda Sherrod, who had power of attorney for her mother who is now deceased. The check was endorsed by Ms.

Janorise Stone on behalf of Stone Funeral Home and deposited on April 9, 2013. On or about March 20, 2013, Tyris Brantley, son of Jean R Brantley and brother of Leonarda Sherrod, obtained a power of attorney over the financial matters of Jean Brantley. When he discovered the check to the funeral home, he arranged a meeting for himself and another sister, Deborah Daniels, with Janorise Stone FDIC regarding the check. By affidavits and support of the complaint filed with the Division, both Mr. Brantley and Ms. Daniels stated that Ms. Stone indicated that the check was for payment of preneed funeral arrangements and particular a cemetery plot.

Mr. Rivers stated that an Administrative Complaint was filed and Respondent requested an administrative hearing of certain disputed issues and material facts under s. 120.57(1), F.S. In lieu of a formal hearing in this matter, Stone Funeral Home has determined that it is in their best interest to enter into this Settlement Stipulation. Stone Funeral Home has agreed to pay an administrative fine of \$1500. The terms of the Settlement Stipulation are reasonable under the facts and circumstances of this case. The Department requests that the Board approve the settlement and issue the Consent Order to conclude this matter.

The Chair questioned whether there was any one present representing Stone Funeral Home. There was a negative response.

MOTION: Mr. Helm moved to approve the Settlement Stipulation as recommended by the Department. Mr. Mueller seconded the motion, which passed unanimously.

(3) Stone, Janorise: Case No. 144432-13-FC; Division #ATN-20713

Mr. Rivers stated that the Division alleges that Janorise Stone, Funeral Director in Charge at Stone Funeral Home, entered into a preneed contract without the proper licensure. On March 19, 2013, the check payable to Stone Funeral Home in the amount of \$5770 was given to the funeral home by Leonarda Sherrod, who had power of attorney for her mother who is now deceased. The check was endorsed by Ms. Janorise Stone on behalf of Stone Funeral Home and deposited on April 9, 2013. On or about March 20, 2013, Tyris Brantley, son of Jean R Brantley and brother of Leonarda Sherrod, obtained a power of attorney over the financial matters of Jean Brantley. When he discovered the check to the funeral home, he arranged a meeting for himself and another sister, Deborah Daniels, with Janorise Stone FDIC regarding the check. By affidavits and support of the complaint filed with the Division, both Mr. Brantley and Ms. Daniels stated that Ms. Stone indicated that the check was for payment of preneed funeral arrangements and particular a cemetery plot.

Mr. Rivers stated that an Administrative Complaint was filed and Respondent requested an administrative hearing of certain disputed issues and material facts under s. 120.57(1), F.S. In lieu of a formal hearing in this matter, Janorise Stone has determined that it is in her best interest to enter into this Settlement Stipulation. Janorise Stone has agreed to pay an administrative fine of \$1500. The terms of the Settlement Stipulation are reasonable under the facts and circumstances of this case. The Department requests that the Board approve the settlement and issue the Consent Order to conclude this matter.

MOTION: Mr. Clark moved to approve the Settlement Stipulation as recommended by the Department. Mr. Helm seconded the motion, which passed unanimously.

B. Disputed Issues of Material Fact (Section 120.57(1) Hearings)

(1) Rose Hill Cemetery Company: Case No. 141381-13-FC; Division #ATN-20615 (Probable Cause Panel B)

This item was withdrawn from the agenda.

C. Material Facts Not Disputed (Section 120.57(2) Hearings)

(1) Probable Cause Panel A

(a) All Points Removal Service, LLC: Case No. 130794-13-FC; Division #ATN-17524 (F040067)

Mr. Rivers stated that on May 15, 2013, an administrative complaint was filed against the Licensee alleging violations of the Funeral, Cemetery, and Consumer Services Act. More specifically, the Division alleges that the licensee failed to place identification on the ankle or wrist of the deceased, failed to treat the deceased with dignity and respect, and the name of the licensee is not active with the Florida Department of State, Division of Corporations.

On or about May 17, 2013, the Department served the licensee with the administrative complaint. On or about June 7, 2014, the Licensee provided an election of proceeding form to the Department requesting a section 120.57(1), Florida Statutes, hearing involving material facts in dispute. However, the Licensee failed to provide a statement indentifying any material facts in dispute. On June 21, 2013, the Department filed an Order of Dismissal without Prejudice for the Licensee to cure cited defects in its election of proceeding form. On July 15, 2013, the Department received an amended request for section 120.57(1), Florida Statutes, hearing involving material facts in dispute.

Based on the amended request, the Department forwarded that case to the Division of Administrative Hearings (“DOAH”). Throughout the course of depositions and discovery, the parties determined that no material facts were in dispute. On June 18, 2014, an unopposed motion to relinquish jurisdiction to the Department was filed with DOAH. On June 19, 2014, Judge James H. Peterson, III, issued an order relinquishing jurisdiction to the Department for a section 120.57(2), Florida Statutes hearing not involving material facts in dispute. At this time it would be appropriate for the Board to determine whether or not the Respondent has waived its right to request a proceeding in this matter.

Mr. Knopke recused himself as he served on Probable Cause Panel A.

MOTION: Mr. Jones moved to find that the Respondent was properly served through publication after attempts to personally serve by certified mail and that the Respondent waived its rights to request a proceeding in this matter. Mr. Clark seconded the motion, which passed unanimously.

Mr. Rivers stated that now that the Board has determined that the Respondent has waived its right to request a proceeding, the Department believes it is appropriate at this time for the Chair to entertain a motion adopting the Allegations of Fact as set forth in the Administrative Complaint.

MOTION: Mr. Mueller moved to adopt the Findings of Fact. Mr. Helm seconded the motion, which passed unanimously.

Mr. Rivers stated that the Department contends that the Board’s Findings of Fact support a finding of the violations of Chapter 497, F.S. and Rule 69K, F.A.C. as charged in the Administrative Complaint and that the Respondent is in violation of those statutes and codes as set forth in the Administrative Complaint. The Department feels it is appropriate at this time for the Board to entertain a motion adopting the Conclusions of Law as alleged in the Administrative Complaint.

Ms. Loucks questioned whether the Respondent or a representative was present. There was a negative response.

MOTION: Mr. Jones moved to adopt the Conclusions of Law. Mr. Hall seconded the motion, which passed unanimously.

Mr. Rivers stated that the Department recommends an administrative fine of \$1000 and one (1) year of probation.

MOTION: Mr. Hall moved for a penalty an administrative fine of \$1000 and one (1) year of probation. Mr. Mueller seconded the motion, which passed unanimously.

(b) Noble, Ron; Case No. 134081-13-FC; Division #ATN-17635 (F046246)

Mr. Knopke recused himself as he served on Probable Cause Panel A.

Mr. Rivers stated that while employed at Oxley-Heard Funeral Home, the Licensee embezzled funds for his personal use. The Licensee entered into a civil judgment requiring him to pay Oxley-Heard \$250k. An Administrative Complaint was filed in this matter on October 9, 2013. The Licensee has since admitted to the facts as they were listed in the Administrative complaint and counsel for the Licensee has requested a hearing not involving material facts in dispute. At this time it would be appropriate for the Board to determine whether or not the Respondent has waived its right to 120.57(1) hearing.

MOTION: Mr. Helm moved that the Respondent has waived his rights to a 120.57(1) hearing. Mr. Hall seconded the motion, which passed unanimously.

Mr. Rivers stated that now that the Board has determined that the Respondent has waived its right to request a proceeding, the Department believes it is appropriate at this time for the Chair to entertain a motion adopting the Allegations of Fact as set forth in the Administrative Complaint.

MOTION: Mr. Clark moved to adopt the Findings of Fact. Mr. Hall seconded the motion, which passed unanimously.

Mr. Rivers stated that the Department contends that the Board's Findings of Fact support a finding of the violations of Chapter 497, F.S. and Rule 69K, F.A.C. as charged in the Administrative Complaint and that the Respondent is in violation of those statutes and codes as set forth in the Administrative Complaint. The Department feels it is appropriate at this time for the Board to entertain a motion adopting the Conclusions of Law as alleged in the Administrative Complaint.

Ms. Loucks stated that at this time it is appropriate for the Respondent and his counsel to address the Board as they could have arguments stating that the facts alleged in the Administrative Complaint do not support the Conclusions of Law so now would be the appropriate time for it.

Mr. Shropshire requested that the Respondent raise his right hand to be sworn in. "Do you solemnly swear that the testimony you are about to give in this matter will be the truth, the whole truth and nothing but the truth so help you God?"

Mr. Ronald Michael Noble answered, "Yes."

Ms. Wendy Wiener, representing the Respondent, stated that this is an informal administrative hearing and as you have just heard and as you know that means the material facts are not in dispute. The material facts are that Mr. Noble embezzled funds from his employer. Mr. Noble did enter into a Consent Judgment as is set forth in the documents. There is also an allegation of a single incident over his twelve (12) period of employment at Oxley-Heard of failure to properly handle a preneed contract. As your counsel has informed you, the purpose of this hearing is for me to present argument that the facts as admitted do not support Conclusions of Law sufficient to take significant disciplinary action against Mr. Noble and for me to make argument and Mr. Noble to present evidence regarding factors that would mitigate against severe punishment. The Board's charge, as you have been discussing this morning, is to protect the public. The law cautions you however. Restrictions shall be imposed only to the extent necessary to protect the public from significant or discernible harm or damage and not in a manner which will unreasonably affect the competitive market. Unlike other cases that you have had before you even today, this case is not like about harm or damage to the public. It is rather about competition and the attempted views by one Licensee against another to eliminate competition from the marketplace. Now, as I just said, the Board's role, per the law is to protect the public not to protect an employer from an employee. That is what the court system and other systems are for. As you can see from the hundreds of pages of civil court documents, the complainant availed himself of that civil court system. What you did not find in the Board package is a single consumer complaint or even a single allegation that there was consumer harm or harm to the public. You did not find them because they do not exist. Mr. Noble is not a threat to the public, he has not caused harm to the public and Mr. Rivers cannot describe to you how his actions have harmed the public. Now let me briefly address whether the admitted facts are themselves violations of Chapter 497. Mr. Noble admits to the mishandling of a single preneed contract and that is a single incident of a statutory violation. No consumer was harmed, mind you, via that statutory violation but that was a single incident of a statutory violation. The embezzlement, which is really the basis for this matter, does not rise to the level of a violation of Chapter 497, F.S. That was a matter between and employer and a formal employee.

Now let me focus your attention on the circumstances that mitigate against the extremely severe punishment sought against Mr. Noble. There are five (5) factors, in the relevant rule, that can be considered by the Board and I just want to briefly touch on all five (5) of them. The relevant rule permits the Board to consider the severity of the violation. While in this instance, Mr. Noble did admit to the facts as alleged, only the single incident of mishandling a preneed contract is a violation of Chapter 497, F.S. So when taken into consideration, the severity of the actual statutory violations is extremely low. The second circumstance the Board may consider is the degree of harm to the consumer or to the public. There is none, none is alleged and none exists. There was no harm to any consumer or to the public in this matter. The Board may also consider the number of times the violation has previously been committed by the Licensee. In the 657 pages you have before you, this is the only single incident of a violation of the chapter that is alleged against Mr. Noble. This is the only case ever presented against Mr. Noble by the regulatory Agency. He has no other discipline imposed upon his license. As to the actual violation of the law he admits to but a single violation of Chapter 497, F.S. The Board may also take into account the disciplinary history of the

Licensee, of which there is none. Finally, the Board may consider the status of the Licensee at the time the violation was committed. The Licensee was at that time and remains today in good standing with the regulator. Once the mitigating factors are considered, it is evident that regulatory punishment to the degree sought by the Agency should not be imposed upon Mr. Noble's funeral director and embalmer license. Mr. Noble has posed and continues to pose no threat to the public.

Finally, I am going to close by calling to your attention the very important fact of the timing of this matter. The facts which give rise to the potential discipline happened more than ten (10) years ago. If you read the hundreds of pages of civil court documents, you will see that there was an allegation with documentary support wherein the complainant acknowledged that the \$29k due would be treated as a loan and that it was repaid in full showing that Mr. Noble and the complainant had settled this matter between themselves and it stayed that way until Mr. Noble came back to the community and became the complainant's competitor. Mr. Noble has been serving the community since 1972 and has no disciplinary history whatsoever over the course of that 42 year term as a Licensee and this civil matter between an employer and former employee should not mark that record by revoking his funeral director and embalmers license. Mr. Noble is here to answer any questions that the Board may have and before he does so I do want to ask him a couple of specific questions to make sure that there is evidence in the record to support to mitigating factors not simply argument of counsel:

Wiener: Mr. Noble, have you ever had discipline imposed against your funeral director and embalmers license?

Noble: No ma'am.

Wiener: Have you ever had a disciplinary case presented before the Board for resolution?

Noble: No.

Wiener: Is your license in good status at this time?

Noble: Yes ma'am.

Wiener: Was it in good status at the time the violations were committed?

Noble: Yes ma'am.

Wiener: Regarding the facts of the matter, the embezzlement from your employer, tell the Board over which time period that occurred.

Noble: It was in 2004.

Ms. Wiener stated that she did not have any other questions Mr. Noble is here to answer any questions that the Board may have.

Mr. Hall stated that Mr. Noble has admitted to embezzling \$250k.

Ms. Wiener stated that the amount is actually in dispute. That number was never settled upon.

The Chair stated that the findings of fact were not disputed.

Ms. Wiener stated that the finding is that there is a consent judgment in the amount of \$250k. There is not a finding that Mr. Noble actually embezzled \$250k. Mr. Noble admits that the Consent Order exists and can address for Mr. Hall why it exists.

Mr. Noble stated that the reason the Order exists is because he retained counsel in this case over ten (10) years ago and spent close to \$20k fighting these allegations. When it came down to the very end, the attorney that I had withdrew because I had no more money to pay him. I agreed and signed that Stipulation thinking that it would cease there that it was a civil matter and would not go any further. Mr. Noble stated that he did not steal that much money.

Mr. Hall questioned whether Mr. Noble agrees that he took the first \$29k.

Mr. Noble concurred.

Mr. Hall questioned how much Mr. Noble claims to have taken after that.

Mr. Noble stated that he did not embezzle any more money after that.

Mr. Hall stated that Mr. Noble claims to not have taken any money after the \$29k but he signed the statement indicating that he took \$250k.

Mr. Noble stated that is correct.

Ms. Wiener stated that to be clear, the Consent Judgment does not address the specific amount of the embezzlement. There is an issue related to civil theft wherein a complainant receives treble damages. If you look through the entire set of documents the actual amount that was claimed due in a demand letter from counsel to Mr. Noble very on was \$90k and so that was the additional amount that they had come up with and then the numbers kind of went back and forth but there is a treble damages issue that is also set forth in the documents you have in evidence now.

Mr. Jones stated that Mr. Noble stated he did not take any more money but page 33 of 657 talks about the Capital One credit card, checks Mr. Noble wrote to himself, excess payments and bonuses. Mr. Jones questioned whether this happened.

Mr. Noble stated that it did happen and the money was repaid.

Ms. Wiener stated that that was part of the \$29k.

Ms. Oliver questioned whether there is any applicable statute of limitations regarding this issue, if the last allegation of the commission of fraud, deceit or negligence took place in 2004 or 2005.

Ms. Wiener stated that they brought the matter during the applicable statute of limitations then and it was reduced to judgment later on. In terms of criminal prosecution I think the statute of limitations would have long since run. There is not an applicable statute of limitations that applies in this particular regulatory circumstance. As I said, extremely noteworthy is the fact that this all happened ten (10) years and longer ago and yet Mr. Noble has continued to be licensed and continued to practice without any allegation of harm to the public or complaints by the public against his license since that time.

The Chair called the Board's attention to page 10 where there is a list of statutes that constitute sufficient grounds for suspension or revocation and there are four (4) statutes indicated there.

Ms. Wiener stated that she would be happy to address the applicability of each one if the Board feels the need for her to do so. The first statute that was alleged to have been violating is what we generally refer to in the Industry as the "catchall statute." It says if you violate any other provisions of Chapter 497, F.S. then you violated this provision. The second that is alleged to have been violated is regarding fraud, deceit, misrepresentation, misconduct or incompetence in the Industry. That statute does come into play with regard to the single incident of mishandling a preneed contract. That would be the single violation of the law that is admitted in this circumstance although I would argue vehemently that a single incident of mishandling a preneed contract does not rise to the level of revoking a funeral director and embalmers license. The third statute which I think is s. 497.165, F.S., and there was none. That law does not apply at all in this case as there was no deficiency per say. Regarding the fourth statute, as I said there was a single incident where there was a piece of merchandise accepted in lieu of payment. So that you know and I believe that it is reflected in the evidence that you have before you that Mr. Noble did make good on that contract and paid that money also over to the complainant.

MOTION: Mr. Helm moved to adopt the Conclusions of Law. Mr. Hall seconded the motion, which passed unanimously.

MOTION: The Chair moved for a penalty of revocation and a \$5000 administrative fine based upon the statutes referenced. Mr. Hall seconded the motion, which passed unanimously.

(2) Probable Cause Panel B

(a) Jay Monument & Vault a/k/a Jay Monument & Vault, Inc.: Case No. 153256-14-FC; Division #ATN-21590 (F037739)

Ms. Anderson recused herself as she served on Probable Cause Panel B.

Mr. Rivers stated that Jay Monument & Vault d/b/a Jay Monument & Vault Inc. was licensed as a monument establishment retailer from October 1999 – October 2001. As of February 25, 2014, the Licensee was found to be opened for business selling and building monuments, having 23 active monument contracts and using monument sales retail agreements that were not approved by the licensing authority. On or about June 2012, a consumer placed an order for a monument with the Licensee. In about February 2013, the consumer paid the Licensee a \$400 deposit for the monument. Thereafter, having received no response to the inquiries as to when the monument would be ready, the consumer sent a certified letter requesting a refund of her deposit. The deposit was finally returned over thirty (30) days from the date of the request.

The Department filed an Administrative Complaint on June 20, 2014, which was served on Respondent by certified mail on June 27, 2014. The Department received Jay Monument's response and through its owner, Wanda Garrison, elected to waive its right to a hearing and did not dispute any of the factual allegations in the matter. Based on this information, the Department filed a Motion for Determination of Waiver of Rights and Final Order. At this time it would be appropriate for the Board to make a motion to determine whether the Respondent waived its rights to a 120.57(1) hearing in this matter.

MOTION: Mr. Jones moved that the Respondent has waived its rights to a 120.57(1) hearing. Mr. Clark seconded the motion, which passed unanimously.

Mr. Rivers stated that now that the Board has determined that the Respondent has waived its right to request a proceeding, the Department believes it is appropriate at this time for the Chair to entertain a motion adopting the Allegations of Fact as set forth in the Administrative Complaint.

MOTION: Mr. Mueller moved to adopt the Findings of Fact. Mr. Hall seconded the motion, which passed unanimously.

Ms. Loucks questioned whether there was anyone present representing Jay Monument. There was a negative response.

Mr. Rivers stated that the Department contends that the Board's Findings of Fact support a finding of the violations of Chapter 497, F.S. and Rule 69K, F.A.C. as charged in the Administrative Complaint and that the Respondent is in violation of those statutes and codes as set forth in the Administrative Complaint. The Department feels it is appropriate at this time for the Board to entertain a motion adopting the Conclusions of Law as alleged in the Administrative Complaint.

MOTION: Ms. Oliver moved to adopt the Conclusions of Law. Mr. Clark seconded the motion, which passed unanimously.

Mr. Rivers stated that the Department recommends an administrative fine of \$1000 and renewal of the license with associated fees. Failure to renew the license within thirty (30) days of the execution of the Final Order would cause an Order to Cease and Desist to be entered without further administrative action. The Licensee must submit monument contracts to the Board for approval and one (1) year probationary term to commence upon execution of the Final Order.

Mr. Knopke questioned whether the Respondent went on for thirteen (13) years without a license.

Mr. Rivers stated that was indicated in the facts.

Mr. Knopke questioned how you go thirteen (13) years without finding someone operating a business that is not licensed.

Mr. Shropshire stated that monument establishments are not inspected so if you do not get any complaints on them you just assume that when they do not renew that they have gone out of business.

Mr. Knopke questioned whether the refund was the trigger in this case.

Mr. Shropshire concurred.

Mr. Helm stated that on September 30, 2013, someone went to the establishment and it was abandoned then they went back in February 2014 and the establishment was open. The Respondent’s response indicated that she would work with the Division.

The Chair stated that he read the response to mean cooperate but maybe he is putting words in the Respondent’s mouth.

Mr. Knopke questioned the maximum fine.

Mr. Helm stated that the Respondent needs to pay thirteen (13) years worth of fees that have not been paid.

Mr. Rivers stated that the violations were set under ss. 497.152(5)(b) and 497.554(1), F.S.

Mr. Mueller stated that on page 14 of 134, it states that it is revocation, suspension and a \$5000 fine.

Mr. Rivers stated that there are aggravating factors.

Ms. Ellen Simon stated that if the Board finds that there are aggravating factors then the maximum disciplinary guidelines provided by Rule do not exist or you can go above the maximum guidelines.

Mr. Rivers stated that in order for the Board to do that the aggravating factors would have to be stated on the record before deviating from the penalty guidelines as listed in the Rule.

Mr. Shropshire stated that he has seen this before other Boards where in this kind of situation that set a fine for x dollars and also there is a condition that they pay all of the renewal fees that they should have paid since roughly 2001. The latter is not necessarily considered a disciplinary sanction. Mr. Shropshire questioned whether that might be legally appropriate in this case if the Board chose to do so.

Ms. Loucks questioned whether the Department meant that the license would be renewed with just fees or all the past due fees. Basically, the Board could impose a fine equivalent to all of the nonpayment of the fees for the time periods that they missed. The Board would have to cite the aggravating factors on the record in order to do that because the disciplinary guidelines for the monument establishment states that the penalty is a reprimand and a fine of \$1000 per count and up to revocation. If you are going to impose a more significant fine than \$1000 per count, as it appears to be three (3) counts in here, you would have to cite the aggravating factors on the record.

Mr. Rivers stated that considering the aggravating factors, they may include but are not limited to the severity of the violation, the degree of harm to the consumer or public, the number of times the violation previously have been committed by the Licensee, the disciplinary history of the Licensee, as well as the status of the Licensee at the time the violation was committed.

MOTION: Mr. Jones moved for a penalty of \$5000 administrative fine; renewal of the license along with the fees for the thirteen (13) years they did not pay to renew and a two (2) year probationary period, based on thirteen (13) years of non licensed sales and the Department will notify the regulatory authorities in the states of Alabama and Georgia about the discipline. Mr. Knopke seconded the motion, which passed unanimously.

*****BREAK*****

*****READDRESSSED – C. (1) (b) Noble, Ron; Case No. 134081-13-FC*****

Mr. Shropshire stated that Mr. Rivers would like to readdress the Board concerning that matter briefly.

Mr. Rivers recommended that the Board reconsider the penalty that was imposed on Mr. Noble. After review of the penalty guidelines for a first offense, the penalty that was assessed was beyond the assessed penalty guidelines without aggravating factors to list on the record. The Department would ask that the penalty be vacated and then set again for the December Board

meeting where Mr. Noble can be in attendance with a notice so that the Board may reconsider the case with aggravating factors.

The Chair questioned whether Mr. Noble is available now.

Ms. Wiener stated that Mr. Noble left at the conclusion of the hearing. This hearing was properly notice and concluded.

Mr. Rivers stated that to his knowledge Mr. Noble is no longer in attendance.

Ms. Wiener stated that she would object to any post hearing introduction of aggravating factors. This matter was considered, it was concluded and any other actions would be in violation of Mr. Noble's due process rights.

Mr. Shropshire questioned whether Mr. Rivers is suggesting that the Board vacate the action it just took in its entirety and set the matter back for a hearing at its December Board meeting because if there was an error, the Board wants to get it right under the law.

Mr. Rivers concurred.

The Chair questioned whether the error is able to be corrected now.

Ms. Loucks responded, "No sir." Mr. Noble has the right to be here to hear additional information that has been provided being that the aggravating circumstances were not discussed when the Board imposed the penalty the first time so it would be best for the Board to consider a motion to reconsider the case of Ronald Noble and a separate motion to vacate the decision made earlier.

Ms. Oliver questioned whether the Board has the authority to go back and hear new evidence if we do not get it right the first time.

Ms. Loucks stated that if the Board reconsiders and vacate the motion made earlier today, when it comes back to the Board in December it would be as a new hearing. It would be as though the hearing today did not take place so they would be able to provide additional information and argument at a future meeting regarding whether or not it should be aggravated and the Department and Division would have the opportunity to go back and see if there are aggravating circumstances and factors that would justify the penalty that was imposed previously, so it would be a new hearing at a future meeting.

Ms. Oliver stated that here concern is that the Department gets a second bite of the apple to introduce evidence that it should have presented today but did not. I am concerned about the due process concerns with that.

Ms. Loucks stated that the Board has the ability to reconsider any order and actually even after it is filed you can. It is in the Board's best interest to have that reconsidered because this Order could be appealed and the Board would not have any basis for the penalty imposed based on what is in the record and not in the Order because the District Court would look at the Order.

Ms. Wiener stated that they would seek an award of attorney's fees as well because that Order is outside of the scope of the law. I do think there are grave due process concerns about this matter at this point.

MOTION: The Chair moved to reconsider the case of Ronald Noble. Mr. Mueller seconded the motion, which passed unanimously.

MOTION: Mr. Jones moved to vacate the previous finding made earlier today and continue the matter to the December meeting. Mr. Mueller seconded the motion, which passed unanimously.

(b) Probable Cause Panel A: Jones, Melvin: Case No. 151723-14-FC; Division #s ATN-21666 (F046907)

Mr. Knopke recused himself as she served on Probable Cause Panel A.

Mr. Rivers stated that on June 12, 2014, the Department filed an Administrative Complaint alleging that Melvin Jones, a licensed funeral director and embalmer, and the Funeral Director in Charge of the Reddick Funeral Home, did not practice proper management of biomedical waste disposal and transport because biomedical waste was commingled with ordinary waste in a single receptacle, was not placed in the required red bags for biomedical waste and was not picked up for disposal by an authorized biomedical waste disposal company. The inspection also revealed there was no hot water in the preparation room.

An Administrative Complaint was filed against Mr. Jones on June 12, 2014. A copy of the Administrative Complaint including an Election of Proceeding form was sent to Mr. Jones by certified mail to the address of record. On June 30, 2014, a copy of the Administrative Complaint with an Election of Proceeding form was resent to Reddick Funeral Home by certified mail. The Licensee failed to file an Election of Proceeding form or any other written response to the Administrative Complaint. Based on this information, the Department filed a Motion for Final Order by Default. At this time it would be appropriate for the Board to determine whether the Respondent has waived his right to a proceeding on the matters alleged in the Administrative Complaint.

MOTION: Mr. Jones moved to find that the Respondent has waived his right to a proceeding on the matters alleged in the Administrative Complaint. Ms. Oliver seconded the motion, which passed unanimously.

Mr. Rivers stated that now that the Board has determined that the Respondent has waived its right to request a proceeding, the Department believes it is appropriate at this time for the Chair to entertain a motion adopting the Allegations of Fact as set forth in the Administrative Complaint.

MOTION: Mr. Helm moved to adopt the Findings of Fact. Mr. Hall seconded the motion, which passed unanimously.

Mr. Rivers stated that at this time it is appropriate for the Respondent to address the Board.

The Chair questioned whether there was anyone present representing the Respondent. There was a negative response.

Mr. Rivers stated that it should be noted that following receipt of the Motion for Default Mr. Jones actually did get in touch with the attorney assigned to this case, Ms. Colleen Rio, on September 19, 2014. Mr. Jones advised that he has a biomedical waste removal contract in place since December 9, 2013 and as he stated in his letter on that same day responding to the Department's inspection report, Mr. Jones faxed Ms. Rio a copy of the contract with Bio Waste Tech Inc. The contract has an effective date of December 9, 2013. The validity of the contract was confirmed by Ms. Rio who contacted Bio Waste Tech on September 22, 2014. It is likely if this contract had been on record when the inspection was conducted, this case would not be here. The Department contends that the Board's Findings of Fact support a finding of the violations of Chapter 497, F.S. and Rule 69K, F.A.C. as charged in the Administrative Complaint and that the Respondent is in violation of those statutes and codes as set forth in the Administrative Complaint. The Department feels it is appropriate at this time for the Board to entertain a motion adopting the Conclusions of Law as alleged in the Administrative Complaint.

MOTION: Mr. Mueller moved to adopt the Conclusions of Law. Ms. Anderson seconded the motion, which passed unanimously.

Mr. Rivers stated that in light of the new information presented, the Department recommends a penalty of a \$250 administrative fine on the Licensee's license. At this it would be appropriate for the Board to deliberate and determine a penalty in this matter.

MOTION: Ms. Oliver moved for a penalty of revocation and a \$250 administrative fine. Mr. Mueller seconded the motion, which passed unanimously.

(c) Probable Cause Panel A: Reddick Funeral Home: Case No. 151718-14-FC; Division #ATN-21666 (F040168)

Mr. Knopke recused himself as she served on Probable Cause Panel A.

Mr. Rivers stated that this is the companion case for the previous case of Melvin Jones, FDIC of Reddick Funeral Home.

On June 12, 2014, the Department filed an Administrative Complaint alleging that Melvin Jones, a licensed funeral director and embalmer, and the Funeral Director in Charge of the Reddick Funeral Home, did not practice proper management of biomedical waste disposal and transport because biomedical waste was commingled with ordinary waste in a single receptacle, was not placed in the required red bags for biomedical waste and was not picked up for disposal by an authorized biomedical waste disposal company. The inspection also revealed there was no hot water in the preparation room.

A copy of the Administrative Complaint including an Election of Proceeding form was sent to Reddick Funeral Home by certified mail to the address of record. The Licensee failed to file an Election of Proceeding form or any other written response to the Administrative Complaint. Based on this information, the Department filed a Motion for Final Order by Default. At this time it would be appropriate for the Board to determine whether the Respondent has waived his right to a proceeding on the matters alleged in the Administrative Complaint for failure to respond to the Election of Proceeding.

MOTION: Mr. Mueller moved to find that the Respondent has waived his right to a proceeding on the matters alleged in the Administrative Complaint for failure to respond to the Election of Proceeding. Mr. Hall seconded the motion, which passed unanimously.

Mr. Rivers stated that now that the Board has determined that the Respondent has waived its right to request a proceeding, the Department believes it is appropriate at this time for the Chair to entertain a motion adopting the Allegations of Fact as set forth in the Administrative Complaint.

MOTION: Mr. Mueller moved to adopt the Findings of Fact. Mr. Hall seconded the motion, which passed unanimously.

Mr. Rivers stated that at this time it is appropriate for the Respondent to address the Board.

The Chair questioned whether there was anyone present representing the Respondent. There was a negative response.

Mr. Rivers stated that the Department contends that the Board's Findings of Fact support a finding of the violations of Chapter 497, F.S. and Rule 69K, F.A.C. as charged in the Administrative Complaint and that the Respondent is in violation of those statutes and codes as set forth in the Administrative Complaint. The Department feels it is appropriate at this time for the Board to entertain a motion adopting the Conclusions of Law as alleged in the Administrative Complaint.

MOTION: Mr. Helm moved to adopt the Conclusions of Law. Mr. Hall seconded the motion, which passed unanimously.

Mr. Rivers stated that the Department recommends a penalty of a \$250 administrative fine on the Licensee's license. At this it would be appropriate for the Board to deliberate and determine a penalty in this matter.

MOTION: Ms. Oliver moved for a penalty of revocation and a \$250 administrative fine. Mr. Mueller seconded the motion, which passed unanimously.

5. Application(s) for Preneed Sales Agent
A. Informational Item (Licenses Issued without Conditions) – Addendum A

The application(s) presented are clean and have been approved by the Division. This item is informational only and does not require Board action.

6. Application(s) for Continuing Education Course Approval
A. Recommended for Approval without Conditions – Addendum B
(1) Florida Cemetery, Cremation & Funeral Assoc #75
(2) Hospice Foundation of America #14410
(3) Independent Funeral Directors of Florida Inc #135
(4) New Jersey Funeral Service Education Corp. #7002

The majority of the Continuing Education Committee and the Division recommends approval of the course(s) for the number of hours indicated on the Addendum.

MOTION: Mr. Mueller moved to approve the application(s). Mr. Clark seconded the motion, which passed unanimously.

7. Application(s) for Florida Law and Rules Examination

A. Informational Item (Licenses Issued without Conditions) – Addendum C

- (1) *Direct Disposer*
 - (a) *Barnard, Melanie S*
 - (b) *Jordan, Adam C*
 - (c) *Pelletier-Mitchell, Daneya*
- (2) *Funeral Director (Endorsement)*
 - (a) *Bohin, Robin*
 - (b) *Weakland, Michael*
- (3) *Funeral Director and Embalmer (Endorsement)*
 - (a) *Daviduk, Heather A*
- (4) *Funeral Director and Embalmer (Internship)*
 - (a) *Agee, Simone Y*
 - (b) *Strong, Kevin A*
 - (c) *Vassallo, Michael J*

The application(s) presented are clean with no indication of a criminal or disciplinary history and have been approved by the Division pursuant to delegation by the Board. This item is informational only and does not require Board action.

8. Application(s) for Internship

A. Informational Item (Licenses Issued without Conditions) – Addendum D

- (1) *Funeral Director*
 - (a) *Giffin, Terry L (F043211)*
 - (b) *Jackman, Tracy R (F077921)*
 - (c) *Langjahr, Yvonne (F020849)*
 - (d) *Russell, Michael K (F080569)*
 - (e) *Woods, Daron D (F063604)*
- (2) *Funeral Director and Embalmer*
 - (a) *Eason, Danny (F080608)*
 - (b) *Kratzer, Kris E (F080545)*
 - (c) *Marvella, Eric F (F080444)*
 - (d) *Mason, Randi S (F080443)*
 - (e) *Perry, Erik G (F070002)*
 - (f) *Thomas, Kathryn K (F079855)*

The application(s) presented are clean with no indication of a criminal or disciplinary history and have been approved by the Division pursuant to delegation by the Board. This item is informational only and does not require Board action.

B. Recommended for Approval without Conditions (Criminal History)

- (1) *Funeral Director and Embalmer*
 - (a) *Iannacone, Tara J*

The Applicant submitted an application for a Concurrent Internship on June 6, 2014. The application was incomplete when submitted. All deficient items were returned on July 23, 2014. The Applicant submitted a fingerprint card, the processing of which returned a criminal history, to wit:

- Ms. Iannacone pled guilty in October 2010 to misdemeanor shop lifting, value of under \$200, in New Jersey. She was fined \$1,151 and received a suspended sentence of 30 days in jail. All fines have been paid.

The Division is recommending approval without conditions.

The Chair questioned whether there was anyone present representing the Applicant. There was a negative response.

MOTION: Mr. Knopke moved to approval of the application. Mr. Mueller seconded the motion, which passed unanimously.

9. **Application(s) for Embalmer Apprenticeship**
A. *Informational Item (Licenses Issued without Conditions) – Addendum E*
(1) *Brai, Sean A (F080390)*
(2) *Sarles, Jerad E (F080310)*
(3) *Wilson, Laura E (F075451)*

The application(s) presented are clean with no indication of a criminal or disciplinary history and have been approved by the Division pursuant to delegation by the Board. This item is informational only and does not require Board action.

10. **Application(s) for Registration as a Training Agency**
A. *Informational Item (Licenses Issued without Conditions) – Addendum F*
(1) *SE Funeral Homes of Florida LLC d/b/a Baldwin-Fairchild Oaklawn Park Cemetery & Funeral Home (F078966) (Sanford)*

The application(s) presented are clean with no indication of a criminal or disciplinary history and have been approved by the Division pursuant to delegation by the Board. This item is informational only and does not require Board action.

11. **Consumer Protection Trust Fund Claims**
A. *Recommended for Approval without Conditions – Addendum G*

The Division recommends approval of the claim(s) for the amounts indicated on the Addendum.

Mr. Knopke questioned whether Coleman Funeral Home is a new “Defaulting Seller” as he does not recall seeing them on the Addenda since he has been on the Board.

Mr. Shropshire stated that he would have to report back to Mr. Knopke as he did not have the information available to respond.

MOTION: Mr. Mueller moved to approve the claim(s). Mr. Jones seconded the motion, which passed unanimously.

12. **Application(s) for Monument Establishment Sales Agent**
A. *Informational Item (Licenses Issued without Conditions) – Addendum H*

The application(s) presented are clean with no indication of a criminal or disciplinary history and have been approved by the Division pursuant to delegation by the Board. This item is informational only and does not require Board action.

13. **Notification(s) of Change of Location**
A. *Informational Item (Licenses Issued without Conditions) – Addendum I*
(1) *Johnson’s Memorial Chapel Inc (F060084) (Boynton Beach)*
(2) *Richardson’s Family Funeral Care Inc (F052127) (Panama City)*
(3) *The Warden Group LLC (F077572) (Jacksonville)*

This item is informational only and does not require Board action.

14. **Application(s) for Funeral Establishment**
A. *Recommended for Approval with Conditions*
(1) *A Good Shepherd’s Funeral Home and Cremation Services LLC (Oakland Park)*

An application for a Funeral Establishment was received on August 8, 2014. The application was incomplete when submitted. All deficient items were returned on September 11, 2014. The fingerprint cards for all principals were returned with criminal history for the principal, Dwayne Sheppard. The Funeral Director in Charge will be Peggy Johnson-Rahming (F043590).

The Applicant's principal, Dwayne Sheppard, has submitted a criminal history to wit December 2012; Driving with a suspended license. He was fined \$250 and court costs of \$26.

The establishment is recommended for approval subject to the condition that the establishment passes an onsite inspection by a member of Division Staff.

MOTION: Mr. Knopke moved to approve the application subject to the condition that the establishment passes an onsite inspection by a member of Division Staff. Ms. Anderson seconded the motion, which passed unanimously.

(2) A J Manuel Funeral Home Inc (Florida City)

An application for a Funeral Establishment was received on August 7, 2014. The application was incomplete when submitted. All deficient items were returned on August 27, 2014. The fingerprint cards for all principals were returned with no criminal history. The Funeral Director in Charge will be Jeffrey Tillman (F044406).

The establishment is recommended for approval subject to the condition that the establishment passes an onsite inspection by a member of Division Staff.

MOTION: Ms. Oliver moved to approve the application subject to the condition that the establishment passes an onsite inspection by a member of Division Staff. Mr. Clark seconded the motion, which passed unanimously.

(3) Deborah Faniel Jenkins d/b/a Faith Funeral Services (Haines City)

An application for a Funeral Establishment was received on September 2, 2014. The application was complete when submitted. The fingerprint cards for all principals were returned without criminal. The Funeral Director in Charge will be Clayton Boyd (F046641).

The establishment is recommended for approval subject to the condition that the establishment passes an onsite inspection by a member of Division Staff.

MOTION: Mr. Jones moved to approve the application subject to the condition that the establishment passes an onsite inspection by a member of Division Staff. Mr. Clark seconded the motion, which passed unanimously.

(4) Demarco Family Cremation and Funeral Home LLC (Tampa)

The following was presented to the Board for review:

- (1. This application for a Funeral Establishment license was received on August 5, 2014. The fingerprint cards for all principals were returned without reportable criminal record shown.
- (2. The sole principal of the Applicant herein, is Yvette E. Klausch, as shown on the Applicant's List of Principals included in the application, Attachment A. The Florida Division of Corporations likewise shows Yvette E. Klausch as the sole listed member and manager of the Applicant, Demarco Family Cremation and Funeral Home LLC. The proposed Funeral Director in Charge, as stated in the application, will be Yvette E. Klausch (F042365).
- (3. The Division believes that informed consideration of this application requires a rather detailed explanation of some related facts.
- (4. This is an application for a new funeral establishment license. However this establishment would be located at the same premises where until recently there was operated a funeral establishment by the Gonzalez-Roel interests, under the licensed

name JGR Funeral Services Inc. (F039959). Adolfo and Julio Gonzalez-Roel came before the Board for informal hearing, at the June 24, 2009 Board meeting, on Administrative Complaints that charged that on August 21, 2008 they pled guilty to grand theft, a 3rd degree felony, regarding more than \$20,000 and less than \$100,000 in funds belonging to SCI. At that Board meeting the Board revoked them both. The Final Orders were filed August 13, 2009 and are final. The wife (Lucia Gonzalez-Roel) of one of the brothers continued to operate the funeral establishment, and on the advice of Board counsel, no action was deemed possible against the funeral establishment because the wrongdoing of the revoked persons could not be attributed to the funeral establishment as operated by the wife of the revoked person. The history of Adolfo and Julio Gonzalez-Roel is considered by the Division to be relevant hereto because Yvette E. Klausch worked for JGR Funeral Services Inc. until recently, and in statements she has made she has indicated that Julio Gonzalez-Roel was present in that funeral establishment while she worked there and she reported to him and Lucia Gonzalez-Roel (see infra).

(5. Prior to July 2010, JGR Funeral Services Inc. had a preneed license. JGR Funeral Services Inc. applied for renewal of the preneed license in 2010, but the Board denied renewal. The denial was not appealed and JGR Funeral Services Inc. never held any preneed license after July 1, 2010.

(6. In Feb, 2014 DeArbor1 LLC and the Gonzalez-Roel interests entered into a Bill of Sale dated 2-6-14, by which the Gonzalez-Roel interests in effect sold the 6718 N Armenia Funeral Home business to DeArbor1. This change of ownership was not reported to the Division or the Board. DeArbor1 asserts that the Gonzalez-Roel interests were supposed to initiate a change of ownership request with the Board but failed to do so. The evidence suggests that the DeArbor1 LLC interests and the Gonzalez-Roel interests intended that the Gonzalez-Roel interests would stay on and operate the funeral establishment for the DeArbor1 LLC interests for some period of time.

(7. In Feb. 2014 Century Bank, located in the Tampa area, loaned DeArbor1 LLC approximately \$1.33 million. This was the sum of 3 loans:

- \$658,750 secured by a mortgage and assignment of rents at the funeral establishment premises, dated February 6, 2014.
- \$465,892 secured by a UCC security interest in inventory, accounts and equipment; and by a life insurance policy on Julio Gonzalez-Roel
- \$209,527 secured by the above mortgage dated February 10, 2014.

(8. DeArbor1 LLC is believed to be operated by the all or some of the same principals who in 2013 had their preneed license suspended by Alabama regulatory authorities, and who have several cemeteries in Alabama in federal bankruptcy proceedings in Alabama. More specifically:

- In Sept. 2013 Alabama regulatory authorities suspended the preneed license of an entity named DeArbor LLC, for misconduct as specified in the order of suspension. The Alabama Suspension Order identified persons involved in the operation of DeArbor LLC as follows: Judy A. DeSola, Salvatore DeSola, and Anthony Arboritanza. Judy DeSola is a principal of DeArbor1 LLC.
- In May 2014 a federal bankruptcy proceeding was initiated in Alabama, against DeArbor LLC, and DeArbor LLC and several Alabama cemeteries owned by that firm are currently in federal bankruptcy proceedings in Alabama.

(9. The evidence indicates that from February until approximately early July 2014 the Gonzalez-Roel interests ran the funeral home for the DeArbor1 LLC interests. In or about early July 2014 the DeArbor1 LLC interests and the Gonzalez-Roel interest had a falling-out and one evening, after the funeral establishment was closed, the DeArbor1 LLC interests had the locks changed, and when the Gonzalez-Roel interests learned of this, they went to the funeral establishment, but were turned away by the DeArbor1 LLC interests. A description of these events is provided by Lucia Gonzalez-Roel.

(10. The Gonzalez-Roel interests subsequently regained possession of the premises temporarily by changing the locks back early one morning.

(11. The conflict between the DeArbor1 LLC interests and the Gonzalez-Roel interests was taken by those parties to the civil courts in Hillsborough County. In or about August 2014 a trial court ruled that the DeArbor1 LLC interests had the right to possession of the premises, and in or about late August 2014 the Gonzalez-Roel interests surrendered possession to the DeArbor1 LLC interests, who are believed to be currently in possession of the premises.

(12. Throughout July and August both the Gonzalez-Roel interests and the DeArbor1 LLC interests were in frequent touch with the Division, each urging the Division to side with them in their dispute. The Division took no position as to their dispute.

(13. The person who signed the current application, and who is indicated in the application as the proposed FDIC, is one Yvette E. Klausch. Yvette E. Klausch worked for the Gonzalez-Roel interests as a funeral director at the JGR funeral establishment, until the takeover of the premises by the DeArbor1 LLC interests in or about July, at which time the DeArbor1 LLC interests engaged her services. See below.

(14. On August 29, 2014 the Division sent Yvette E. Klausch a deficiency letter, in regard to the application herein. By letter dated September 4, 2014, Attorney Dawn Siler-Nixon of the law firm of Ford Harrison replied to the deficiency letter on behalf of Yvette E. Klausch.

(15. By letter dated September 4, 2014, the Division has advised Yvette E. Klausch, that the Division has substantial concerns in regard to the Applicant's trustworthiness or integrity in business or professional matters, arising out of two matters:

ITEM 1: The ability or potential ability of DeArbor1 LLC, and/or certain persons affiliated with that entity, to affect the operation of the proposed funeral establishment. It is our understanding that DeArbor1 LLC owns the property, and that the Applicant herein would operate the funeral establishment on premises leased from the DeArbor1 LLC interests.

ITEM 2: The evidence suggesting that while Yvette E. Klausch was employed at JGR Funeral Services, that firm illegally sold multiple preneed contracts, and that she was involved in selling the preneed contracts

(16. By email dated September 14, 2014 Yvette E. Klausch responded to the Division's September 4, 2014 letter. In her response, in her paragraph labeled "Item 2," Yvette E. Klausch states that "*I was employed by JGR Funeral services, Inc. (JGR), for a short period of time from August 1, 2013 to July 17, 2014. During my tenure there, I reported directly to Julio and Lucia Gonzalez-Roel. During my tenure, I never sold any preneed contracts.*" Emphasis added.

(17. By email to Yvette E. Klausch dated September 18, 2014, the Division requested that Yvette E. Klausch provide a response to the affidavit of one Tony Rodriquez, dated September 18, 2014, to the effect that in June 2014 Yvette E. Klausch sold Mr. Rodriquez a preneed contract. In his affidavit Mr. Rodriquez states: "*On June 20, 2014, my wife Betty J. Rodriquez and I went to JGR Funeral Home located at 6718 N Armenia Avenue Tampa, Florida 33604 and met with Yvette Klausch to make preneed arrangements for my mother ... she [Yvette E. Klausch] personally wrote out and completed a statement of funeral goods and services selected totaling \$1,635 for my mother's preneed funeral arrangements.*"

(18. Yvette E. Klausch replied by email dated September 19, 2014. She does not deny the Rodriquez assertions, but indicates to the effect that at the time of the Rodriquez sale it was her understanding that the Gonzalez-Roel interests had obtained a preneed license.

(19. Yvette E. Klausch asserts to the effect that DeArbor1 LLC and its principals will have no substantive involvement in the operations of the proposed funeral establishment.

Yvette E. Klausch has been advised by the Division that she should attend the October 2, 2014 Board meeting to make presentation in support of her application and to be prepared to answer any questions from the Board regarding her application or related matters.

Mr. Shropshire stated that the Division has indicated to the Applicant that the Division will reserve a determination as to its recommendation until after the Division hears the Applicant's presentation at this meeting. It is my understanding that the Applicant and counsel for Applicant are here. Mr. Shropshire requested that the Applicant raise her right hand to be sworn in. "Do you solemnly swear that the testimony you are about to give in this matter will be the truth, the whole truth and nothing but the truth so help you God?"

Ms. Yvette E. Klausch responded, "Yes." Ms. Klausch stated that she is applying for licensure to do business as Demarco Family Cremation and Funeral Home. Demarco is my grandfather's name. He had a funeral home in upstate New York. He

had six (6) brothers. Five (5) of them were in the funeral business and one (1) was an attorney. It would be an honor for me to go ahead and move this from upstate New York to Florida to carry on my grandfather's name for my family's heritage and for my children's heritage. My grandfather's name and his brothers' names are stellar in the upstate New York community. Several funeral homes still exist under the Demarco name and including the history which dates back pre 1920. I understand that there is 300+ pages of information that was given to the Board regarding this manner and the location there of. I want to make it clear to the Board, to the State and everyone involved that I have no affiliation with JGR Funeral Home. I have no affiliation with Julio Gonzalez-Roel or his wife Lucia. I have no affiliation with the former funeral director of charge, Douglas Hernandez. I have no affiliation, other than a lease agreement that will be put into place following potential issuance of the establishment license, with DeArbor1. I ask the Board to consider my application with conditions, as applied with inspection, to grant me a license doing as Demarco Family Funeral Home. I think the people in that area deserve an honest, respectful person and funeral director to take care of them and to handle their loved ones and that is why I am here and that is why I decided to be present for this hearing.

Mr. Knopke questioned how long Ms. Klausch worked for JGR.

Ms. Klausch stated that she worked there from August 1, 2013 to July 17, 2014, eleven (11) months.

Mr. Knopke questioned whether Ms. Klausch has worked for DeArbor1.

Ms. Klausch answered, "No, well from what I understood from the information I was given, Julio Gonzalez-Roel and his wife sold the business to DeArbor1 back in February of this year. I have never met any of the people involved. I was never privy to any of those meetings with the Gonzalez-Roels and DeArbor1 people. I only went by what I was told. Mr. Gonzalez had told me that he had sold the business but he was going to still run the business because DeArbor1 was not familiar. Honestly I do not know. All I know is that DeArbor1 purchased the business back in February. Mr. Gonzalez-Roel told me of the purchase. Nothing changed. Everything was status quo as far as personnel or anything like that."

Mr. Knopke stated that his question was not a trick question as it could be perceived that way.

Ms. Klausch responded that she did not take it as such.

Mr. Knopke questioned whether Ms. Klausch worked for DeArbor1 at all after she was terminated by JGR.

Ms. Klausch answered, "Yes, after my termination, yes. I guess it would be by default."

Mr. Knopke questioned whether Ms. Klausch is familiar with and has used the Division's website before.

Ms. Klausch answered, "Absolutely."

Mr. Knopke questioned whether Ms. Klausch has looked up anything on that site before.

Ms. Klausch answered, "Yes."

Mr. Knopke stated that Ms. Klausch stated in her materials that she had never sold preneed arrangements.

Ms. Klausch stated that she never intentionally sold preneed arrangements illegally.

Mr. Knopke stated that is not the question. Ms. Klausch stated in the 328 page document that she had never sold preneed arrangements. Then when there was an affidavit from the Rodriguez family that stated Ms. Klausch had you all of a sudden remember that you had and you stated that Mr. Gonzalez-Roel had told you that they were getting their preneed license resolved or something to that effect.

Ms. Klausch responded, "Yes he did." Actually back in I want to say April, I was asked to stay late at the funeral home while another account was added to the credit card machine that was going to be a trust account for preneed and that Ms. Gonzalez-Roel was taking classes and getting CEUs for her insurance license to sell preneed.

Mr. Knopke stated that in her experience Ms. Klausch has seen different preneed contracts over the year, which are different than statements of goods and services used on the at-need side.

Ms. Klausch concurred.

Mr. Knopke questioned whether he would find the contract that Ms. Klausch wrote up with the Rodriguez family that he would tem as a typical at-need contract that was being used as a preneed contract, if he dig back far enough in the file.

Ms. Klausch concurred. Ms. Klausch stated that that was what she was told to use by Mr. Gonzalez-Roel.

Mr. Knopke stated that on page 3 of Ms. Klausch's establishment license application, Section 5 asks about other licenses and whether you have ever been licensed before in this state which includes licensed as a funeral director, embalmer, direct disposer, funeral establishment, direct disposal establishment, cinerator facility, removal service, centralized embalming facility, refrigeration service, cemetery, monument establishment or preneed sales business. Ms. Klausch checked "no."

Ms. Klausch stated that in 2009 she and her husband had a funeral home named Because We Care in Lakewood Ranch. It was a funeral home but we outsourced our embalming and refrigeration and cinerator facility. We were open in Lakewood Ranch for approximately five (5) weeks and when I answered "no" because my husband was the funeral director in charge and basically took care of all of that. We were there five (5) weeks and we did five (5) or six (6) funerals. I have very good communication and very good trustworthiness with several of the ministers and priests in the area. We spent all our savings opening Because We Care Funeral Home. My husband to be came before the Board and got licensed. We got married September 18th, got back from our honeymoon and we were ordered to be shut down in Lakewood Ranch. The person that rented the space from my then fiancé and I to run the business found in Lakewood Ranch's bylaws that they did not allow a bowling alley or funeral home in Lakewood Ranch because that would decrease property values. We had seven (7) days to vacate. Again, I answered "no" there because my husband and I were not married so I really did not consider it as myself. Probably an incorrect answer so I apologize to the Board for that. There is no way I would try to deceive the Board in any way, shape or form. We were not closed because of any improprieties. As I said Lakewood Ranch found this little thing in their bylaws saying that bowling alley and funeral homes decrease value so we lost everything.

Mr. Knopke stated that on the application under Refrigeration, Section 9 Ms. Klausch checked that it would be maintained onsite. Mr. Knopke questioned whether there is refrigeration onsite.

Ms. Klausch stated that there is.

Mr. Knopke stated that the letter from Tampa Bay Cremation that states they will provide cremation and refrigeration should only include cremation.

Ms. Klausch questioned whether refrigeration should also be included because if there is that waiting period between the time someone is brought into their care for refrigeration to the time the human remains are taken to the crematory. If there is any delay they are going to refrigerate the deceased under Florida Statutes.

Mr. Knopke agreed. Mr. Knopke stated that under the "Business Entity" section, Ms. Klausch listed her husband as a principal.

Ms. Klausch stated that she listed her husband there as a manager only in the event of her death. Consequently my husband has lost his job due to that error in my judgment.

Mr. Knopke questioned whether Ms. Klausch's husband would be involved.

Ms. Klausch stated that her husband would not be involved. He was never meant to be involved. He was only put there in case I die so that the company would not disintegrate. That is my grandfather's name. Due to my error or misjudgment, my husband recently lost his job. He has no involvement with Demarco Funeral Home and there were never any intentions of him having any involvement.

Mr. Knopke questioned why Ms. Klausch listed her husband if he was not involved.

Ms. Klausch stated that when she filled out the application, she actually did type in "in the event of my death."

Mr. Knopke stated that the statement was there but if he was not going to be involved at all why put it down.

Ms. Klausch stated that she was advised to do it in case she dies so that her grandfather's name does not go completely down the tube. That mistake of putting my husband down in the event of my death has cost my husband his job.

Mr. Knopke stated that Ms. Klausch indicated she wanted to fulfill the preneed contracts with Independent Funeral Directors of Florida. Mr. Knopke questioned whether those are the JGR preneed contracts that were written previously.

Ms. Klausch stated that she has a list that is put out quarterly by the Florida Independent Funeral Directors Association that was one of the few of the papers that were left behind by the Gonzalez-Roels. There are contracts in there from 2006 to 2009. They are the NO2 contracts. I have had communication with Michele Hood regarding these contracts and I do plan on fulfilling those contracts.

Mr. Knopke questioned how Ms. Klausch got the authority to even ask to fulfill the contracts. Mr. Knopke questioned whether Ms. Klausch purchased the contracts from someone or whether she paid DeArbor1 for those.

Ms. Klausch responded, "No." I know that when some passes away, anyone can fulfill a preneed contract once you fill out the appropriate paperwork. I was hopefully assuming that these families would still come to me. Since that paperwork was left behind, even though there has been a letter sent out by the Gonzalez-Roels to speak with them regarding their 2006-2009 preneed, I have no problem fulfilling those contracts. Legally the family does not have to come to me and I know that. I have stayed on property since the Gonzalez-Roels exited. I have listened to families cry. I have been yelled at, screamed at. I have worked very closely with Mr. Schuller and the Department. I have helped families with their complaints. I have nothing that would be construed as doing any type of business out of the funeral home establishment itself. I have just been there maintaining property and answering the phones. I have not even gotten an answering service because I did not want the Board to construe anything in any way that I was in fact doing or conducting business as a funeral home. I have provided the complaint form that the families are to fill out and provide to Mr. Schuller and the State. I also have a card that I made and printed out to give families with the fax and phone number to Mr. Schuller's office, so I have been the one that has been there.

Mr. Hall questioned the Gonzalez-Roel family's duties.

Ms. Klausch stated that Mr. Gonzalez was basically the PR guy because he did not have a funeral director's license. Ms. Gonzalez-Roel was the President thereof. If you look at the property, there are two (2) buildings, the funeral home building and the admin building. I stay on my funeral home side, answered the phones and met with some of the families as did Mr. Hernandez. Mr. and Ms. Gonzalez-Roel were in the other building. To be honest, I had the least amount of contact I could possibly have. It was a matter of exchanging payments and getting the bills to them that came in. I had no outside affiliation with them, no personal. I was not funeral director in charge. I was an employee. I did actively look for other employment while I was working for them because I know of Mr. Gonzalez-Roel's reputation. However, when you have a daughter going through a divorce and a daughter in school, you work for who you can get a job with. I am applying for this establishment license to give the people in that community someone that is dedicated and has spent a lifetime in funeral service. This is all I am. When people ask me, "how do you like your job", I do not tell them it is a job, it is a passion. My passion is to make sure that these families are served properly and not deceived. I will do whatever the Board would recommend, would want. I will open my books up for inspections. I will give every single at-need family's phone number so that they can contact them to make sure that they were satisfied with the degree of service. If the Board finds anything that I have intentionally done in any type of violation of preneed or any other agreements, I will relinquish my license for the establishment voluntarily. I want to do what is right for the Board, what is right for funeral service and what is right basically for the families. I have letters from families that have literally called me a diamond in the rough at JGR Funeral Home. I had a service for a priest. I have a letter from his proctor stating how impressed he was with my services to that family. The priest's brother was in Africa. I was actually terminated and moved off property before Father Peter could be sent to Africa after his funeral. I stayed in contract with Mr. Schuller and with Tampa Bay Cremation because that is where Father Peter was brought before he was sent to Africa. Mr. Gonzalez-Roel and JGR did not even send anything with him. I took it upon myself financially to send everything

I could to Africa for him. Father Peter had letters and pictures from families that he served because he was affiliated with the Veterans Administration. It cost me well over \$100 of my own money, which has been a financial burden anyway, to send his brother the guest book that people sent and the prayer cards that we made special for him. I have done everything in my power to try to maintain some semblance of dignity throughout this whole mess.

The Chair questioned during Ms. Klausch year there, in her day to day routine and interaction with the JGR family and staff, whether Ms. Klausch observed any activity that she was not comfortable with or anything illegal.

Ms. Klausch stated that there were people in and out of Mr. Gonzalez's office. As I said, there were two (2) buildings. What Julio did on his side, who he met with, I do not know. I answered the phones. They did not have a secretary. There was a lady who came in from 3am to 8am to work on the embalming reports and prayer cards in Spanish. I was far removed from anything that was going on with Mr. Gonzalez-Roel. He kept that very private and his office door was shut. I know he was drinking alcohol in his office and things like that but I stayed on my side.

The Chair questioned whether Ms. Klausch saw any illegal activities from the at-need side to the preneed side.

Ms. Klausch stated that she fulfilled all the preneed funeral contracts as an at-need funeral director would.

The Chair questioned whether Ms. Klausch saw any illegal activities during her time there.

Ms. Klausch stated that during her time she did not. Mr. Gonzalez-Roel took care of the money and the contracts. I can tell you that there were families that saw him that I know paid in cash. There was at-need when I was not there. I know that for a fact. A lot of that was done while I was not on premise. I had a day off during the week and every other weekend off. There was a file cabinet in Ms. Gonzalez-Roel's office that was locked at all times. I had no access to it and I could not tell you what was in it other than a bunch of files.

The Chair questioned Ms. Klausch's knowledge of DeArbor1's activities in Alabama.

Ms. Klausch stated that she found the article online when Mr. Gonzalez-Roel told her that he had sold the business to them. I showed Ms. Gonzalez-Roel the article regarding some of the improprieties in Alabama but that is all I know about them. I was not privy to any of those meetings or contact with any of those people.

The Chair stated that considering that there could be many client families who thought they had prearrangements and funded prearrangements, The Chair questioned how many Ms. Klausch thinks there are.

Ms. Klausch stated that she honestly does not know. I can show you files that I have made of families that have come in who have called. I told them to come in bring me their paperwork. I made copies and helped them file complaints with the State. Honestly, as I told Mr. Schuller, there were even a couple of contracts that were issued by the Independent Funeral Directors Association that were numbered. I know that they give a certain amount of preneed contracts at a time. There were some that were not even filed because I have had a couple of families come in with those contracts and there is no record of them.

The Chair questioned whether this occurred while Ms. Klausch was working there.

Ms. Klausch stated that these are just the families that have come in brought her the paperwork to show what Mr. Gonzalez-Roel had written. As I said there were a couple that were with the Independent Funeral Directors Association and I am looking at it thinking the money is there, making phone calls on behalf of the family.

The Chair questioned how Ms. Klausch is conducting such business and interacting with people without a license.

Ms. Klausch stated that she is on property, answering the phones. It has probably been one of the most emotional and trying times of my life. These families have been defrauded at the worst times of their lives. There is bad everybody, bad attorneys, bad restraint people and you always hear about the bad never the good and what we do and how we serve our families. The period of time that I have spent on property at JGR painting, unclogging the toilets that they clogged before they left has been

financially draining. It has been emotional. My husband has had to listen to me complain and cry but I am not going to give up on these families.

The Chair questioned how Ms. Klausch is going to handle when these families come to her, where there are no funds and they have had a death.

Ms. Klausch stated that basically the only thing she can do is her best to fulfill the contract. I know that there have been a couple corporate funeral homes that have said they would take any JGR contracts that were written. I will help the family file a complaint with the State. I know that there is a fund set up at the State that is there to help people in these situations. I will fulfill every contract that I possibly can with the respect and dignity that a family deserves without putting an emotional burden on them. I have spoken with a casket company that is willing to help me a little bit. Anything that I can do to help a family I will do. I do not know what else to say being that every situation that comes up is different. I have families that have paid thousands and thousands. There are some families that still want to use JGR because they have spoken with me, which is no longer JGR, no affiliation with JGR and I do not want that. Even in Mr. Rodriguez's statement he said I was nice and compassionate. I will do the best that I can even if I have to offer some kind of discount. If they do not have money I will figure it out. There has got to be at-need families that will come to me based on what I can do and whatever profits I can make I can always adjust the contract from a preneed family.

The Chair questioned whether Ms. Klausch has considered that there may be people coming in without a contract but they are claiming that they paid.

Ms. Klausch stated that she has not encountered that yet and honestly does not know how she would deal with that situation. Every family that I have spoken with has luckily kept their paperwork of contracts and payments. I honestly do not know. That is a lot of money to not save your paperwork. I am sure there are going to be unscrupulous people that are going to come in and say that but I honestly cannot answer that question.

Mr. Hall questioned whether the Board could get the contracts that Ms. Klausch referred to earlier that are there that we can find people attached to them so that we can follow up with the prosecution to Gonzalez. Ms. Klausch mentioned that there are some applications there but she could not locate the money.

Ms. Klausch concurred.

Mr. Hall questioned whether the inspector could pick those up.

Mr. Shropshire stated that the Department has an investigation pending against JGR.

Ms. Klausch stated that every one that she has received has been sent to Mr. Schuller.

Mr. Hall questioned whether Ms. Michele Hood could share with the Board the total number we are looking at or what deficits might be there so that Ms. Klausch understands what she might be up against.

Mr. Shropshire requested that the Ms. Hood raise her right hand to be sworn in. "Do you solemnly swear that the testimony you are about to give in this matter will be the truth, the whole truth and nothing but the truth so help you God?"

Ms. Michele Hood, Independent Funeral Directors of Florida answered, "I do."

Mr. Hall stated that Ms. Klausch is anticipating maybe fulfilling those contracts. Mr. Hall questioned whether Ms. Hood has a feel for what kind of dollar amount we are looking at and what kind of deficit Ms. Klausch may be facing so that she will know what kind of financial responsibility she has ahead of her if she did that.

Ms. Hood stated that as far as the unfunded contracts, she does not have any idea how many unfunded contracts exist. I have seen copies of prearranged contracts that were written on at-need forms that were obviously not trusted. We had issued a total of 170 contracts to JGR Funeral Home of which I know that we received approximately 65-70 of those back. So there is

potentially 100 contracts out there with numbers. I have no idea whether they have been written, thrown in the trash, anything.

Mr. Helm questioned whether the 60-70 received were blank.

Ms. Hood stated that they received approximately 65 contracts showing there are some trust monies available. Now as far as the payment of those trust funds are concerned, JGR Funeral Services is listed as the owner of record on those contracts. We have not received from DeArbor1, who purchased the funeral home, a copy of their bill of sale including those preneed contracts. So at this point in time, I do not have the ability to pay out a claim to anyone. I am working with my trustee to get some language to DeArbor1, as the alleged owner of these preneed contracts, to authorize us to pay out to the consumers and to any fulfilling licensed funeral establishment, the principal and full earnings of those contracts to those consumers or to the fulfilling funeral home. Once we get that into place, if DeArbor1 signs off on that, then we will be happy to process claims but at this point we are not processing anything.

Mr. Hall stated that Ms. Klausch needs to understand that there is 100 potentially cases out there that she may have a funeral and buy merchandise for and may not get a check for a while.

Ms. Hood stated that they certainly would not come from IFDF because they do not have any funds in trust. We can only pay out of trust what we have and again that is subject to those conditions that I mentioned.

Mr. Hall stated that is just what he wants Ms. Klausch to understand. Mr. Hall questioned whether Ms. Klausch is financially able to do that.

Ms. Hood add that because they have been writing preneed contracts on at-need forms there is absolutely telling how much preneed is out there that has not been funding.

Mr. Jones questioned who was writing the contracts for the funeral home.

Ms. Hood stated that all of the contracts that were funded were signed either by a licensed funeral director or a licensed preneed sales agent prior to JGR Funeral Services losing their preneed license. These are contracts entered into prior to 2009. There has not been anything since. When they lost their preneed license we put them on notice that we would no longer be able to accept any preneed contracts from them and that they would need to submit back to us any preneed contracts that had not been written but we never received them.

The Chair thanked Ms. Hood.

Mr. Knopke stated that his concerns are Ms. Klausch wrote preneed and got caught.

Ms. Klausch stated that at that time she did not think she was doing anything illegal.

Mr. Knopke stated that it does not matter whether Ms. Klausch thought she was doing it illegal or not, there was not a license. Ms. Klausch admitted that she is familiar with the Division's website and has looked up stuff. It is easy to go there and look up a person name to see all the licenses they have. Ms. Klausch obviously did not do that because she would not have found that and Ms. Klausch already indicated that she was concerned about whether they had a license because she asked them and they advised they were getting it. To me that would tell me I need to go look before I put my funeral directors license on the line for them.

Ms. Klausch stated that Mr. Knopke is correct.

Mr. Knopke stated that Ms. Klausch said she did not work for DeArbor1, she did not have any contact with those people, yet when there was an issue with the firm and what was going on, Ms. Klausch knew exactly who to call. She called Mr. DeCristafaro.

Ms. Klausch stated that she did not call. Mr. DeCristafaro made several phone calls to JGR Funeral Home over the course of the time of purchase. I did not even know who he was until back in June I guess when Mr. and Ms. Gonzalez-Roel really kind of stopped taking his phone calls. Mr. DeCristafaro called the funeral home and Mr. and Ms. Gonzalez-Roel refused to take his calls. This started to be a pattern starting mid-June. One day he called and asked if he could speak with me. He explained who he was. He stated that he reads the paper and saw that I have business with JGR through the obituaries. Mr. DeCristafaro asked whether I was getting paid on the funerals. I was not privy to the agreement between JGR and DeArbor1. The question I was asked by Mr. DeCristafaro was whether I was collecting the at-need funeral funds when I performed a funeral service as a licensed funeral director. My answer was yes. From then on, he was the only person that I spoke with when he called. I did not call him.

Mr. Knopke stated he would have to go back and look because he thinks he disagrees with Ms. Klausch. Mr. Knopke questioned how Ms. Klausch answers the phone when someone calls the firm today.

Ms. Klausch responded, "Hello" or "This is Yvette." Usually it is hello. There is no establishment so there is nothing to say. I am not going to say JGR because I sure do not want to be affiliated with them. So basically it is "Hello" or "This is Yvette."

Mr. Knopke stated that based upon Ms. Klausch's years of experience and knowledge of preneed contracts, he has real concerns because Ms. Klausch knows the difference and she knows it is wrong.

Ms. Klausch stated that she knows what she was told as an employee. Mr. Gonzalez-Roel stood up at his desk and said, "You will be faithful to me when I tell you that it is okay with me as the owner of this funeral home to write that contract for Ms. Paul."

Mr. Hall questioned whether Ms. Klausch has put any thought into moving to another location. Mr. Hall questioned if Ms. Klausch does not want to be tied to them why would you want that building.

Ms. Klausch stated that they lost everything in Lakewood Ranch and does not have a dime to put towards another facility. This is already there and it is a decent location.

Mr. Hall stated that the stigma is there.

Ms. Klausch agreed.

Mr. Hall questioned why Ms. Klausch would want to start with that and how since Ms. Hood advised that there are potentially 100 families could come. Mr. Hall questioned if Ms. Klausch do not have a dime or the ability to rent another facility to get away from that stigma, what happens when that family comes to Ms. Hood and she advises that she would like to help but cannot release the money. Mr. Hall questioned how Ms. Klausch is going to serve that family.

Ms. Klausch stated that would be part of her lease agreement. Ms. Hood mentioned something about DeArbor1 sending a letter.

Mr. Hall stated that DeArbor1 owns those preneed contracts so she could not just release a check to you.

Ms. Klausch stated that she understands.

Mr. Hall questioned whether Ms. Klausch is hoping to get DeArbor1 to release the contracts in the lease agreement.

Ms. Klausch concurred.

Mr. Hall stated that is something Ms. Klausch might want to check out ahead of time.

Ms. Klausch stated that she has not signed a lease with them yet. That is all based upon the establishment licensure.

Mr. Clark stated that as a funeral director, he shares Ms. Klausch's passion for serving families but it is confusing. Mr. Clark respects the fact that Ms. Klausch wants to take her grandfather's name to this community but she is starting out with all of

that extra liability by staying at that location. You want to build that location and carry on your grandfather's name and build it into a great brand at a location that is already at a deficit.

Ms. Klausch stated that right now this is the only location available that she can afford. You know what it costs to start a funeral home from scratch building, meeting inspection standards, requirements, etc.

Mr. Hall questioned what happens if Ms. Klausch has established herself at the location and DeArbor1 loses the building and she is out. You have seen the website and the articles and there is a real possibility that you could invest a lot of your money and be out.

Ms. Klausch stated that the only thing she would be investing with DeArbor1 would be her lease.

Mr. Hall stated that phones, signs, etc. are not inexpensive so if DeArbor1 loses the building to foreclosure or whatever reason Ms. Klausch has spent all of the money and would have to start over again. We are trying to look out for you.

Ms. Klausch stated that she understands and appreciates that but right now that is a chance she is willing to take. The reason I say that is because the families that have come through the door in the last month and a half have shown faith in me, not JGR, not Julio, not Lucia, in me, including a priest talking to me about his brother and his mom who have not prepaid arrangements. They just wanted to know what was going on because he was a priest that served the Hispanic community when Mr. Gonzalez-Roel was there. This is a chance I am willing to take.

The Chair questioned how Ms. Klausch is operating in that building without a lease.

Ms. Klausch stated that she is not doing anything right now. I am painting and answering the phones. Honestly I had hoped to be on the agenda sooner than this but I screwed up on my paperwork.

The Chair questioned what type of agreement Ms. Klausch has with DeArbor1 for being in the building now.

Ms. Klausch stated that DeArbor1 knows that she is there now and it is not really costing them anything other than me answering their telephones. It is not costing DeArbor1 anything. This is not one of the best neighborhoods so having someone on the property at least from 8am to 4pm, I can see the families that come in with complaints, make sure there is no one sitting in the gazebo drinking beer, as we have had a lot of homeless people there. I have posted trespassing notices. This is all on my part my investment into my hopeful establishment of Demarco Funeral Home.

The Chair questioned whether there is signage on the property.

Ms. Klausch responded "Absolutely not, sir."

The Chair questioned whether there is a yard sign.

Ms. Klausch stated that there is a place for a sign where JGR had their signage but it is covered. It is a lighted sign and the plastic inserts have been removed.

The Chair questioned about the entrance with the FDIC and list of funeral directors.

Ms. Klausch stated that there is nothing legally to be posted there because it is not an establishment. There is no signage.

Mr. Jones questioned the types of calls Ms. Klausch is taking and who are they calling.

Ms. Klausch stated that families are calling JGR's phone number (932-5308).

Mr. Jones questioned what Ms. Klausch is telling the callers since she is not reporting to be them.

Ms. Klausch stated that she tells them the truth that she is answering the phones for them. Well I am answering the phones not for JGR because I am not JGR. I am answering the phones for the families and I have the complaint forms. A lot of these people are old and they do not have computer access. They come in and I provide them with complaint forms and Mr. Schuller's phone number.

Mr. Jones questioned whether Ms. Klausch is there every day.

Ms. Klausch stated that she is there Monday thru Friday from 8a to 4p.

Mr. Jones questioned whether Ms. Klausch is drawing a salary from anyone.

Ms. Klausch answered, "No sir."

Mr. Clark questioned who pays the phone bill.

Ms. Klausch stated that the phone bill is being paid by DeArbor1.

Mr. Hall questioned whether Ms. Klausch receives at-need calls.

Ms. Klausch stated that she has gotten probably six (6) or eight (8) and has referred them to Florida Mortuary.

Mr. Knopke stated that there is nothing in the proposed lease agreement about preneed.

Ms. Klausch stated that that would be something she would have to address. I have not signed a lease. That would be something that would be addressed upon getting the establishment license.

Mr. Clark questioned the Division's thoughts or recommendation at this point.

Mr. Shropshire questioned whether Ms. Klausch is represented by counsel.

Ms. Klausch stated that Ms. Dawn Siler-Nixon is here with her.

Mr. Shropshire questioned whether she is Ms. Klausch's attorney.

Ms. Klausch stated that she is.

Mr. Shropshire questioned whether he could direct a few questions to Ms. Siler-Nixon.

The Chair stated that when Mr. Shropshire asked if she was represented by counsel the lady said no.

Ms. Dawn Siler-Nixon, Ford & Harrison, stated that she did not speak to that. Ms. Klausch wanted to be heard today on her own. I came today to provide advice and counsel if she needed it today so I am here to answer questions if you like.

Mr. Shropshire questioned whether Ms. Siler-Nixon represents the Applicant.

Ms. Siler-Nixon stated that she does represent Ms. Klausch and came with her today. I have spoken with Mr. Shropshire and the investigators as well as needed and provide as much information as I can.

Mr. Shropshire stated that the Division has interacted with you at times when we thought you were also representing DeArbor1.

Ms. Siler-Nixon concurred. At points in time I did relating to the removal of formal employees from their premises and the need to make sure that that was clarified as well as in a proceeding with the court to obtain injunctive relief related to that. I think that some of that information is also in the packet that the Board received.

Mr. Shropshire stated that last week, the Division had its examiner Kurt Schuller to get in contact with Ms. Siler-Nixon, and it was on the understanding that you represented DeArbor1, very specifically to say to you could you get DeArbor1 to please tell IFDF to pay these claims. Mr. Schuller has gone so I wonder if Ms. Siler-Nixon could tell us what her reaction was or what has happened on that request.

Ms. Siler-Nixon stated that she spoke to Mr. Schuller and she also spoke with the woman that addressed the Board (Ms. Hood) recently. Ms. Hood stated that she was waiting on information from the trustee as to the language that would be required from DeArbor1 in terms of providing the trust account funds to anyone who applied for that and that is the information that we are waiting on. I told her and Mr. Schuller that DeArbor1 is willing to do whatever is necessary to make sure that those funds are appropriately applied to the money that was put into trust for those individuals.

Mr. Shropshire questioned whether it is Ms. Siler-Nixon's understanding that when Ms. Hood gets the language DeArbor1 will probably sign it to authorize release of the funds.

Ms. Siler- Nixon responded, "Yes sir and I have shared that with Ms. Hood as well."

Mr. Shropshire stated that, for the Board benefits, Ms. Siler-Nixon has been very cooperative and we have had some conversations with her and Ms. Klausch had made reference that if she is found guilty of selling preneed without a license, Ms. Klausch agrees to relinquish this license. Mr. Shropshire questioned whether Ms. Siler-Nixon discussed this with Ms. Klausch.

Ms. Siler-Nixon stated that she did and Ms. Klausch shared that information just now that if she is found to have intentionally violated the statute that she is willing to relinquish the establishment license that is issued today.

Mr. Shropshire questioned whether Ms. Siler-Nixon understands that the Department has an investigative case against Ms. Klausch for selling preneed without a license and it is moving forward. Perhaps it will be presented to Probable Cause, probable cause will be found and charges will be served on Ms. Klausch. Ms. Klausch has a factual defense as she was under the understanding that they were licensed. I assume she would have to go to DOAH to present that to an ALJ and if the ALJ buys that defense and says not guilty that would be fine but if the ALJ says guilty then Ms. Klausch is agreeing that she is going to relinquish that license.

Ms. Siler-Nixon concurred. Ms. Klausch has stated. If it does go to hearing and an ALJ makes the determination that she intentionally violated that regulation then she will relinquish the license.

Mr. Shropshire responded, "Not intentional, just violated the statute."

Ms. Siler-Nixon stated that that would be an issue for the ALJ. The ALJ would have to make the determination that Ms. Klausch did intentionally violate, which would be the final determination that he is not accepting her defense in essence that her employer told her that they had a preneed license, that she saw the trust account that was set up for a preneed license. There would be no reason for a trust account otherwise. And that only under those circumstances did she then engage in the issuance of a preneed.

Ms. Loucks stated that since that is all speculative at this point the Board cannot hold Ms. Klausch to say that she is going to relinquish a license that she has not even received at this point. The Board should look at the application and the issues it has with the application and not an investigation that is not a part of this. Ms. Klausch has the ability to challenge it and the Division has the responsibility to prosecute it and win. At this point, the Board should not hold Ms. Klausch to anything as to when she is going to relinquish this license because it has to be issued first.

Ms. Siler-Nixon stated that Ms. Klausch is trying to say that she wants to be upfront and honest about everything and that she is very confident in her ability to perform the functions at the establishment that she is at. Ms. Klausch is confident in what she did as an employee was at the direction of her employer. That is something in the future and that is something that she will challenge if it comes up.

Mr. Shropshire stated that the Division not infrequently enters into stipulations for licensure and they do not purport to bind the Board but they are conditioned to the Division's recommendation. That is what I am getting at here today because I have been asked for the Division's recommendation. The Division's recommendation as we discussed is that if Ms. Klausch would agree that if an ALJ finds in a proceeding that all the elements of the violation are met and she violated the statute by selling preneed without a license that she will relinquish the funeral establishment license that she would be getting here today. It is anticipatory but it relates to what the Division is recommending to the Board.

Ms. Loucks questioned whether the investigation is on Ms. Klausch's funeral director's license.

Mr. Shropshire responded, "Yes." Mr. Shropshire stated that the involvement of DeArbor1, although the Division still has suspicions, I do not believe that we can prove that DeArbor1 will be able to exert control so I would recommend to the Board that you put that out of your consideration as a ground for denial of the application. In the Division's view the main item remaining is selling preneed without a license and that goes to the integrity of the Applicant based on the stipulation, which I believe that they have made here today.

Ms. Siler-Nixon stated that they have said that several ways already. I defer to the Board's legal counsel as well in terms of the future proceeding that is going to occur and what happens during that proceeding but Ms. Klausch has said unequivocally if she is found to have intentionally violated that statute that she is will to relinquish the license if that is a requirement that the Board imposes on her as a result of awarding the establishment license today.

Mr. Shropshire stated that based on that, the Division would recommend that the Board approve the application subject to the stipulation that if Ms. Klausch is found guilty of selling preneed without a license that she will relinquish the funeral establishment license granted today.

The Chair questioned what Ms. Klausch is doing with the money when people are coming in to make at-need or preneed payments.

Ms. Klausch stated that she has no way to accept any payments. Ms. Klausch stated that no one has come in with a payment.

The Chair questioned whether the consumers are only coming in with questions.

Ms. Klausch concurred. No money has been offered or exchanged to me.

Ms. Oliver questioned whether an administrative fine of \$1000 and a reprimand is the typical penalty for a first count of selling preneed without a license. Ms. Oliver stated that she does not see the need to impose additional penalties upon this woman. Ms. Klausch is being investigated for potentially selling preneed without a license. I do not know that we can hold her accountable for the sins of her employer. If she was selling preneed without a license, I understand but there has been no finding of that and it has not gone through a probable cause hearing. If it turns out she was, we can deal with that at that time.

Mr. Shropshire stated that Ms. Oliver is correct. The Board could approve the license here today and then if there is a finding that Ms. Klausch violated in her individual capacity the prohibitions of selling preneed without a license, we could in theory open up a case against the funeral establishment on the basis that one of the principals is not of good character.

Mr. Clark questioned whether it matters that Ms. Klausch is volunteering the stipulation, not the Board.

Ms. Loucks stated that it makes a difference if the Board includes it as part of the Order. If the Board just accepts Ms. Klausch at your word then whatever happens in the future the Board could not hold her to that.

Mr. Hall questioned whether the Division has any idea when the investigation would be complete.

Mr. Shropshire stated that because Mr. Schuller continues every couple of days to get one (1) or two (2) more consumers calling in and he has to take interviews and affidavits that process could go on for another month, then Probable Cause another month after that and if it goes to DOAH, nine (9) months.

Mr. Hall questioned whether the Applicant would rather wait until the investigation has concluded and come back before the Board because she could risk everything. Ms. Klausch would be better off t going somewhere else to serve her family by drawing a check because she has to live.

Ms. Klausch stated that she is afraid that it would be a conflict of interest if she tried to open a funeral home while currently working for a different funeral home. I am not prepared to take that chance. I am here asking the Board to issue this license. I am taking this chance and what I do will meet the State's requirements. I will do what I can to provide the best service that I can to my families. My investment will be whatever I have left in my savings account. I have Peach Tree contracts for my at-need families if and when I get an establishment license, the minimum ordered. To me, stationary and things like that are trivial. The main thing on the table is my establishment license. Once that is approved I will cross that bridge, but to risk getting a job at another funeral home and now obviously corporate and private funeral homes are aware that I want to open my own funeral home. Ms. Klausch questioned the odds that she would get a job anywhere.

Mr. Hall stated that he does not think Ms. Klausch has any idea of the concept of the overhead and expenses.

Ms. Klausch stated that she appreciates Mr. Hall's concern. Back in New York when my grandfather passed away I ran the funeral home so I am aware that the owner is the last to get paid once the bills are paid. I am aware of what I am doing as far as the risk that I am taking and it is huge.

Mr. Jones questioned whether Ms. Klausch understands the ramifications if she is found guilty of selling preneed without a license.

Ms. Klausch responded, "Yes sir."

Ms. Loucks stated that she could not find anything but she did not see that any first offense had revocation without aggravating it.

MOTION: Ms. Oliver moved to approve the application subject to the condition that the establishment passes an onsite inspection by a member of Division Staff. Mr. Mueller seconded the motion, which failed with six (6) dissenting votes.

Ms. Loucks stated that the Board needs to take action on the application so there would need to be another motion of some sort made, whether it is approval with additional conditions or denial.

Ms. Oliver stated that the way she read the application, it asked "has the Applicant ever been in the funeral business before" and the Applicant is Demarco Funeral Homes LLC and it has not.

2nd MOTION: Mr. Knopke moved to deny the application based on the mistakes in the application and Ms. Klausch initial claim that she did not do preneed. The motion was withdrawn.

The Chair stated that there is a complicated web here and the Board is not charged with untangling it.

Mr. Knopke questioned what would happen if the Board did not make a decision.

Ms. Loucks stated that the Applicant could petition to have it deemed admitted and then the license would be granted without any conditions.

Mr. Clark stated there were some questions regarding the Division's recommendation of the stipulation and questioned whether Ms. Loucks had any problem with moving forward with that as some type of happy medium.

Ms. Loucks stated that she is not counsel to this Board but she used to be in the past. Ms. Loucks stated that she has concerns about the Board putting a stipulation on an application license for conduct that you are prosecuting a different license that she holds for. Potentially Ms. Klausch may be in the position where the Board is going to say well if this happens you agree to give up this license and by the way we are going to take this other license too because there is an investigation ongoing for the activity that you have an issue with on a license already. So the Department, in my opinion, has available to it the opportunity

to punish the Applicant's funeral director for her conduct but you are also trying to punish an entity that was not involved in that activity before. I personally find that that is problematic. I know that Mr. Shropshire has indicated to you that the Division has done that in the past. I personally, if I were the Executive Director to the Board, would not recommend that you do it that way. Looking at the application I would tell the Board to look at the application that is before you and take action on the legitimate questions that you have regarding the conduct of the Applicant. I know Mr. Hall is trying to help, but it appears Ms. Klausch is aware of the financial position that she is putting herself in and to the extent that she is doing that to herself. It does become a problem when it impacts the public negatively

The Chair questioned the deemer date in the event a motion passed to table this item.

Mr. Shropshire stated that while Ms. Jasmin Richardson calculates that he would like to clarify the Division's position. I have the greatest respect for Ms. Loucks but there is a strong, factual nexus between the action that would occur against Ms. Klausch's individual funeral directors license and this application because this application cannot be granted unless the Board finds that the principals of this Applicant are of good character with no demonstrated history so forth. The Division certainly would not be intending to punish this Applicant based on a result in the other case, but the other case would almost necessarily indicate that the sole principal in fact of this LLC Applicant is not of good character because she was found guilty of selling preneed without a license. That is the basis for the stipulation.

Mr. Hall questioned how long Ms. Klausch has had her funeral directors license.

Ms. Klausch stated she has had her license for thirty-two (32) years, since she was twenty-one (21).

Mr. Hall stated that Ms. Klausch should have a pretty good feel of what the preneed licensing requirements were.

Ms. Klausch stated that she was licensed in New York and then licensed in Florida eighteen (18) years ago. I went on the premise as not being the FDIC but an employee. When my employer told me he was using that contract and that was what I was supposed to use so that is what I did.

Mr. Hall stated that it is easy for Ms. Klausch to cop out and say the employer told her to do it when she knew of his reputation.

Ms. Siler-Nixon stated that Ms. Klausch did and she has testified that she had the information the Gonzalez-Roels that they had the license, the trust account that was set up for that very purpose that she was to use. If they did not have the license there would be no need to set up any kind of trust account separate from what they already had. Ms. Klausch was told that they had the preneed and she was to write preneed. She understands that she could have done research, but again she was an employee and that has not been proven that there is any other indication that she is not of good character and has not had any type of blemish on her record in thirty-two (32) years.

Mr. Hall stated that his point is not only could Ms. Klausch go onto the computer, but as a preneed license is issued to an establishment the license is right on the wall but the funeral directors license as you walk into the establishment.

Ms. Siler-Nixon stated that Ms. Klausch is working in the location where the funeral services are provided and the Gonzalez-Roels kept everything behind locked doors in a closed place where they were.

Mr. Hall stated that these licenses have to be visible to the public and would have been there for the inspectors or it would have been listed on the inspection report. So it is not like they could have hid that in a locked cabinet or something.

Ms. Siler-Nixon stated that she is not saying that they hid it but it was behind their own locked door. The public came into the facility where Ms. Klausch was located and a separate building on the property housed the office where the licensure was located and that was behind their locked door.

Ms. Loucks questioned whether the Division is recommending approval contingent on the passing of the inspection and then Ms. Klausch agrees to relinquish this license only after the investigation was concluded on her funeral directors license. Basically the agreement to relinquish would be to waive any right to contest a case being opened up against this funeral

establishment for subsequent finding that this .license was issued because the Department found out subsequently that Ms. Klausch was not of good moral character. So it is precluding a separate complaint against the funeral establishment.

Mr. Shropshire responded, "Yes." Mr. Shropshire stated that he is almost inclined to withdraw it. To some extent I was just trying to impress upon Ms. Klausch that one way or the other, based on the evidence we have, there is going to be an action against her for selling preneed without a license and it is sort of along the lines of what Mr. Hall has been indicating to you. You know in your heart at this point in time if you sold preneed and the likelihood that you are going to prevail. If you are going to invest all of this money and you know in your heart that you did it, is it smart to go along this line, but because it does create such unclarity in the record, at this point I would just recommend approving it but we are going to be coming after you.

The Chair stated that ironically the deemer date is December 4, 2014, which happens to be our next in person Board meeting date.

Ms. Siler-Nixon stated that they would respectfully request that this not be rolled again to a different time period. Ms. Klausch has already suffered significant financial hardship during the interim period of time that it has not been considered. She applied and applied again because there were some issues with her application that were told to her and she has been waiting for at least sixty (60) days if not more for this Board to consider her application. She believed that it would be considered at the September 4th Board meeting and it was recommended to her that she wait until you were meeting in person and I would respectfully request that you take action to go ahead and approve her establishment license now as opposed to having her wait for an additional period of time for that to be considered again.

The Chair questioned whether any results of the investigation would be available to be shared with the Board if the item was tabled to the December 4th meeting.

Ms. Loucks stated that the Board is basing the Settlement Stipulation on a DOAH hearing and if the case has not even been to Probable Cause there is no way it is going to be resolved before December 4th. There is absolutely no way.

Mr. Shropshire concurred.

3rd MOTION: Mr. Jones moved to approve the application subject to the condition that the establishment passes an onsite inspection by a member of Division Staff and two (2) years probation. Ms. Anderson seconded the motion, which passed with two (2) dissenting votes.

*****BREAK*****

(5) *JMR Service Group LLC d/b/a Winter Oak Funeral Home & Cremations (Winter Garden)*

An application for a Funeral Establishment was received on August 10, 2014. The application was incomplete when submitted. All deficient items were returned on September 3, 2014. The fingerprint cards for all principals were returned without criminal. The Funeral Director in Charge will be Daniel Enea (F067961).

The establishment is recommended for approval subject to the condition that the establishment passes an onsite inspection by a member of Division Staff.

MOTION: Mr. Jones moved to approve the application subject to the condition that the establishment passes an onsite inspection by a member of Division Staff. Mr. Knopke seconded the motion, which passed unanimously.

(6) *Johnny Pons d/b/a American Funeral Home & Cremations (Chief land)*

An application for a Funeral Establishment was received on August 28, 2014. The application was incomplete when submitted. All deficient items were returned on September 18, 2014. The fingerprint cards for all principals were returned without criminal. The Funeral Director in Charge will be Johnny Pons (F043465).

The establishment is recommended for approval subject to the condition that the establishment passes an onsite inspection by a member of Division Staff.

MOTION: Mr. Knopke moved to approve the application subject to the condition that the establishment passes an onsite inspection by a member of Division Staff. Ms. Oliver seconded the motion, which passed unanimously.

15. Application(s) for Preeed Branch Office License
A. Recommended for Approval without Conditions – Addendum J

The Division recommends approval of the application(s).

MOTION: Ms. Oliver moved to approve the application(s). Mr. Knopke seconded the motion, which passed unanimously.

16. Related Items - Roger D. Cribb d/b/a In Loving Memory (Sebastian)
A. Recommended for Approval without Conditions
(1) Monument Establishment Retailer License

This application is being filed for a new monument establishment retailer license. The application was received on July 15, 2014 and deficiencies were noted. A deficiency letter was sent on July 18, 2014 and the Applicant resolved all deficiencies as of August 21, 2014. If approved, Applicant will utilize the attached monument retail sales agreement which is also being presented for approval at this meeting.

Mr. Helm questioned where the Applicant would conduct business as the application indicates there is no office.

The Chair questioned whether there was anyone present representing the Applicant. There was a negative response.

Mr. Shropshire stated that s. 497.550(1)(d) provides as follows: *“The requirements of this chapter apply to both monument retailers and monument builders, except as provided in this paragraph. Each monument establishment shall be a physical structure that is located at a specific street address, in compliance with zoning regulations of the appropriate local government, and not located on property that is exempt from taxation, but a monument retailer may not otherwise be required to comply with s. 497.552 or be subject to inspection under this chapter.”*

Mr. Helm stated that the statute Mr. Shropshire quoted does call for a physical structure at a specific address.

Mr. Shropshire stated that the Applicant is not required to have a showroom but he does have to have physical structure that is properly zoned. The application was received by the Department on July 15, 2014.

The Chair stated that a deficiency letter was sent out after the application was received. All deficiencies were resolved August 21, 2014.

Mr. Shropshire stated that the Board could table the item without a deemer issue until the November Board meeting to allow the Division to look into this.

Mr. Helm questioned how the Division would get answers.

Mr. Shropshire stated that the Division would ask the Applicant and then send an inspector out.

MOTION: Mr. Helm moved to defer the application to the next meeting to allow the Division time to look into the Board’s concerns. Mr. Knopke seconded the motion, which passed unanimously.

B. Recommended for Approval with Conditions
(1) Monument Retail Sales Agreement

Roger D. Cribb d/b/a In Loving Memory Headstones & Granite submits a monument retail sales agreement for approval. If the form is approved, it is to be used for the sale of monuments through its monument retailer establishment whose application is also being presented at this Board meeting.

The Division recommends that this item be deferred to the next meeting.

MOTION: Mr. Helm moved to defer the agreement to the next meeting to allow the Division time to look into the Board’s concerns regarding the retailer license. Mr. Knopke seconded the motion, which passed unanimously.

17. Application(s) for Removal Facility
A. Recommended for Approval with Conditions
(1) Nathan D Neal Inc d/b/a HR Transport (Holly Hill)

An application for a Removal Service was received on April 25, 2014. The application was incomplete when submitted. All deficient items were received on September 5, 2014. The fingerprint cards for all principals were returned without criminal history.

497.385 Removal services; refrigeration facilities; centralized embalming facilities.—

(1) REMOVAL SERVICES AND REFRIGERATION SERVICES.—

(g) 2. A change in location shall be promptly reported to the licensing authority pursuant to procedures established by rule. Operations by the Licensee at a new location may not commence until an inspection by the licensing authority of the facilities, pursuant to rules of the licensing authority, has been conducted and passed at the new location.

Rule 69K-24.010: Application for Licensure of Removal Services, Refrigeration Facilities, and Centralized Embalming Facilities.

(3) Any change in ownership or location of a removal service, refrigeration facility, or centralized embalming facility requires re-licensure. Such application for re-licensure must be made within ten (10) days of the change in ownership or location.

The Division recommends approval subject to the condition that the establishment passes an onsite inspection by a member of Division Staff.

MOTION: Mr. Mueller moved to approve the application subject to the condition that the establishment passes an onsite inspection by a member of Division Staff. Ms. Anderson seconded the motion, which passed unanimously.

18. Executive Director’s Report

Mr. Shropshire introduced Ms. Ellen Simon, new Assistant Division Director.

A. 2014 Board Meeting Schedule (Action)

ALL MEETINGS WILL BEGIN @ 10:00am

Thursday, January 8 th	Conference Call
Thursday, February 5 th	Tallahassee
Thursday, March 5 th	Conference Call
Thursday, April 2 nd	Jacksonville
Thursday, May 7 th	Conference Call
Thursday, June 4 th	Conference Call
Thursday, June 25 th	Tallahassee
Thursday, July 9 th	Conference Call
Thursday, August 6 th	Altamonte Springs
Thursday, September 3 rd	Conference Call
Thursday, October 1 st	Tampa
Thursday, November 5 th	Conference Call
Thursday, December 3 rd	Tallahassee

The Chair requested that the May 7, 2015 meeting be changed to May 14, 2015.

Ms. Oliver questioned whether the Board would be interested in meeting in Fort Myers or Punta Gorda next year.

The Chair stated that the Board does need to meet in SW Florida. We have not been there in some time.

Mr. Helm questioned whether the conference calls could be held at 9a instead of 10a.

The Chair stated that he would like to keep the meetings at a constant time so that those who are not Board members would always know that the meeting would commence at 10a. The Chair requested that the Division look into holding a meeting in SW Florida.

Mr. Shropshire stated that the Division would report back at the next meeting.

B. Update on Status of Pershing-Vista Trust Deficit Matter (Oral)

VOID

C. Report: Payment of Disciplinary Fines and Costs (Informational)

Monthly Report of Fine and Costs Assessed and Paid
 Division of Funeral, Cemetery and Consumer Services
 October 2, 2014 Board Meeting
 Date of Report: September 23, 2014

Licensee	Board Meeting	Case No.	Total Fine & Cost Due	Date Due	Paid in Full?	Comments
Cemetery Professionals, LLC dba Beaches Memorial Gardens and Cemetery Professionals, LLC dba Beaches Memorial Park	Jun-12	110156-10-FC & 110157-10-FC	\$5,250 \$5,000 38,859.57	9/6/2012 12/7/2012 35 mo pymts	YES YES Current	Licensee monthly restitution payments are current.
Affiliated Funeral Service	Feb-14	137272-13-FC	\$1,500	6/2/2014	No	On 6/24/14, Division sent file to DFS Legal requesting appropriate action be taken for alleged failure to comply with the Board's order. New case number 156496-14-FC was formed. On September 11, 2014, an Emergency Order of Suspension was entered.
Deliria Holmes	Apr-14	133746-01-FC	\$1,666.66 \$250 \$1,666.67 \$1,666.67	4/20/2014 5/15/2014 6/20/2014 8/20/2014	Yes Yes Yes Yes	
Holmes Funeral Directors	Apr-14	133745-13-FC	\$1,666.66 \$250 \$1,666.67 \$1,666.67	4/20/2014 5/15/2014 6/20/2014 8/20/2014	Yes Yes Yes Yes	
David-Russell Funeral Home	Jun-14	149527-14-FC	\$500	8/1/2014	Yes	
Alphonso West Mortuary, Inc.	Jun-14	144438-13-FC	\$2,500	8/18/2014	Yes	
Debra Daniels	Jun-14	144434-13-FC	\$2,500	8/18/2014	Yes	
Hickson Funeral Home	Jun-14	146249-12-FC	\$2,000	8/6/2014	Yes	
Eugene Hickson	Jun-14	146247-12-FC	\$2,000	8/6/2014	Yes	
Guerry Funeral Home of Macclenny, LLC	Jun-14	143487-13-FC	\$1,500	8/20/2014	Yes	
William Guerry	Jun-14	143486-14-FC	\$500	8/20/2014	Yes	
Collisons Holding Company d/b/a Collison Family Funeral Home and Crematory - Howell Branch Chapel	Aug-14	143103-13-FC	\$1,500	9/17/2014	Yes	
Richard Alford	Aug-14	Mulitple cases	\$2,000	See Note D		
Sumner Granite & Bronze, Inc.	Aug-14	Mulitple cases	\$2,000	See Note D		

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| <p>A. When payment in full becomes past due, the FCCS Division works with the DFS Legal Division to enforce payment.</p> <p>B. Once fines and costs are paid in full, licensee kept on this report 3 months, showing Paid in Full, and then dropped off report; also licensee dropped off report after disciplinary action filed due to nonpayment of the fine and costs.</p> <p>C. The Order re this case is still in process, so no Due date is not yet established.</p> <p>D. Due date has not passed, as of the date of this report.</p> <p>E. As of the date of this report, monthly payments were current.</p> | |
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19. Chairman's Report (Oral)

The Chair stated that he wanted those in attendance to understand what the Board members have to do to review and be prepared. The packet that the Board just went through had a total of 31,011 pages. If you go through the 31,011 pages and you do not flip back and forth, every third page, with our statutory compensation, a nickel drops onto our desk. The Chair commended the Board and advised everyone on how prepared this Board is and all the hard work involved. With the volume we just went through, it is remarkable. The Chair also thanked staff.

20. Office of Attorney General's Report (Oral)

None

21. Administrative Report

The Administrative Report was provided to the Board via the Agenda.

22. Disciplinary Report

The Disciplinary Report was provided to the Board via the Agenda.

23. Upcoming Meeting(s)

- A. *November 6th (Teleconference)*
- B. *December 4th (Tallahassee)*

24. Adjournment

The meeting was adjourned at 2:31 p.m.