

IN THE MATTER OF	*	BEFORE THE
PAUL STELLA FUNERAL HOME, PA	*	STATE BOARD
License Number: E00170	*	OF MORTICIANS
Respondent-Home	*	CASE NUMBER: 06-075

* * * * *

**FINAL ORDER TO REVOKE THE RESPONDENT-HOME'S
ESTABLISHMENT LICENSE**

Pursuant to Md. State Govt. Code Ann. § 10-201, *et seq.*, (2004 Repl. Vol. and 2006 Supp.) of the Administrative Procedure Act (APA), and the Maryland Morticians Act, codified at Md. Health Occ. Code Ann. § 7-101, *et seq.*, ("the Act") (2005 Repl. Vol.), the State Board of Morticians ("the Board") sent an initial Notice of Intent to Revoke the Respondent-Home's Establishment License of Paul Stella Funeral Home, PA ("the Respondent-Home"), License Number E00170, on April 3, 2007.

The Notice instructed the Owner of the Respondent-Home to request a hearing in writing within thirty (30) days of the Notice. More than 30 days has passed and the Respondent has failed to request a hearing. Therefore, the State Board of Morticians hereby **REVOKES** the establishment license of Paul Stella Funeral Home, PA.

**FACTS THAT WARRANT THE REVOCATION OF THE RESPONDENT-HOME'S
LICENSE**

The Board intends to revoke the Respondent-Home's establishment license to operate as a funeral home for the foregoing facts which the Board has reason to believe are true:

1. At all times relevant hereto, the Respondent-Home was licensed to operate as a funeral home. The Respondent-Home was first given a license on October 1, 1972.

2. Paul Stella ("the Owner") became a partner with Hartley Miller on or about October 2002, changing the name of the Respondent-Home from Harley Miller to Hartley Miller-Stella Funeral Home. The Board issued an establishment license under that name on December 1, 2002, with an expiration date of November 30, 2004. The Respondent-Home is located on Harford Road in Baltimore City.

3. On or about December 8, 2005, the Owner of the Respondent-Home filed an Article of Amendment with the Department of Assessments and Taxation to change the name of the Respondent-Home to Paul Stella Funeral Home, PA. The Board approved the name change on January 3, 2006, and issued a license under that name, which expired on November 30, 2006.

4. As a result of a form received by the Board on May 17, 2006, from the Complainants, husband and wife,¹ the Board opened an investigation that revealed the following:

A. On August 4, 1993, Complainant-Wife's father purchased from the Hartley Miller Funeral Home three vaults as a Christmas present for himself, his daughter and her husband;

B. On December 19, 1999, Complainant-Wife's father died, using one of the vaults;

¹ The names of the Complainants, other morticians and Clients are confidential.

C. In the beginning of 2006, as the Complainants were gathering their tax information for 2005, they noticed that they did not receive a 1099 form for the vault accounts at Madison Bohemian Bank (hereinafter "Bohemian") for their 2005 interest;

D. The Complainant-Husband went to the Bohemian and asked why they had not received a 1099, and found out that the accounts were closed;

E. Thereupon, after returning home and discussing same with his wife, the Complainant-Wife called the Respondent-Home in the beginning of February 2006 and talked with the Owner of the Respondent-Home, who asked whether she had received a letter about changing from a bank account to an insurance policy. However, the Complainants never received a letter or a copy of an insurance policy or any other kind of documentation. The Owner said that he would mail the documentation to the Complainants;

F. The Complainants never received a letter, so the Complainant-Wife called the Owner again on April 11, 2006, and the Owner of the Respondent-Home promised once again to send a letter;

G. On May 2, 2006, the Complainant-Husband went back to the bank for copies of the authorization letters, which were not dated by the Owner of the Respondent-Home, but had Complainant-Husband's purported signature dated December 20, 2004, and the Complainant-Wife's purported signature dated

December 30, 2004. The signatures did not match the signatures of the Complainants on the bank's signature cards and were forgeries;

H. The next day, the Complainants met with the bank President, who produced checks closing out accounts for the Complainants, which signatures did not match the signature cards the bank had on file. Also, on the checks was the Owner's signature;

I. The Owner did not have authorization to withdraw monies from those accounts;

J. In response to the complaint, the Owner of the Respondent-Home sent to the Board an undated letter which stated that he sent a letter to those with pre-needs asking if their accounts could be moved into insurance, rather than bank accounts. The Owner of the Respondent-Home claimed that, if the person didn't respond, he took that to mean that there was no objection to his moving the money. The Owner further claimed that he didn't know that the Complainants just had vaults and no preneed contracts; later, he stated that he thought he was "looking out for there (sic) best interest until I saw it was only two vaults when the money was withdrawn." The Owner of the Respondent-Home further explained that the "Insurance Gentleman would come by to pick the checks up to transfer the money, knowing what I know now, I wouldn't have put [the Complainants'] money in Insurance anyway, (sic)." The Owner further claimed that he made a mistake by depositing the check into the wrong account at Bank of America, and he "didn't want the state (sic) to take there (sic) money even if they don't know it." The Owner

promised to refund the Complainants their money with interest from December 2004;

K. On May 4, 2006, Bohemian refunded a total of \$1,481.30 to the Complainants. (The Owner did not refund any money despite his promise to do so.)

5. Based upon the above, the Board continued its investigation, which disclosed the following:

A. The Respondent-Home's preneed report, dated August 12, 2005 for the year 2004, indicates that all accounts are up to date and that a portion have been cancelled due to death or have been transferred to other funeral homes. It further indicates that the remaining were transferred to insurance policies with supporting letters from the Owner of the Respondent-Homes to the account holders, with their signatures:

B. That statement was not true in that between June 2004 and January 2005, the Owner of the Respondent-Home closed a total of 123 accounts in the Madison Bohemian Bank;

C. Thirteen of the closed accounts were placed into insurance policies;

D. As set forth in more detail below, some of the other money withdrawn from the Bohemian went into the Respondent-Home's accounts at the Bank of America: to wit, a business account, under the name of Hartley Miller-Stella Funeral Home; and two personal accounts, one under the names of Paul Stella and Melissa Stella in Forest Hill, Maryland and, the other under Paul Stella and Melissa

Franczkowski (the maiden name of the Owner's wife, hereinafter, "Melissa F"), with the same address as the other personal account;

E. When the Board's investigator tried to obtain copies of the preneed accounts that the Owner submitted letters for in his preneed report, he was only able to get partial contracts for nine of them;

F. The Owner could not find the contracts for two of the clients, but gave the Board's Investigator the contracts for six others;

G. The Owner further claimed that Mortician A had written insurance policies for some of the preneed accounts and that he failed to give him copies of the policies;

H. On June 23, 2006, the Investigator met Client A at the Bohemian Bank and showed her a copy of the letter that was used to close her account and the check that was issued to her in the amount of \$5194.48. Client A had no knowledge that the account was closed on September 3, 2004 and that the check was issued. She also stated that it was not her signature on the letter or on the back of the check, which was then endorsed by the Owner of the Respondent-Home and placed in the Home's business account on that date. Client A stated that she never gave the Respondent-Home permission to close the account;

I. On June 26, 2006, the Investigator went to Client B's residence and showed her a copy of the letter that was used to close her account and the check that was issued in the amount of \$1787.68. Client B had no knowledge that the account was closed on December 6, 2004; nor did she give permission to do so.

Client B stated that it was not her signature on the letter to the bank to close the account nor her signature on the back of the check, which was then endorsed by the Owner to the Owner's business account on the above date;²

J. Also, on June 26, 2006, the Investigator met with Client D at his residence. Client D stated that he and his wife, who is now in a nursing home, had made preneed arrangements at the Home. Client D further stated that, when he went to the Bohemian in February 2006, he discovered that his and his wife's accounts were closed and the money was now in an insurance policy, which Client D thought was the normal course of business. The Investigator showed Client D a copy of the letter that was used to close the account on August 23, 2004. Based upon that letter, a check for \$7019.94 was issued. Client D stated that the signature on the letter was not his or his wife's. The Owner of the Respondent-Home placed the check from Client D's account into the Home's business account. Client D's wife's account was closed on November 28, 2004, but only \$3500 of the \$7227.35 was placed into the personal account that the Owner of the Respondent-Home shared with Melissa F. The remainder is unaccounted for;

K. On June 27, 2006, the Investigator met with Client E at his residence, who stated that it was not his signature on the letter to the Bohemian to close the account, nor was it his signature on the check, which was then made "pay to the order of Funeral Directors Life." Client E never knew that the account was closed until he received an insurance policy in the mail in February 2004. Client E stated

² The Respondent also deposited Client C's preneed account money into the same business account on the same day.

that neither his nor his wife's signature is on the policy. Client E further stated that he had never met Mortician A, the insurance agent;

L. On June 29, 2006, the Investigator met with Mortician A who indicated that the Owner of the Respondent-Home had contacted him to fund pre-arrangements with insurance. Mortician A further indicated that he had assisted the Owner with 13 preneed insurance policies and had no knowledge of the letters that went out to the account holders to close out their accounts at Bohemian. Mortician A stated that he does not have copies of the policies, because they were given to the Owner. Furthermore, Mortician A claimed that he was unable to get copies from the insurance company;

M. Thereafter, the Investigator talked to a Vice President at the Funeral Directors Life insurance company who told him that Mortician A prepared insurance policies for 10 people and that two of them had died. She further stated that copies can be obtained by written request;

N. The Investigator then called Unity Financial Life and spoke to a Senior Vice President who told him that Mortician A had prepared policies for three people, that they were valid, and could be obtained by written request;

O. On September 21, 2006, the Investigator tried to contact Client F who now has her preneed funded through insurance. He was able to speak to Client F's son who told him that his mother lives in Ft. Myers, Florida and that he has the power of attorney for his mother. Client F's son stated that he was aware that his mother had made preneed arrangements with the Home, but was not aware that her

preneed account, in the amount of \$6895.41, had been closed at the Bohemian on July 19, 2004. Client F's son asked the Investigator to fax over all of the information, which the Investigator did. Client F's son stated that that was not his mother's signature and his mother had been in Florida for the last three years, including the time period when the check was written. Client F's son was adamant that his mother, who lived in an assisted living facility, had never met with Mortician A to complete an insurance application. Client F's son advised the Investigator that his two aunts also had preneeds with the Owner;

P. The Investigator then met with Client F's sisters, Clients G and H, at Client H's residence, where he advised Client G that her account in the amount of \$6446.21 at the Bohemian was closed on September 3, 2004. Client G stated that she did not have knowledge of that nor did she give permission for it to be done. The Investigator showed Client G a copy of the bank check issued to her with her purported signature on the back, which was then made payable to Unity Financial Life. Client G denied that it was her signature or instructions. She was not aware that her preneed was now funded through insurance, and she had never met the insurance agent, Mortician A;

Q. The Investigator then advised Client H that her account in the amount of \$6438.06 was closed at the Bohemian. Client H stated that she had no knowledge of that nor did she give permission to do so. The Investigator showed Client H the check that was issued with her purported signature on the back. Client H advised that it was not her signature. The Investigator later determined, through

bank records, that Client H's preneed money was placed into the joint personal account that the Owner shares with Melissa Stella;

R. The Investigator was unable to contact the following preneed account holders, but was able to verify bank records, as follows:

- (1) Client I's account was closed on December 6, 2004, in the amount of \$4584 and deposited into the Owner's personal account that he shares with Melissa F;
- (2) Client J's account was closed on September 13, 2004, in the amount of \$4457.51, and was deposited into the Owner's personal account that the Owner shares with Melissa F. The rest is unaccounted for;
- (3) Client K's account was closed on August 20, 2004, in the amount of \$4678.01, and deposited into the Owner's personal account in his and his wife's name;
- (4) Client L's account was closed on August 23, 2004, in the amount of \$4650.32 but only \$2000 of it was placed into the Owner's personal account that he shares with Melissa F. The rest is unaccounted for;
- (5) Client M's account was closed on August 20, 2004, in the amount of \$6881.97 and deposited in the Owner's business account;
- (6) Client N's account was closed on August 9, 2004 in the amount

of \$5942, and was deposited in the Owner's business account.

6. As a result of the above, the Board summarily suspended the Respondent-Home's license on November 29, 2006. The Owner attended a Show Cause hearing on January 12, 2007, following which the Board continued the suspension of the Respondent-Home.

7. On or about January 22, local news reported that the Owner was under investigation by the Federal Bureau of Investigation (FBI) and the United States Postal Service. By letter dated January 30, 2007, a Postal Inspector sent questionnaires to those having prepaid funeral contracts to fill out about the Owner's interactions with them. As a result of the above, the Board and the Office of the Attorney General received more complaints, as follows:

- A. By a fax to the Board, received on February 5, 2007, Client O informed the Board that, on November 27, 2005, he entered into a preneed contract with the Owner on behalf of his aunt, as well as an irrevocable trust agreement, paying in full the contract price of \$5000;
- B. On a Board-complaint form, received by the Board on February 5, 2007, Clients P and Q, husband and wife, informed the Board that they made preneed arrangements with the former owner of the Home on June 17, 1998 and were told by him not to prepay but he would keep their information on file. On June 23, 2005, the Owner came to their home suggesting that they prepay for the funerals in the amount of \$7960, which they did, signing an agreement that had been dated for June 17,

1998, with some changes, including an agreement for an irrevocable trust. Once the news reports were aired/printed, they reviewed the documents, noticing that they had signed documents dated June 17, 1998, including a new document—the irrevocable trust—on June 23, 2005, and that they had never received any statements from the bank regarding the account;

- C. On February 5, 2007, Client R faxed the Board a copy of the information she had sent to the Postal Inspector, which indicated that, on July 21, 2006, she entered into preneed arrangements with the Owner on the behalf of her mother, paying him \$1050, which check the Owner cashed within 20 minutes of receipt;
- D. By way of a letter to the Board faxed on January 4, 2007, Client S indicated that, on July 22, 2005, she made preneed arrangements with the Owner for her daughter and signed a supplemental agreement on that date establishing an irrevocable trust agreement for herself. There is a preneed agreement signed by Client S and the Owner that is dated April 10, 1991—which was most likely made with the former owner—which Client S dated beside her signature "7/2/05," and a supplemental agreement to establish an irrevocable preneed trust dated for the same date, where the original date was whited out. There is another preneed agreement signed by the Owner and Client S for her daughter, which is a different amount than the latter one; this is dated July 2, 2005, and

appears to have been whited out at the signature portion. Client S gave the Owner three checks as payment: one dated 6/23/05 for \$3270; one dated 7/10/05 for \$1000; and, one dated 8/3/05 for \$3372. In addition to these amounts, there is a receipt for \$695 for grave opening and closing dated June 5, 1991. Client S indicated that, when the FBI agent showed her a letter closing her preneed account at the bank, the signature was a forgery. She was not one of the persons for whom the Owner used the preneed money taken from the bank to buy preneed insurance;

- E. Clients T and U, husband and wife, sent the Board documents, including page 4 of the Postal Inspection questionnaire, which disclosed that they had entered into preneed arrangements with the Owner on December 6, 2001, as well as signing irrevocable trust agreements on that date. The Owner marked both contracts as "paid in full." The escrow interest statement that they received from the Bohemian was for 2004. Sometime in April 2005, they realized that they had not received a tax statement for 2005 and Client U called the Owner who told her that, to save people from having to pay taxes on interest, he converted the funds into insurance. When asked how he could do that without their signatures, the Owner replied that everyone was sent a consent form, and when she replied that they never received one, he replied that it was only a formality and he would mail one, which he never did. Clients T and U never received any notice that their accounts were closed and they are

- not listed as those whose preneed money was converted to insurance;
- F. Client V sent to the Board on its form a complaint against the Owner, received on January 31, 2007, which stated that, on September 23 and 29, 1993, her mother and father, respectively, made preneed arrangements with the former owner of the Home, including signing irrevocable trusts. Client V stated that the "situation remained uneventful until media coverage of the alleged embezzlement charges" against the Owner were exposed;
- G. Client W sent in a complaint on the Board's form, which was received by the Board on February 6, 2007. Client W stated that she and her husband had met with the Owner on August 28, 2005 and contracted for a preneed funeral for her mother. She paid the Owner \$6900, and the Owner marked the documents "paid in full." Client W also entered into an irrevocable trust agreement on that day;
- H. Client X filed a complaint against the Owner on a Board form, which was received by the Board on January 30, 2007. Client X stated that the Owner came to her house because she was sick and couldn't get to the funeral home. On March 23, 2006, Client X entered into a preneed contract and an irrevocable trust agreement. She paid the Owner \$5244, in full, with a Federal Credit Union check, which the Owner cashed at a Philadelphia bank.
8. On January 31, 2007, the landlord - the family of the former (deceased)

owner of the Home - evicted the Owner from the Home for non-payment of rent, carting over 240 boxes, many of which contained client information. These, along with two caskets, were put into the garage in the back of the property.

9. On March 22, 2007, a Federal Grand Jury issued a nine-count indictment against the Owner for secretly draining more than \$550,000 from 140 client trust accounts set aside for future funerals. The indictment seeks forfeiture of \$525,000. If convicted, the Owner could receive a maximum sentence of 30 years in prison for bank, mail and wire fraud.

10. As set forth above, the Respondent-Home violated the Act and regulations thereunder and the Respondent-Home's license should be revoked.

CONCLUSION OF LAW

The pertinent provisions of the APA state:

§ 10-226 (C)

- (1) Except as provided in paragraph (2) of this subsection, a unit may not revoke or suspend a license unless the unit first gives the licensee:
 - (i) written notice of the facts that warrant suspension revocation; and
 - (ii) an opportunity to be heard.

The Board finds that the Respondent violated the following provisions of § 7-316:

(b) (1) Subject to the hearing provisions of § 7-319 of this subtitle and paragraph (2) of this subsection, the Board may reprimand, place on probation, deny, suspend, or revoke a funeral establishment license for any of the grounds listed in subsection (a) of this section.

- (2) The Board may not reprimand, place on probation, deny, suspend, or revoke a funeral establishment license because of a violation of a provision of this title by an employee of the establishment, unless the employee has a proprietary interest in the business that is conducted from the establishment.

(a) Subject to the hearing provisions of § 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:

- (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;
- (20) Willfully makes or files a false report or record in the practice of mortuary science;
- (21) Willfully fails to file or record any report as required under law, willfully impedes or obstructs the filing or recording of the report, or induces another to fail to file or record the report;
- (22) Submits a false statement to collect a fee;
- (24) Violates any rule or regulation adopted by the Board;
- (25) Is professionally, physically, or mentally incompetent;
- (26) Commits an act of unprofessional conduct in the practice of mortuary science;
- (31) Fails to provide the Board the certification required under § 7-405 (l) of this title.

In addition the Respondent violated Code Md. Regs. tit. 10, 29.06. (March 18, 2002):

.04 Disposition of Preneed Contract Fund

D. Interest on Preneed Contract Fund

(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.

E. 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.

.06 Termination of Preneed Contract.

A. Except as otherwise provided in this regulation, a preneed contract may not be terminated by the seller.

B. 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.

C. 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;

(2) The business of the seller is discontinued;

(3) The seller is unable to perform under the terms and conditions of the preneed contract for reasons other than an increase in the cost of goods and services; or

(4) The buyer fails to pay the entire contract price before the death of the beneficiary.

.09 Irrevocable Trusts.

A. A buyer may establish an irrevocable trust with respect to all or any portion of the payment made under the contract in an interest-bearing, federally insured escrow or trust account held by the seller, but only for the purpose of entitling the buyer to be eligible for current Social Security benefits or for benefits under any other plan that restricts eligibility to those with limited assets.

- B. The seller shall present to the buyer a document establishing the irrevocable trust which provides:
- (1) The appointment of a trustee to sign all necessary papers to effectuate the contract upon the death of the buyer;
 - (2) That the disposition of income earned by the trust inures to the benefit of the buyer;
 - (3) The transfer of the trust funds, if required; and
 - (4) The disposition of the trust funds if:
 - (a) The business of the seller is discontinued,
 - (b) The seller is unable to perform under the terms and conditions of the preneed contract, or
 - (c) The buyer fails to pay the entire contract price before the death of the beneficiary.
- C. The buyer or legal representative of the buyer shall retain the right to appoint, as trustee of the irrevocable trust, a substitute trustee.
- D. If the buyer who sets up an irrevocable trust terminates the preneed contract with the seller, the buyer and seller shall take the following actions:
- (1) The seller shall maintain the funds in trust for the beneficiary until a substitute seller is selected;
 - (2) The buyer shall enter into a new preneed contract with the substitute seller; and
 - (3) The seller shall transfer the trust funds to the substitute seller for placement in a separate interest-bearing escrow account or trust account.
- E. Notwithstanding the provisions set forth in these regulations, when a buyer terminates the preneed contract, the funds contained in the irrevocable trust may not be returned to the buyer but the seller shall maintain the funds in trust for the beneficiary.
- F. Funds maintained in an irrevocable trust are not counted as assets with respect to the buyer's Social Security benefits, Medical Assistance eligibility, or any other plan which restricts eligibility to those with limited assets.
- G. The seller shall provide in the document establishing a trust the following notice,

conspicuously displayed in 10-point boldface type:

"This document creates an irrevocable trust. Under the terms of this document, a buyer may not receive a refund of any payments made for the preneed burial or cremation contract."

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, by a majority vote of a quorum of the Board present, it is hereby

ORDERED on this 22nd day of May 2007 that the Respondent-Home's license to operate as a funeral home in the State of Maryland be and is hereby **REVOKED**; and it is further

ORDERED that this Order is a public document pursuant to Md. State Govt. Code Ann. §§ 10-611 *et seq.* (2004 Repl. Vol. and 2006 Supp.).

May 22, 2007
Date



David L. Hovatter, President
Board of Morticians

NOTICE OF RIGHT TO APPEAL

Pursuant to H.O. § 7-320, you have a right to take a direct judicial appeal. A Petition for Judicial Review must be filed within thirty days of your receipt of this executed Order, and shall be made as provided for judicial review of a final decision in the APA, codified at State Govt. Code Ann. § 10-201, et seq.