

Department of Business and Professional Regulation
AGENCY CLERK

Sarah Wachman, Agency Clerk

By: Sarah Wachman

**STATE OF FLORIDA
BOARD OF FUNERAL DIRECTORS AND EMBALMERS**

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,

Petitioner,

v.

Case Nos. 2000-04574
2000-04575

ANTHONY J. DAMIANO and
ALPHA & OMEGA CREMATION SOCIETY
OF SOUTH FLORIDA, INC.,

Respondent.

FINAL ORDER

Petitioner has filed a Joint Administrative Complaint seeking disciplinary action against Respondents licenses. A copy of the Joint Administrative Complaint is attached to and made a part of this Final Order.

This matter appeared before the Board of Funeral Directors and Embalmers on February 8, 2001, in Tallahassee, Florida, for informal hearing pursuant to Petitioner's Motion for Default. Petitioner was represented by Joseph W. Malka. The Respondent Anthony J. Damiano appeared for himself and the Corporations waived representation by counsel and invoked his fifth amendment right to decline to testify. After review of the investigative file, presentation of counsel and being otherwise fully advised in the premises, the Board reaches the following conclusions.

FINDINGS OF FACT

1. The Board adopts as its finding of facts paragraphs 1 - 21 of the Joint Administrative Complaint which is attached hereto as exhibit "A" and incorporated herein by reference.

2. Respondent failed to file any papers, pleading or other responsive documents to the personally served Administrative Complaint.

3. There is competent, substantial evidence to support the Board's conclusions.

CONCLUSIONS OF LAW

4. Based upon the Findings of Fact, the Board concludes that Respondent Anthony Damiano has violated Section 470.019(2)(d), Florida Statutes by committing misrepresentation or fraud in the conduct of the business of a direct disposer or direct disposal establishment.

5. Based upon the Findings of Fact, the Board concludes that Respondent Anthony Damiano has violated Section 470.019(2)(m), Florida Statutes, by violating Section 470.0165(2), Florida Statutes, which forbids direct disposers from selling, conducting, or arranging for funeral services, memorial services, visitations, or viewings.

6. Based upon the Findings of Fact, the Board concludes that Respondent Anthony Damiano has violated Section 470.019(2)(e), Florida Statutes, by making any false or misleading statement, oral or written, directly or indirectly, regarding any law or rule pertaining to the preparation for disposition, transportation for disposition, or disposition of dead human bodies.

7. Based upon the Findings of Fact, the Board concludes that Respondent Anthony Damiano has violated Section 470.019(2)(f), Florida Statutes, by paying to or receiving from any organization, agency, or person, either directly or indirectly, any commission, bonus, kickback, or rebate in any form whatsoever for direct disposing business, by the registrant or his agent, assistant or employee.

8. Based upon the Findings of Fact, the Board concludes that Respondent Anthony Damiano has violated Section 470.019(2)(g), Florida Statutes, by aiding or abetting and unregistered person to engage in the disposition of dead human bodies or remains as provided under this chapter or to engage in conduct or activities for which a license to engage in the profession of funeral directing or embalming is required.

9. Based upon the Findings of Fact, the Board concludes that Respondent Anthony Damiano has violated Section 470.019(2)(l), Florida Statutes, by advertising goods and services in a manner which is fraudulent, deceptive, or misleading in form or content.

10. Based upon the Findings of Fact, the Board concludes that Respondent Anthony Damiano has violated Section 470.019(2)(o), Florida Statutes, by soliciting, by or through his agent, assistant, or employee, through the use of fraud, undue influence, intimidation, overreaching, or other form of vexatious conduct.

11. Based upon the Findings of Fact, the Board concludes that Respondent Anthony Damiano has violated Section 470.019(2)(p), Florida Statutes, by committing fraud or deceit in the practice of direct disposition.

12. Based upon the Findings of Fact, the Board concludes that Respondent Anthony Damiano has violated Section 470.019(2)(r), Florida Statutes, by offering at-need or pre-need service of direct burial.

13. Based upon the Findings of Fact, the Board concludes that Respondent Anthony Damiano has violated Section 455.227(1)(m), Florida Statutes, by making deceptive, untrue, or fraudulent representations in or related to the practice of a profession or employing a trick or scheme in or related to the practice of a profession.

14. Based upon the Findings of Fact, the Board concludes that Respondent Anthony Damiano has violated Section 455.227(1)(o), Florida Statutes, by practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities the licensee knows, or has reason to know, the licensee is not competent to perform.

15. Based upon the Findings of Fact, the Board concludes that Respondent Alpha & Omega Cremation Society, Inc. has violated Section 470.019(2)(d), Florida Statutes, by committing misrepresentation or fraud in the conduct of the business of a direct disposer or direct disposal establishment.

16. Based upon the Findings of Fact, the Board concludes that Respondent Alpha & Omega Cremation Society, Inc. has violated Section 470.019(2)(r), Florida Statutes, by offering at-need or pre-need services of direct burial.

17. Based upon the Findings of Fact, the Board concludes that Respondent Alpha & Omega Cremation Society, Inc. has violated Section 470.019(2)(m), Florida Statutes, by violating Section 470.021(2), Florida Statutes, by failing to report promptly to the Board a change in location of a direct disposal establishment.

18. Based upon the Findings of Fact, the Board concludes that Respondent Alpha & Omega Cremation Society, Inc. has violated Section 470.019(2)(m), Florida Statutes, by violating Section 470.024(9), Florida Statutes, by operating a funeral establishment at the same location as a direct disposal establishment when they were not licensed as co-located establishments on October 1, 1993.

19. Based upon the Findings of Fact, the Board concludes that Respondent Alpha & Omega Cremation Society, Inc. has violated Section 455.227(1)(m), Florida Statutes by making deceptive, untrue, or fraudulent representations in or related to the practice of a profession or employing a trick or scheme in or related to the practice of a profession.

20. Based upon the Findings of Fact, the Board concludes that Respondent Alpha & Omega Cremation Society, Inc. has violated Section 455.227(1)(o), Florida Statutes, by practicing or offering to practice beyond the scope permitted by the law or accepting and performing professional responsibilities the licensee knows, or has reason to know, the licensee is not competent to perform.

21. Based upon the Facts found, the Board concludes that the following aggravating factors set forth in Rule 61G8-30.001(6):

- a. The severity of the offenses;
- b. The danger to the public;
- c. The number of repetitions of offenses;

....

- g. The actual damage, physical or otherwise caused by the violations;
- h. The deterrent effect of the penalty imposed;
-
- k. The actual knowledge of the licensee pertaining to the violation; and
-
- n. Actual negligence of the licensee pertaining to any violation....

justify enhanced penalties.

22. There is competent, substantial evidence to support the Board's conclusions.

The Board is empowered by Section 491.009, Florida Statutes, to impose a penalty against the licensees. Therefore, it is ORDERED that Petitioner's Motion for Default is hereby granted and:

1. Respondent Anthony Damiano's license to practice as a direct disposer, number KA 0000329, is hereby REVOKED without leave to reapply for licensure for ten years from the date this Order is filed.

2. Respondent Alpha & Omega Cremation Society's license as a direct disposal establishment, license number KB 0000280, is hereby REVOKED.

3. Respondents, Anthony Damiano and Alpha & Omega Cremation Society of South Florida, Inc., shall pay fines of five thousand dollars (\$5,000.00) for each count, for a total of eighty-five thousand dollars (\$85,000.00) to the Board of Funeral Directors and Embalmers. Payment shall be made no later than 30 days after entry of this Final Order in the form of a cashier's or certified check and made payable to the Executive Director of the Board of Funeral Directors and Embalmers.

4. Respondent, Anthony Damiano shall pay fines of fifty-five thousand dollars(\$55,000.00) and Alpha & Omega Cremations Society of South Florida, Inc., shall pay fines of thirty thousand dollars (\$30,000.00).

5. Respondent Anthony Damiano shall pay the costs of this investigation and prosecution, excluding costs associated with any attorney's time, in the amount two hundred fifteen dollars and fifty-five cents. (\$215.55), within 30 days of the effective date of this Order,

in the form of a cashier's or certified check made payable to the Executive Director of the Board of Funeral Directors and Embalmers.

6. Respondent Alpha & Omega Cremation Society shall pay the costs of this investigation and prosecution, excluding costs associated with any attorney's time, in the amount two hundred fifteen dollars and fifty-five cents, (\$260.90), within 30 days of the effective date of this Order, in the form of a cashier's or certified check made payable to the Executive Director of the Board of Funeral Directors and Embalmers.

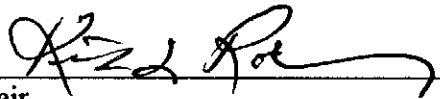
7. This Final Order shall become effective on the date of filing with the Agency Clerk of the Department of Business and Professional Regulation.

NOTICE OF RIGHT TO APPEAL UNLESS WAIVED

Unless expressly waived, any party substantially affected by this final order may seek judicial review by filing an original Notice of Appeal with the Clerk of the Department of Business and Professional Regulation, and a copy of the notice, accompanied by the filing fees prescribed by law, with the clerk of the appropriate District Court of Appeal within thirty (30) days rendition of this order, in accordance with Rule 9.110, Fla. R. App. P., and section 120.68, Florida Statutes.

DONE AND ORDERED this 14th day of February, 2001.

Board of Funeral Directors
and Embalmers


Chair

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Final Order has been provided via U. S. Certified Mail to EDWARD M. KAY, 4F Trial Lawyers Building, 633 SE Third Avenue, Fort Lauderdale, Florida 33301 this ____ day of _____, 2001.

Department of Business and
Professional Regulation

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
BOARD OF FUNERAL DIRECTORS AND EMBALMERS

DEPARTMENT OF BUSINESS AND
PROFESSIONAL REGULATION,

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Case Nos. 2000-04574
2000-04575

ANTHONY J. DAMIANO and ALPHA &
OMEGA CREMATION SOCIETY OF SOUTH
FLORIDA, INC.,

Respondents.

JOINT ADMINISTRATIVE COMPLAINT

Petitioner, DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION ("Petitioner"), files this Administrative Complaint before the Board of Funeral Directors and Embalmers against ANTHONY J. DAMIANO, hereinafter ("Damiano"), and ALPHA & OMEGA CREMATION SOCIETY OF SOUTH FLORIDA, INC., hereinafter ("Alpha & Omega"), ("Respondents"), and alleges:

1. Petitioner is the state agency charged with regulating the practice of direct disposition, pursuant to Section 20.165, Florida Statutes, and Chapters 455 and 470, Florida Statutes.
2. At all times material hereto, Respondent Damiano was licensed in the State of Florida as a direct disposer, license number KA 0000329.
3. Damiano's last known address is 1390 Sorrento Drive, Ft. Lauderdale, FL 34276.
4. At all times material hereto, Respondent Alpha & Omega was licensed in the State of Florida as a direct disposal establishment, license number KB 0000280.



5. Alpha & Omega's address of record with the Department is 4318 W. Broward Blvd., #5, Plantation, Florida 33317, which is not the address at which Alpha & Omega has been operating.

6. Alpha & Omega operates its business at 2267 S. University Drive, Davie, Florida 33324; the same location as All Care Funeral Home & Crematory, Inc., ("All Care") and Serenity Cremation Society, Inc. ("Serenity"), both also owned by Damiano.

7. Alpha & Omega is not licensed to be colocated with either All Care (FH 0002297) or Serenity (FH 0002485), and is therefore in violation of Section 470.024(9), F.S.

8. At all times material hereto, Damiano was the direct disposer in charge of Alpha & Omega.

9. At all times material hereto, Damiano, through Alpha & Omega, has been engaging in the sale of pre-need funeral contracts without being properly licensed or holding an appropriate certificate of authority, in violation of Section 497.405, F.S. and 470.019(2)(r), F.S.

10. Alpha & Omega does not hold a certificate of authority to enter into pre-need contracts.

11. On or about April 9, 1999, Alpha & Omega entered into a pre-need arrangement with Ronald D. Buckler of North Lauderdale, Florida.

12. In accordance with the contract, check number 124 in the amount of \$495.00 was tendered by Mr. Buckler made payable to Alpha & Omega.

13. Alpha & Omega's information packet for the public lists cremation casket or alternative containers ranging in price from \$75.00 to \$3000.00, implying that a casket is required for cremation.

14. Alpha & Omega advertises as being capable of providing services of a funeral director, services which it is not licensed to perform.

15. Damiano has advertised All Care in the Yellow Pages as performing cremations on its premises, when his facility is not equipped to provide this service.

16. On or about May 22, 2000, the Department of Banking and Finance, Division of Financial Investigations, hereinafter ("DBF"), who issues certificates of authority for pre-need funeral contracts, obtained sworn testimony from a former employee of Damiano, after a complaint for grand theft and exploitation of the elderly was received against another of Damiano's facilities which operates at the same address as Alpha & Omega.

17. At all times material hereto, Damiano has been entering into pre-need funeral arrangements with the public without being licensed or holding a certificate of authority.

18. Damiano has contracted to scatter remains at a cost of \$95.00 each, although numerous plastic bags of ashes, some labeled and some not labeled, have been discovered, left unscattered for at least four months.

19. Damiano has prepared bodies for burial or directed other unlicensed persons to do so.

20. Damiano has signed death certificates and requests for burial transit permit in the name of Joseph Jodrey (FE 0001632), who is the listed funeral director in charge for All Care, which Damiano owns.

21. Damiano has solicited referrals for his business from hospice nurses and the Broward County Medical Examiner's office, by providing cash or tickets to sporting events.

Counts Relating to Respondent Damiano

COUNT ONE

22. Petitioner realleges and incorporates paragraphs one through twenty-one as though fully set forth herein.

23. Based upon the foregoing, Respondent violated Section 470.019(2)(d), F.S., by committing misrepresentation or fraud in the conduct of the business of a direct disposer or direct disposal establishment.

COUNT TWO

24. Petitioner realleges and incorporates paragraphs one through twenty-one as though fully set forth herein.

25. Section 470.0165(2), F.S., provides that direct disposers may not, in their capacity as direct disposers, sell, conduct, or arrange for burials, funeral services, memorial services, visitations, or viewings.

26. Based upon the foregoing, Respondent violated Section 470.019(2)(m), F.S., by violating a statute or administrative rule regulating practice under this chapter.

COUNT THREE

27. Petitioner realleges and incorporates paragraphs one through twenty-one as though fully set forth herein.

28. Based upon the foregoing, Respondent violated Section 470.019(2)(e), F.S., by making any false or misleading statement, oral or written, directly or indirectly, regarding any law or rule pertaining to the preparation for disposition, transportation for disposition, or disposition of dead human bodies.

COUNT FOUR

29. Petitioner realleges and incorporates paragraphs one through twenty-one as though fully set forth herein.

30. Based upon the foregoing, Respondent violated Section 470.019(2)(f), F.S., by paying to or receiving from any organization, agency, or person, either directly or indirectly, any commission, bonus, kickback, or rebate in any form whatsoever for direct disposing business, by the registrant or his agent, assistant or employee.

COUNT FIVE

31. Petitioner realleges and incorporates paragraphs one through twenty-one as though fully set forth herein.

32. Based upon the foregoing, Respondent violated Section 470.019(2)(g), F.S., by aiding or abetting an unregistered person to engage in the disposition of dead human bodies or remains as provided under this chapter or to engage in conduct or activities for which a license to engage in the profession of funeral directing or embalming is required.

COUNT SIX

33. Petitioner realleges and incorporates paragraphs one through twenty-one as though fully set forth herein.

34. Based upon the foregoing, Respondent violated Section 470.019(2)(l), F.S., by advertising goods and services in a manner which is fraudulent, deceptive, or misleading in form or content.

COUNT SEVEN

35. Petitioner realleges and incorporates paragraphs one through twenty-one as though fully set forth herein.

36. Based on the foregoing, Respondent violated Section 470.019(2)(o), F.S., by soliciting, by or through his agent, assistant, or employee, through the use of fraud, undue influence, intimidation, overreaching, or other form of vexatious conduct.

COUNT EIGHT

37. Petitioner realleges and incorporates paragraphs one through twenty-one as though fully set forth herein.

38. Based on the foregoing, Respondent violated Section 470.019(2)(p), F.S., by committing fraud or deceit in the practice of direct disposition.

COUNT NINE

39. Petitioner realleges and incorporates paragraphs one through twenty-one as though fully set forth herein.

40. Based upon the foregoing, Respondent violated Section 470.019(2)(r), F.S., by offering at-need or preneed service of direct burial.

COUNT TEN

41. Petitioner realleges and incorporates paragraphs one through twenty-one as though fully set forth herein.

42. Based upon the foregoing, Respondent violated Section 455.227(1)(m), F.S., by making deceptive, untrue, or fraudulent representations in or related to the practice of a profession or employing a trick or scheme in or related to the practice of a profession.

COUNT ELEVEN

43. Petitioner realleges and incorporates paragraphs one through twenty-one as though fully set forth herein.

44. Based upon the foregoing, Respondent violated Section 455.227(1)(o), F.S., by practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities the licensee knows, or has reason to know, the licensee is not competent to perform.

Counts Against Respondent Alpha & Omega:

COUNT TWELVE

45. Petitioner realleges and incorporates paragraphs one through twenty-one as though fully set forth herein.

46. Based upon the foregoing, Respondent violated Section 470.019(2)(d), F.S., by committing misrepresentation or fraud in the conduct of the business of a direct disposer or direct disposal establishment.

COUNT THIRTEEN

47. Petitioner realleges and incorporates paragraphs one through twenty-one as though fully set forth herein.

48. Based upon the foregoing, Respondent violated Section 470.019(2)(r), F.S., by offering at-need or pre-need service of direct burial.

COUNT FOURTEEN

49. Petitioner realleges and incorporates paragraphs one through twenty-one as though fully set forth herein.

50. Section 470.021(2), F.S., requires that any change in location of a direct disposition establishment shall be reported promptly to the board.

51. Based upon the foregoing, Respondent violated Section 470.019(2)(m), F.S., by violating a statute or administrative rule regulating practice under this chapter.

COUNT FIFTEEN

52. Petitioner realleges and incorporates paragraphs one through twenty-one as though fully set forth herein.

53. Section 470.024(9), F.S., provides that operating a funeral establishment at the same location as a direct disposal establishment when they were not licensed as colocated establishments on October 1, 1993, is grounds for discipline.

54. Based upon the foregoing, Respondent violated Section 470.019(2)(m), F.S., by violating a statute or administrative rule regulating practice under this chapter.

COUNT SIXTEEN

55. Petitioner realleges and incorporates paragraphs one through twenty-one as though fully set forth herein.

56. Based upon the foregoing, Respondent violated Section 455.227(1)(m), F.S., by making deceptive, untrue, or fraudulent representations in or related to the practice of a profession or employing a trick or scheme in or related to the practice of a profession.

COUNT SEVENTEEN

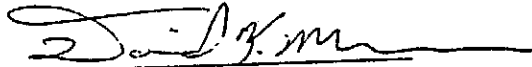
57. Petitioner realleges and incorporates paragraphs one through twenty-one as though fully set forth herein.

58. Based upon the foregoing, Respondent violated Section 455.227(1)(o), F.S., by practicing or offering to practice beyond the scope permitted by law or accepting and performing professional responsibilities the licensee knows, or has reason to know, the licensee is not competent to perform.

WHEREFORE, Petitioner respectfully requests the Board of Funeral Directors and Embalmers enter an order imposing one or more of the following penalties: revocation or

suspension of the Respondent's license, restriction of the Respondent's practice, imposition of an administrative fine not to exceed \$5,000 per violation, issuance of a reprimand, placement of the Respondent on probation, assessment of costs associated with the investigation, imposition of any or all penalties delineated within Section 455.227(2), *Florida Statutes*, and/or any other relief that the Board is authorized to impose pursuant to Chapters 455 and/or 470, *Florida Statutes*, and/or the rules promulgated thereunder.

Signed this 28th day of August, 2000.



David K. Minacci
Lead Professions Attorney

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Tallahassee, FL 32399-2202

FILED
Department of Business and Professional Regulation
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CLERK Brandon M. Nichols
DATE 8-29-2000

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Sullivan & Coleman

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