

IN THE MATTER OF

ROGER J. MASON

Respondent

LICENSE NUMBER: M0963

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BEFORE THE

BOARD OF MORTICIANS

AND FUNERAL DIRECTORS

CASE NUMBER: 11-008

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CONSENT ORDER

On April 6, 2011, the State Board of Morticians and Funeral Directors (the "Board") charged **ROGER J. MASON (the "Respondent")**, License Number **M0963 (D.O.B. 06/08/1947)**, with violating certain provisions of the Maryland Morticians Act (the "Act"), Md. Health Occ. Code Ann. ("H.O.") §§ 7-101 et seq. (2009 Repl. Vol. and 2010 Supp.). Specifically, the Board charged the Respondent with violating the following provisions of the Act:

H. O. § 7-316. Denials, reprimands, suspensions, and revocations--Grounds

(a) In general. – Subject to the hearing provisions in § 7-319 of this subtitle and except as to a funeral establishment license, the Board may deny a license to any applicant, reprimand any licensee, place any licensee on probation, or suspend or revoke any license if the applicant or licensee:

- (1) Fraudulently or deceptively obtains or attempts to obtain a license for the applicant or licensee or for another;
- (2) Fraudulently or deceptively uses a license;
- (3) Commits fraud or misrepresentation in the practice of mortuary science;
- (13) Fails, after proper demand, to refund promptly any payments received under a pre-need contract with interest;
- (24) Violates and rule or regulation adopted by the Board; to wit:

COMAR 10.29.06.04A. Within 10 days of receiving payment under a preneed contract, the seller shall deposit into an

interest-bearing escrow or trust account that is insured by the Federal Deposit Insurance Corporation (FDIC):

(1) An amount from the payment that is equal to at least 80 percent of the selling price of a casket or casket vault under the preneed contract; and

(2) 100 percent of the payment that is for all other goods and services under the preneed contract.

COMAR 10.29.06.04D.

(1) The interest or dividends earned by the interest-bearing escrow or trust account belongs to the buyer of the contract;

(2) The seller shall send to the buyer a tax form stating the amount of the interest accumulated in the account each year that the contract is in effect until the time of death of the beneficiary.

COMAR 10.29.06.04E. The seller may not withdraw from the account the money received from the buyer unless the services and merchandise have been provided as agreed to in the contract or unless the buyer terminates the contract.

COMAR 10.29.06.06B. Except as otherwise provided in this section, a seller may not withdraw from the preneed interest-bearing escrow or trust account the money received from a buyer unless the services and merchandise agreed to in the contract have been provided.

COMAR 10.29.06.06C. At the time a preneed contract is terminated, the seller shall refund to the buyer the payments and interest held for the buyer, if any one of the following conditions occur:

(1) The buyer or the legal representative or representatives of the buyer demands in writing a refund of the payments made except as set forth in Regulation .09 of this chapter;

(26) Commits an act of unprofessional conduct in the practice of mortuary science[.]

FINDINGS OF FACT

The Board finds the following:

1. The Respondent was initially licensed to practice mortuary science in the State of Maryland under license number M0963 on December 9, 1992. The Respondent's license is current and will expire on April 30, 2012.
2. The Respondent is a licensed funeral director in the District of Columbia (license number: DFD908). The Respondent's license is active and will expire on December 31, 2011. The Respondent also holds a District of Columbia establishment license and operates his business out of Hunt Funeral Home in Washington, D.C.¹
3. The Respondent previously held a Maryland restricted establishment license (license number: E00427) for Roger J. Mason Funeral Service, which was restricted to operate out of Chambers Funeral Home & Crematorium ("Chambers") in Riverdale, Maryland.
4. On May 18, 2010, the Respondent turned in his restricted establishment license when Chambers' establishment license was summarily suspended. The Respondent chose not to operate his establishment out of any other licensed establishment in Maryland. The Respondent's restricted establishment license was no longer active after May 18, 2010.
5. At all times relevant to the statements herein, the Respondent was a mortician employed by Lee Funeral Home, Inc. ("Lee"), a funeral establishment located at 6633 Old Alexandria Ferry Road, Clinton, Maryland 20735.

¹ The District of Columbia Board of Funeral Directors (the "D.C. Board") could not provide the Board with the Respondent's restricted establishment license number because its database is not up-to-date. The D.C. Board did, however, confirm that the Respondent has an active restricted establishment license in that jurisdiction.

I. Pre-Need Issue

6. On or about December 22, 2010, the Board received a complaint regarding the Respondent's practice of mortuary science. Specifically, the complainant alleged that she had entrusted pre-need monies for her parents' funerals and was having difficulty obtaining that money from the Respondent.

7. Subsequently, the Board initiated an investigation.

8. The Board's investigation revealed that on March 8, 2008, the complainant signed two separate pre-need contracts with the Respondent. One pre-need contract was for her mother ("Decedent A") and the other was for her father ("Decedent B").² Each pre-need contract totaled \$5,990. The complainant paid the Respondent, in full, a total of \$11,980.

9. Both pre-need contracts were written on contract forms belonging to Lee. The Respondent had crossed out Lee's name and address at the top of the contract, and handwrote "Roger Mason," with two telephone numbers handwritten underneath. The Respondent filled out the pre-need contract forms and agreed to provide funeral services for Decedents A and B at the time of their respective deaths.

10. The Board's investigator interviewed the owner of Lee, who stated that he did not give the Respondent permission to use Lee's pre-need contract forms and had no knowledge that the Respondent was using Lee's pre-need contract forms.

11. At the time that the Respondent and the complainant entered into the pre-need contracts for Decedent A and Decedent B, the Respondent was lawfully permitted to accept pre-need monies because he possessed an active establishment license. However, the Board had not seen or approved the Respondent's pre-need forms

² Decedent A died on September 16, 2010 and Decedent B died on December 21, 2010.

because he had previously reported to the Board that he did not accept pre-need business.³

12. On or about January 3, 2011, the Board's investigator interviewed the complainant, who stated that she was dissatisfied with the preparation of Decedent A's body. Further, the complainant stated that she was dissatisfied because there was a long delay in receiving Decedent A's death certificate (the original contained several errors that had to be corrected), and because the Respondent was not present at Decedent A's funeral.

13. According to the complainant, an unknown female served as the funeral director on the Respondent's behalf, and she did not appear to be familiar with the route to the cemetery.

14. Further investigation by the Board revealed that the unknown female is a licensed mortician ("Mortician A") in the State of Maryland who was covering Decedent A's funeral for the Respondent. Mortician A stated that she was unaware that the Respondent no longer had an active establishment license.

15. The complainant stated that because of her dissatisfaction with her mother's funeral, she contacted the Respondent by letter at the address listed on the pre-need contract to request that Decedent B's pre-need money be transferred to

³ During a telephone conversation with the Board's Deputy Director, the Respondent stated that he did not accept pre-need business. However, he later retracted that statement and on or about December 28, 2010, he submitted one pre-need contract for Client A in the amount of \$5,246, dated August 28, 2010, to the Board. The contract itself did not indicate whether it was pre-need or at-need. The Respondent represented that it was the only pre-need contract he had entered into in the State of Maryland. Further, it utilized a form that was not approved by the Board, and included an address that is unrelated to any funeral establishment with which the Respondent has been affiliated. The Respondent informed the Board that the money from that contract was given to an insurance agent to purchase a life insurance policy for funeral expenses for Client A.

another funeral establishment. The Respondent failed to respond to the complainant's letter.

16. Decedent B died on December 21, 2010. The complainant contacted another funeral home, Dunn & Sons ("Dunn"), in Washington, D.C to handle Decedent B's funeral arrangements.

17. As of January 3, 2011, despite repeated requests by the complainant and Dunn, the Respondent had transferred only \$2,000 of the \$5,990 that had been paid by the complainant pursuant to Decedent B's pre-need contract.

18. Ultimately, the Respondent paid the balance of the pre-need monies (\$3,990) to Dunn and Decedent B was buried.

19. However, the Respondent failed to transfer to Dunn the interest earned on the full amount (\$5990) of the pre-need contract.⁴

20. The Board's investigator interviewed the Respondent on January 3, 2011. At that time, the Respondent admitted that he accepted \$11,980 from the complainant for two pre-need contracts for Decedents A and B, and deposited the full amount in his bank account. The Respondent further admitted that while the monies were in his possession, the full amount was not continuously available in his bank account.

21. The Respondent also stated that he told the complainant that he "[didn't] do pre-arrangements, but would personally hold [the money] for when she would need it."

22. In furtherance of its investigation, the Board issued a subpoena to Bank of America for the Respondent's checking account records (account #: XXXXXX2686).

⁴ On or about April 27, 2011, the Respondent paid Dunn interest in the amount of \$354.00.

The account is in the name of "Mason Funeral Service DBA, Roger J. Mason, Sole Prop." and the monthly statements were mailed to an address in Bowie, Maryland.

23. A review of the Respondent's checking account records revealed the following:

- a. On March 8, 2008, the complainant issued two checks (#142 and #143) to the Respondent for \$5,990 each for Decedent A and Decedent B's pre-need contracts;
- b. On March 10, 2008, one check (#143) was deposited into the checking account. The other check (#142) was deposited into the same account on March 11, 2008.
- c. Before the deposits, the account had a negative balance in the amount of -\$343.65. After the deposits, the account had an ending balance of \$11,522.82.
- d. During March 2008, the account balance was as high as \$14,640.82 (on March 13, 2008) and as low -\$771.17 (on March 27, 2008).
- e. The average daily balance in the account never rose over \$11,980 (Decedent A and B's pre-need monies) until September 2, 2010, when the balance was \$11,985.
- f. On September 16, 2010, the date of Decedent A's death, the account balance was \$577.60. Therefore, had the complainant requested that Decedent A's pre-need funds be transferred to another funeral home, the funds would not have been available.

- g. On December 4, 2010, when the complainant requested the transfer of Decedent B's pre-need funds, the account balance was -\$804.57.
- h. The Respondent often carried a negative balance in his bank account during the time that he was in possession of Decedent A and B's pre-need monies.
- i. Decedent A and B's pre-need monies should have been secured in a federally-insured, interested-bearing account. However, the Respondent deposited the monies in a non-interest-bearing checking account.
- j. The Respondent's monthly banking statements for this bank account reflect expenditures for personal expenses such as recreation, alcohol, gasoline, groceries, dining, tuition, and airline tickets.

II. Practicing Without an Establishment License

24. The Board's review of the Respondent's bank records also revealed that despite no longer having an establishment license in the State of Maryland, the Respondent continued to operate his business in Maryland.

25. The Respondent wrote several checks to the State Health Department⁵ and the Division of Vital Records⁶ after the he represented that he closed his Maryland establishment and turned in his establishment license.

⁵ Check #7266 on September 25, 2008, Check #7500 on May 4, 2010; Check #7517 on June 2, 2010; Check# 7556 on July 13, 2010; Check #7583 on August 3, 2010.

⁶ Check #7265 on October 1, 2008; Check #7359 on August 19, 2009; Check# 7379 on October 12, 2009; Check #7402 on December 31, 2009; Check #7409 on January 13, 2010; Check #7503 on May 5, 2010; Check #7504 on May 8, 2010.

26. On or about March 12, 2011, the Board received information that the Respondent was holding a funeral at a Greater Hope Church on North Gilmore Street in Baltimore City.

27. In furtherance of the Board's investigation, the Board's investigator attended the funeral and observed a sign on the hearse that read, "Roger J. Mason." In the funeral procession, there were three limousines and one hearse, all with Maryland license plates. The Respondent was in attendance and no other licensee was observed to be in attendance.

28. During the funeral, the Respondent approached the Board's investigator, who was outside of the funeral location, and insisted that his mortician's license allows him to hold funerals in the State of Maryland. The Board's investigator informed him that his mortician's license gives him the privilege to work as a mortician at any Maryland establishment and to cover a Maryland funeral for any licensed Maryland establishment.

29. The Board's investigator obtained a funeral program for the deceased ("Decedent C"), which states "Professional Services Entrusted to: Mason Funeral Services 1-800-644-9317 Serving District of Columbia and Surrounding Areas." The telephone number is associated with Roger Mason.

30. When the Board's investigator called the telephone number, an operator answered by saying, "Funeral Service." Further questioning of the operator by the Board's investigator revealed that it was the answering service for Roger J. Mason Funeral Service and that it is located in Bowie, Maryland.

31. Further investigation revealed that Decedent C died at Mercy Medical Center (the "hospital") in Baltimore, Maryland. The remains were picked up by Richard Little, who signed the death certificate and listed the Respondent's home address.⁷

32. A search of Maryland Motor Vehicle Administration records revealed that Richard Little was born in 1987 and uses the Respondent's home address as his home address.

33. The Board asked the Respondent to provide contracts for Maryland funerals that he handled during the previous week. The Respondent provided Decedent C's contract and that of a fourth decedent ("Decedent D"). The contract the Respondent for Decedent D's funeral listed a D.C. funeral establishment.

34. According to Decedent D's daughter, Decedent D died in a Maryland hospital, arrangements were made at a Maryland funeral home, Roger Mason Funeral Service, and Decedent D's funeral was held at a Maryland church.

III. Failure to Disclose Criminal Conviction

35. On February 27, 2010, the Respondent submitted his renewal application for his mortician license.

36. The Respondent answered "no" to the question, "Have you pled guilty, nolo contendere, been convicted, received probation before judgment or other diversionary disposition of any criminal act or for driving while intoxicated, or for a controlled dangerous substance offense (excluding minor traffic violations)?"

⁷ Mr. Little dropped the death certificate as he left the hospital with Decedent C's remains. It was found by hospital security. The hospital entered into their database "Richard Little Funeral Home" as the establishment that picked up the remains. There is no such entity. The hospital provided the Board with a copy of Decedent C's death certificate, which does not match the death certificate that the Respondent filed with the Department of Vital Records. The filed copy of the death certificate is identical, except that it is signed by the Respondent and lists his D.C. business information.

37. The Respondent's signature appears under the following attestation: "I affirm that the contents of this document are true and correct to the best of my knowledge and belief. Failure to provide truthful answers may result in disciplinary action."

38. A search for the Respondent's name in the Maryland Judiciary Case Search revealed that on February 4, 2010, in the District Court of Maryland for Calvert County, the Respondent pled guilty to Driving, Attempting to Drive Vehicle While Impaired by Alcohol. The incident that gave rise to the charge took place on December 12, 2009.

39. The disposition was probation before judgment, and the Respondent was sentenced to 60 days in jail, with all but 58 days suspended.

40. The Respondent failed to disclose his criminal history on his 2010 renewal application.

CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Board concludes as a matter of law that the Respondent violated H.O. §§ 7-316(a)(1), (2), (3), (13), (24), (26), and COMAR 10.29.06.04A(1), (2); 10.29.06.04D(1), (2); 10.29.06.04E; 10.29.06.06B; and 10.26.06.06(C)(1).

ORDER

Based on the foregoing Investigative Findings and Conclusions of Law, it is this 19th day of May 2011, by a majority of the Board:

ORDERED that the summary suspension of the Respondent's license to practice mortuary science in the State of Maryland is hereby **LIFTED**; and it is further

ORDERED that the Respondent's license to a practice mortuary science in the State of Maryland is hereby **SUSPENDED** for a period of **SIX (6) MONTHS**; and it is further

ORDERED that prior to the reinstatement of the Respondent's license to practice mortuary science, the Respondent shall secure the reinstatement of his restricted establishment license in the State of Maryland; and it is further

ORDERED that upon reinstatement of the Respondent's license to practice mortuary science, he shall be placed on **PROBATION** for a period of **TWO (2) YEARS**, subject to the following terms and conditions:

1. The Respondent shall pay a fine in the amount of **\$1,000.00** to the Board by certified check, payable to the "Maryland Board of Morticians and Funeral Directors," 4201 Patterson Avenue, Baltimore, Maryland 21215 in the following installments:

- a. The first payment of \$500 is due on or before the date when the Respondent's license to practice mortuary science is reinstated,
- b. The second payment of \$500 is due on or before six (6) months from the date of the first payment;

2. Within six (6) months of the effective date of the Consent Order, the Respondent shall successfully complete a Board-approved ethics course and provide written documentation of the same to the Board;

3. The Respondent shall not make pre-need arrangements for his own business (if applicable) or any other funeral establishment in the State of Maryland;

4. The Respondent shall submit to quarterly review by the Board of all at-need contracts during the period of probation;

5. An unsatisfactory review of the Respondent's at-need contracts may be deemed a violation of this Consent Order; and it is further

ORDERED that after the **TWO (2) year** probationary period, the Respondent may submit a written petition to the Board requesting termination of probation. After consideration of the petition, the probation may be terminated, through an order of the Board, or a designated Board committee. The Board, or designated Board committee, will grant the termination if the Respondent has fully and satisfactorily complied with all of the probationary terms and conditions and there are no pending complaints against the Respondent; and it is further

ORDERED that if the Respondent violates any of the terms and conditions of Probation and this Consent Order, the Board, in its discretion, after notice and an opportunity for a show cause hearing before the Board, may impose any sanction which the Board may have imposed in this case, including a probationary term and conditions of probation, reprimand, suspension, revocation and/or a monetary penalty, said allegations of violation of the terms and condition of this Consent Order shall be proven by a preponderance of the evidence; and it is further

ORDERED that the Respondent shall practice according to the Maryland Morticians and Funeral Directors Act and in accordance with all applicable laws, statutes and regulations; and it is further

ORDERED that the Respondent shall be responsible for all costs incurred in fulfilling the terms and conditions of the Consent Order; and it is further

ORDERED that this **CONSENT ORDER** is a **PUBLIC DOCUMENT** as defined in Md. State Gov't Code Ann. §§ 10-611 *et seq.* (2009 Repl. Vol.).

5-19-11
Date



Dr. Hari P. Close, President
Maryland Board of Morticians and Funeral Directors

CONSENT

I, Roger Mason, acknowledge that I have had the opportunity to consult with counsel before signing this document. By this Consent, I accept to be bound by this Consent Order and its conditions and restrictions. I waive any rights I may have had to contest the Findings of Fact and Conclusions of Law.

I acknowledge the validity of this Consent Order as if entered into after the conclusion of a formal evidentiary hearing in which I would have had the right to counsel, to confront witnesses, to give testimony, to call witnesses on our own behalf, and to all other substantive and procedural protections as provided by law. I acknowledge the legal authority and the jurisdiction of the Board to initiate these proceedings and to issue and enforce this Consent Order. I also affirm that I waive our right to appeal any adverse ruling of the Board that might have followed any such hearing.

I sign this Consent Order after having had an opportunity to consult with counsel, without reservation, and I fully understand and comprehend the language, meaning and

terms of this Consent Order. I voluntarily sign this Order, and understand its meaning and effect.

MAY 19 2011
Date

Roger Mason
Roger Mason

Reviewed and approved by:

Edward M. Rahier of Nov 8, 2011
Edward Rahier, Esq.
Attorney for the Respondent

NOTARY

STATE OF MARYLAND
CITY/COUNTY OF Baltimore:

I HEREBY CERTIFY that on this 19th day of May, 2011, before me, a Notary Public of the foregoing State personally appeared Roger Mason made oath in due form of law that signing the foregoing Consent Order was his voluntary act and deed, and the statements made herein are true and correct.

AS WITNESSETH my hand and notarial seal.

Michelle Wade
Notary Public

My Commission Expires: MICHELLE WADE
Notary Public-Maryland
Anne Arundel County
My Commission Expires
December 11, 2011

