

IN THE MATTER OF

BEFORE THE

STEWART FUNERAL HOME

*

BOARD OF MORTICIANS

LICENSE NUMBER: E00231

*

AND FUNERAL DIRECTORS

RESPONDENT-ESTABLISHMENT

*

CASE NUMBER: 2008-011

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ORDER OF SUMMARY SUSPENSION

Pursuant to Md. State Govt. Code Ann. § 10-226 (c) (Repl. Vol. 2004 & Supp. 2007), the Maryland Morticians Act ("the Act"), Md. Health Occ. Code Ann. ("H.O") §§ 7-101 *et seq.*, (Repl. Vol. 2005 & Supp. 2007), the Board of Morticians and Funeral Directors (the "Board") hereby suspends the license of Stewart Funeral Home (the "Respondent-Establishment"), license number: E00231, to operate as a funeral establishment under the Act. This Order of Summary Suspension ("Order") is based on the following investigative findings that the Board has reason to believe are true:

INVESTIGATIVE FINDINGS

1. The Respondent-Establishment was initially licensed to operate as a funeral establishment in State of Maryland, under license number: E00231, on Mary 1, 1971.
2. At all times relevant herein, the Respondent-Establishment is owned and operated by Bradley A. Stewart ("Stewart"), a licensed mortician
3. The Respondent-Establishment located at 32 South Second Street, Oakland, Maryland.
4. On or about December 3, 2007, the Board received a complaint from Client A.

5. A subsequent investigation revealed the following.

FACTS PERTAINING TO CLIENT A'S COMPLAINT ¹

6. On or about September 30, 1989 Client A and her husband went to Respondent-Establishment to purchase a pre-need account for funeral services.

7. Client A paid Stewart a total of \$4,215.25 for her pre-need account.

8. Stewart provided Client A with a statement of goods and services statement.

9. Stewart did not provide Client A with a pre-need contract.

10. Client A's husband paid Stewart a total of \$4190.75 for his pre-need account.

11. Stewart provided Client A's husband with a statement of goods and services.

12. Stewart did not provide Client A's husband with a pre-need contract.

13. In or around 2001, Client A purchased a pre-need account for her mother.

14. Client A paid Stewart approximately \$6,622.00 for her mother's pre-need account.

15. Stewart provided Client A a statement of good and services for her mother pre-need account.

16. Stewart did not provide Client A with a pre-need contract for her mother's pre-need account.

¹ The names of Clients have not been disclosed, in order to protect their identity. The names of the Clients will be disclosed to the owner of Respondent-Establishment upon request to the Administrative Prosecutor.

17. In or around September 2004, Client A purchased a pre-need account for her sister-in-law.

18. Client A paid Stewart approximately \$2620 towards the cost of her sister-in-law's pre-need account.

19. Stewart did not provide Client A with a statement of goods and services for her sister-in-law's pre-need account.

20. Stewart did not provide Client A with a pre-need contract for her sister-in-law.

21. In or around March 2007, Client A purchased a pre-need account for her brother.

22. The total price of the pre-need account for Client A's brother was \$ 6209.

23. Client A paid Stewart approximately \$900 towards the total purchase price of the pre-need account for her brother.

24. Stewart provided Client A with a statement of goods and services for her brother's pre-need account.

25. Client A frequently asked Stewart about the pre-need accounts that she and her husband purchased for themselves and other family members.

26. Stewart told Client A that the pre-need accounts that she and husband purchased were being held in escrow accounts.

27. Stewart has not provided Client A and her husband with a yearly tax form reporting the amount Interest earned by the pre-need accounts that Client A and her husband had purchased from him²

² The Respondent-Establishment is required to forward IRS Form 1099 INT for all holders of pre-need accounts.

28. In July 2007, Client A made several unsuccessful attempts to contact Stewart to discuss the status of her family's pre-need accounts.

29. In or around October 2007, Client A met with Stewart.

30. During their meeting, Stewart told Client A the pre-need accounts that she and her husband had purchased from him were located at the First United Bank & Trust ("First United"), located on Oakland, Maryland.

31. During their meeting, Stewart also provided Client A with a printout listing the pre-need accounts that Client A and her husband had purchased.

32. The printout also listed the names of Client A and her family members, account reference numbers for each family member, account beginning and ending balances, deposits made to each account, and the interest earned by each account between October 1, 2007 and October 31, 2007.

33. On or about November 8, 2007, Client A went to First United.

34. After conducting an extensive search, a First United representative informed Client A that the bank had no record of Client A's and her family member's pre-need accounts.

35. Client A contacted Stewart and told him that First United had no record of her family's pre-need accounts.

36. By letter dated November 9, 2007, Stewart informed Client A that he had opened five separate trust accounts for Client A and her family members, at the Susquehanna Bank, located in Oakland, Maryland.

37. In his November 9, 2007 letter, Stewart also indicated that he had made the following deposits:

Client A	\$4,580.72
Client A's husband	\$4,581.31
Client A's mother	\$6012.50
Client A's sister-in law	\$3140.81
Client A's brother	\$903.80

38. Stewart also enclosed with his November 9, 2007 letter to Client A five deposit receipts that indicated that deposits had been made to each account on November 9, 2007.

39. However, in January 2008, Stewart provided the Board with Susquehanna Bank account summaries showing that he made initial deposits to Client A and her family's pre-need accounts on November 19, 2007.

40. On or about November 13, 2007, Client A sent Stewart a written request for the return of the money that she and her husband paid for their pre-need accounts.

41. Despite numerous requests from Client A, Stewart has not returned the money in Client A's and her family's pre-need accounts.

FACTS PERTAINING TO CLIENT B'S COMPLAINT

42. On or about June 18, 2008, Client B filed a complaint with the Board.

43. A subsequent investigation revealed the following:

44. On or about June 13, 2006, Client B went to the Respondent-Establishment to purchase a pre-need account for funeral services.

45. Client B paid Stewart a total of \$6,104 for her pre-need account.

46. Stewart provided Client B with a statement of goods and services.

47. Stewart did not provide Client B with a pre-need contract.

48. On or about May 14, 2005, Client B requested in writing that Stewart transfer the funds in her pre-need account, to another funeral establishment.

49. Stewart has not transferred the funds in Client B' pre-need account.

50. During the time that Client B's pre-need account has been with the Stewart, he has not provided Client B with an annual IRS form 1099 INT for her account.

FACTS PERTAINING TO CLIENT C

51. On or about June 18, 2008, Client C filed a complaint with the Board.

52. A subsequent investigation revealed the following:

53. On or about June 13, 2006, Client C went to the Respondent-Establishment to purchase a pre-need account for funeral services.

54. Client C paid the Stewart a total of \$6,104 for her pre-need account.

55. Stewart provided Client C with a statement of goods and services.

56. Stewart did not provide Client C with a pre-need contract.

57. On or about May 14, 2008, Client C requested, in writing, that Stewart transfer the funds in her pre-need account to another funeral establishment.

58. The Stewart has not transferred the funds in Client C's pre-need account.

59. During the time that Client C's pre-need account has been with the Stewart, he has not provided Client C with an annual IRS form 1099 INT for her account.

FACTS PERTAINING TO CLIENT D

60. On or about July 1, 1991, Client D purchased a pre-need contract from the Stewart.

61. Client D paid Stewart a total of \$3,000.75 for her pre-need contract.

62. During the time that Client D's pre-need account was with the Stewart, he has not provided Client D with an annual IRS form 1099 INT for her account.

FACTS PERTAINING TO CLIENT E

63. In or around February 1996, Client E purchased a pre-need contract from Stewart.

64. Client E paid Stewart \$5000 for her pre-need contract.

65. In February 2008, Client E's family decided to transfer Client E's pre-need account to another funeral establishment.

66. By letter dated February 18, 2008, Stewart informed Client E's family member that Client E "has an irrevocable burial fund in the amount of \$8,047.00 as of January 2008."

67. On or about February 21, 2008, Client E's family requested in writing that Stewart transfer Client E's pre-need account funds to another funeral establishment.

68. Stewart transferred Client E's pre-need account on February 28, 2008.

69. During the time that Client E's pre-need account has been with Stewart, he has not provided Client E or Client E's family with an annual IRS form 1099 INT. for Client E's account.

FACTS PERTAINING TO CLIENT F

70. On December 28, 2006, Client F purchased a pre-need contract from the Respondent.

71. Client F paid Stewart \$9,000 for her pre-need account.

72. During the time that Client F's pre-need account has been with Stewart, he failed to provide Client F with an annual IRS form 1099 INT for her account.

FINDINGS OF FACT

1. Based on the foregoing facts described above, the Board has cause to believe that the Respondent-Establishment is a threat to the public health, welfare and safety.

2. As set forth above, the Respondent-Establishment also violated the following:

Md. Health Occ. Code Ann. § 7- 316:

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

(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:

(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:

- (3) Commits fraud or misrepresentation in the practice of mortuary science;
- (5) Aids or abets an unauthorized person in the practice of mortuary science;
- (13) Fails, after proper demand, to refund promptly any payments received under a pre-need contract with interest;
- (20) Willfully makes or files a false report or record in the practice of mortuary science;
- (24) Violates any rule or regulation adopted by the Board;

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

H.O. § 7-404. Contract required.

(a) Contract of initial agreement. - (1) At the time a licensee makes funeral arrangements, the licensee shall give to the individual who requested the funeral arrangements a contract that includes:

(i) An itemized list of all services and merchandise that be provided and the total price;

(ii) To the extent possible, a specification of any item for which the licensee will advance money to accommodate the buyer; and

(iii) The terms and method of payment.

(2) The contract shall be in duplicate and contain the signatures of the licensee, other than an apprentice, and the payor of the requested service.

(3) A copy of the signed contract shall be given to the payor at the time the arrangements are finalized.

H. O. §7-405. Preneed contracts.

(c) Form - (1) A pre-need contract shall contain:

(i) The name of each party to the contract and, if the beneficiary is an individual other than the buyer, the name of the beneficiary of the contract;

(ii) A description of any service or merchandise to be provided under the pre-need contract;

(iii) The total price of the services and merchandise agreed on; and

(iv) The method of payment.

(2) A pre-need contract shall be executed in duplicate and be signed by each party.

(3) The seller shall give one of the duplicate originals of the pre-need contract to the buyer.

(d) Deposit of funds.

(1) Within 10 days after receiving a payment under a pre-need contract, the seller shall deposit into an interest bearing, escrow or trust account:

(e) Administration of accounts; irrevocable trusts; notice.

(2) Except as otherwise provided in this subsection, a seller may not withdraw from the account any money received from a buyer unless the services and merchandise have been provided as agreed in the contract.

(3) A pre-need contract is ended and a seller shall refund to a buyer all payments and interest held for the buyer if:

(i) The buyer or the legal representative of the buyer demands in writing a refund of all payments made;

Code Md. Regs tit 10, § 29. 06 04. Disposition of Preneed Funds.

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.

CONCLUSIONS OF LAW

Based on the foregoing, the Board concludes that the public health, safety or welfare imperatively requires emergency action, pursuant to Md. St. Govt. Code Ann. § 10-226 (c) (Repl. Vol 2004. & Supp. 2007).

ORDER

Based on the foregoing investigative findings and conclusions of law, it is on this 30 day of July, 2008, the majority of the Board hereby:

ORDERED that the license issued to Respondent-Establishment to operate as a funeral establishment in the State of Maryland under license number E00231 is hereby **SUMMARILY SUSPENDED**; and it is further

ORDERED that the Respondent-Establishment is prohibited from operating as a funeral establishment in the State of Maryland; and it is it further

ORDERED that the owner of Respondent-Establishment shall immediately return all licenses to the Board; and it is further

ORDERED that for purposes of public disclosure and as permitted by Md. State Govt. Code Ann. §10-617(h) (Repl. Vol. 2004 & Supp. 2007), this document consists of the contents of the foregoing Findings of Fact, Conclusions of Law, and Order, and is reportable to any entity to whom the Board is obligated to report; and it is further

ORDERED that this Order is a public document pursuant to Md. State Govt. Code Ann. §§ 10-601 *et seq.* (Repl. Vol. 2004 & Supp. 2007).

July 30, 2008
Date



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

NOTICE OF HEARING

A show cause hearing to determine whether the Summary Suspension will be continued, lifted or terminated will be held on Wednesday, August 13, 2008, at 1.p.m., before the Board at 4201 Patterson Avenue, Baltimore, 21215.