

FILED

NORTH CAROLINA
WAKE COUNTY

2016 DEC 15 AM 9:39

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
16 CVS 006190

WAKE COUNTY, C.S.C.

NORTH CAROLINA BOARD)
OF FUNERAL SERVICE,)

Plaintiff,)

v.)

HERITAGE CREMATION PROVIDER, LLC,)
LEGACY FUNERAL SERVICES, LLC,)
ANTHONY JOSEPH DAMIANO, and)
JOSEPH DAMIANO, SR.,)
Defendant.)

CONSENT JUDGMENT
FINDING CONTEMPT

THIS MATTER, COMING ON AND BEING HEARD BY THE UNDERSIGNED, and Plaintiff North Carolina Board of Funeral Service (“Plaintiff” or “Board”), by and through the undersigned counsel, having moved the Court pursuant to N.C. Gen. Stat. §5A-15 for an Order to be directed to the Defendants to Show Cause why the Defendants should not be held in Civil and/or Criminal Contempt of this Court’s Order dated September 16, 2016, the Court makes the following:

FINDINGS OF FACT

1. On October 25, 2016, Plaintiff filed a Motion to Show Cause for Civil and Criminal Contempt, seeking an Order to be directed to Defendants Heritage Cremation Provider, LLC; Legacy Funeral Services, LLC; Anthony Joseph Damiano; and Joseph Damiano, Sr. (collectively the “Defendants”) as to why the Defendants should not be held in contempt of this Court’s Order, dated September 16, 2016.
2. On November 3, 2016, the Court granted Plaintiff’s Motion to Show Cause for Civil and Criminal Contempt and issued an Order, setting the contempt hearing for November 10,

2016 at 9:30 a.m. or as soon thereafter as the Court could hear the matter. A copy of the Order was served on Defendants through their counsel.

3. On November 7, 2016, Defendants filed a Motion for Continuance, which was granted by the Clerk of Court. The contempt hearing was rescheduled for November 28, 2016.
4. As part of a compromised settlement to resolve the allegations to be adjudicated at the contempt hearing, the parties admit to the following stipulated facts:
 - a. Plaintiff, North Carolina Board of Funeral Service, is an agency of the State of North Carolina created under the authority of Article 13A, Chapter 90 of the General Statutes of North Carolina, and having its principal office in Raleigh, Wake County, North Carolina.
 - b. Defendant Anthony Joseph Damiano (“A.J. Damiano”) is a citizen and resident of Colorado and/or Florida.
 - c. Defendant Joseph Damiano, Sr. (“Joseph Damiano”) is a citizen and resident of Colorado and/or Florida.
 - d. Defendant Heritage Cremation Provider, LLC (“Heritage”) is a limited liability company organized in both Florida and Colorado. Heritage’s mailing address is P.O. Box 26806, Ft. Lauderdale, FL 33320 and 1755 Telstar Drive, Colorado Springs, CO 80920. Heritage uses the website URL: www.heritagecremationprovider.com. The phone number listed for Heritage is 1-800-972-2070.
 - e. Heritage is managed by Joseph Damiano and is owned by AJ Damiano.
 - f. Defendant Legacy Funeral Services, LLC d/b/a Legacy Funeral and Cremation

(“Legacy”) is a limited liability company organized in Colorado. Legacy’s mailing address is 9800 Mount Pyramid Court, Denver CO 80112. Legacy uses the website URL: www.legacycremationservices.com. The phone number listed for Legacy is 1-800-972-2070.

- g. Legacy is managed by Joseph Damiano.
- h. Neither Heritage nor Legacy, nor any of its owners or employees, possesses any license or permit issued by the Board.
- i. Neither A.J. Damiano nor Joseph Damiano is licensed as a funeral director or funeral service licensee by the Board.
- j. N.C. Gen. Stat. § 90-210.20(k) defines the “Practice of funeral service” as follows:

(k) “Practice of funeral service” means engaging in the care or disposition of dead human bodies or in the practice of disinfecting and preparing by embalming or otherwise dead human bodies for the funeral service, transportation, burial or cremation, or in the practice of funeral directing or embalming as presently known, whether under these titles or designations or otherwise. “Practice of funeral service” also means engaging in making arrangements for funeral service, selling funeral supplies to the public or making financial arrangements for the rendering of such services or the sale of such supplies.

- k. In March 2016, Defendants engaged in the unlicensed practice of funeral services, in violation of N.C. Gen. Stat. § 90-210.25.
- l. On May 10, 2016, the Board filed a Complaint in Wake County Superior Court (Case No. 16 CVS 006190) against the Defendants, asking the Court to permanently enjoin Defendants from the practice of funeral service in North Carolina until such time that they become properly licensed.

m. On September 16, 2016, the Honorable Judge Stephens signed a Consent Judgment and ordered that:

- I. Defendants shall not engage in the practice of funeral services, as that phrase is defined in N.C. Gen. Stat. § 90-210.20(k), until such time, if any, that the Plaintiff may approve Defendants to practice funeral services under the provisions of Chapter 90, Articles 13A – 13F, of the North Carolina General Statutes or until such time, if any, that the North Carolina General Assembly may permit otherwise via statute. Defendants understand and agree that for purposes of this Consent Judgment, the definition of the practice of funeral services includes the rendering of services as set out in N.C. Gen. Stat. § 90-210.20(k) and holding oneself out to the public as being able to provide funeral services.
- II. Until such time, if any, that the Plaintiff may approve Defendants to practice funeral services under the provisions of Chapter 90, Articles 13A – 13F, of the North Carolina General Statutes or until such time, if any, that the North Carolina General Assembly may permit otherwise via statute, Defendants shall cease the practice of funeral services in the state of North Carolina as defined in N.C. Gen. Stat. § 90-210.20(k). Further, Defendants agree to not hold themselves out to the public, implicitly or explicitly, as being able to provide funeral services in North Carolina as defined in N.C. Gen. Stat. § 90-210.20(k). This does not prohibit a Defendant from advertising that it can provide funeral services in other states as allowed by law.
- III. This settlement does not prohibit Defendants from performing industry trade calls for a consumer located outside of North Carolina on behalf of individuals who died in North Carolina but whose final disposition will be outside of North Carolina; provided, however, that in performing trade calls, Defendants will inform consumers truthfully as to whether or not they are licensed in North Carolina and will provide consumers with the name and contact information of the North Carolina licensee performing funeral services in North Carolina. For the purposes of this settlement, a trade call is defined as a call from Defendants to a state-licensed funeral establishment to perform funeral services on behalf of a consumer. Defendants cannot make arrangements with consumers who live in North Carolina or with consumers (regardless of whether they are located inside

or outside of North Carolina) on behalf of decedents whose final disposition will be in North Carolina.

IV. The Superior Court of Wake County, North Carolina shall retain jurisdiction for, and limited to, the purposes of enforcing this Consent Judgment, and the Defendants shall therefore submit to the jurisdiction of this Court if future issues of compliance with this Consent Judgment arise.

V. Any violation of this Consent Judgment shall be deemed contempt of court and shall be punishable by both the civil and criminal contempt powers of this Court upon proper showing.

VI. In the event that Defendants violate this Consent Judgment, the Plaintiff may then avail itself of all remedies provided by law or equity. In the event of a motion to enforce this Consent Judgment, and Plaintiff being the prevailing party, Plaintiff shall be entitled to an award for court costs and attorney fees as awarded by the Court.

- n. On September 16, 2016, the Consent Judgment was served on Defendants through counsel.
- o. Following their receipt of the Consent Judgment, Defendants have continued to engage in the unlicensed practice of funeral services, by holding themselves out to the consuming public as being able to provide funeral services in North Carolina.
- p. Furthermore, Heritage has continued to engage in the unlicensed practice of funeral service by making arrangements with North Carolina consumers on behalf of North Carolina decedents whose final disposition will be in North Carolina.
- q. Furthermore, AJ Damiano has continued to engage in the unlicensed practice of funeral service by managing the operations of an unlicensed establishment in Charlotte, NC, which holds itself out to the consuming public as Carolina Central Crematory.

CONCLUSIONS OF LAW

From the above Findings of Fact, the parties stipulate to the following conclusions of law:

1. Defendants willfully failed to follow the Order of the Court dated September 16, 2016.
2. Defendants are found in criminal contempt of the Court's September 16, 2016 Order.

Based on the above Findings of Fact and Conclusions of Law, it is hereby ORDERED, ADJUDGED AND DECREED that:

- I. Defendant Joseph Damiano, Sr. and Defendant Anthony Joseph Damiano are each sentenced to three (3) days' imprisonment; provided, however, that each active sentence is *unsupervised probation. All Holywood* suspended for a period of two years, under the following terms and conditions:
 - i. Defendants cease and desist from all advertising, solicitations, communications, and correspondence that implies, either directly or indirectly, that they can provide funeral and cremation services for North Carolina consumers or on behalf of North Carolina decedents, whether by themselves or through Heritage Cremation Provider, LLC, Legacy Funeral Services, LLC, Carolina Central Crematory, or any other entity.
 - ii. Defendants do not engage in the practice of funeral service unless and until such time as Defendants are issued a license by Plaintiff to engage in the practice of funeral service. The practice of funeral service includes the rendering of services as set out in N.C. Gen. Stat. § 90-210.20(k) and holding oneself out to the public as being able to provide funeral services.
- II. Defendant Heritage Cremation Provider, LLC is fined an amount of Five Hundred Dollars (\$500.00), to be paid to the Court within thirty (30) days following the execution of this

Consent Judgment;

- III. Defendant Legacy Funeral Services, LLC is fined an amount of Five Hundred Dollars (\$500.00), to be paid to the Court within thirty (30) days following the execution of this Consent Judgment;
- IV. Defendants shall pay Plaintiff's attorney's fees in the amount of Three Thousand Dollars (\$3,000.00), immediately upon the execution of this Consent Judgment; and
- V. The costs of this action shall be taxed against Defendants.

[THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK]

NC Board of Funeral Service v. Heritage Cremation Provider, LLC
16 CVS 6190, Wake County
Consent Judgment Finding Contempt
Page 8 of 9

This is the 13th day of December, 2016.

Robert H. Hobgood

HON. DONALD STEPHENS *Robert H. Hobgood*
SUPERIOR COURT JUDGE PRESIDING

I CONSENT:

HERITAGE CREMATION PROVIDER, LLC

BY:

[Signature]
Anthony Joseph Damiano, Title: owner/operator

LEGACY FUNERAL SERVICES, LLC

BY:

[Signature]
Anthony Joseph Damiano, Title: owner operator

Anthony Joseph Damiano

[Signature]
Joseph Damiano, Sr.

Mark W. Ishman
Attorney for Defendants

THE NORTH CAROLINA BOARD OF FUNERAL SERVICE


BY:

[Signature]

Valdus Lockhart, President

[Signature]
Catherine E. Lee
Attorney for the North Carolina Board of Funeral Service

State of Florida County of Broward
Subscribed and sworn before me on 12-13-16
(Date)
[Signature]
(Notary Signature)

 Brian Hendrick
Notary Public
State of Florida
My Comm. Expires 08/25/2020
Commission No. GG 24835

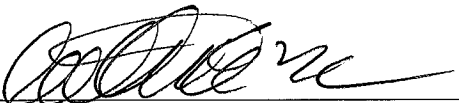
CERTIFICATE OF SERVICE

The undersigned attorney for Plaintiff certifies that on this day the foregoing Consent Judgment Finding Contempt was served upon the Defendants in this action by email and by depositing a copy of the same in the United States mail, First Class, postage prepaid, addressed as follows:

Mark W. Ishman, Esq.
Ishman Law Firm, PC
9660 Falls of Neuse Road, Suite 138-350
Raleigh, NC 27615

Brad Wasser, Esq.
David A. Balto Law Offices
1325 G Street, N.W., Suite 500
Washington, DC 20005

This the 15 day of December, 2016.



Catherine E. Lee