

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
File No. 16 CVS 006190

NORTH CAROLINA BOARD OF)
FUNERAL SERVICE)
Plaintiff,)
v.)
HERITAGE CREMATION PROVIDER, LLC,)
LEGACY FUNERAL SERVICES, LLC,)
ANTHONY JOSEPH DAMIANO, and)
JOSEPH DAMIANO, SR.)
Defendants,)

CONSENT JUDGMENT

IT APPEARING to the Court that the Defendants have been properly served with process in this action; that they have submitted to the jurisdiction of this Court; and that the parties have consented to the signing and entry of this Judgment, the Court makes the following:

FINDINGS OF FACT

1. 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.
2. Defendant Anthony Joseph Damiano (“A.J. Damiano”) is a citizen and resident of Colorado and/or Florida.
3. Defendant Joseph Damiano, Sr. (“Joseph Damiano”) is a citizen and resident of Colorado and/or Florida.

4. 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.
5. Heritage is managed by Joseph Damiano.
6. 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.
7. Legacy is managed by Joseph Damiano.
8. Neither Heritage nor Legacy, nor any of its owners or employees, possesses any license or permit issued by the Board.
9. Neither A.J. Damiano nor Joseph Damiano is licensed as a funeral director or funeral service licensee by the Board.
10. Neither Heritage nor Legacy has filed an Application for Certificate of Authority with the Corporations Division of the North Carolina Department of the Secretary of State.
11. Plaintiff has alleged that without being duly licensed by Plaintiff in North Carolina, Defendants have represented, and continue to represent, themselves to

the consuming public as funeral service practitioners and establishments in North Carolina on the following websites:

<http://www.heritagecremationprovider.com/cremation-services-costs/north-carolina/> and <http://www.legacycremationservices.com/cremation-services-costs/north-carolina>.

12. Plaintiff has alleged that Defendants have engaged in the unauthorized practice of funeral service in North Carolina by making arrangements, via the internet, with North Carolina residents for a funeral or cremation of a North Carolina decedent whose final disposition will be in North Carolina. After making the arrangements, Legacy and/or Heritage contract with North Carolina-licensed funeral directors or funeral service licensees to carry out the services that Legacy and/or Heritage already have arranged with the consumers in North Carolina. North Carolina resident consumers pay Legacy and/or Heritage directly for the funeral or cremation services rendered. Legacy and/or Heritage retain a portion of this payment and remit a portion of this payment to the North Carolina licensees who carry out the services.
13. Plaintiff has alleged Defendants also have engaged in the unauthorized practice of funeral service by operating an unlicensed establishment in Charlotte, North Carolina, which Defendants hold out to the consuming public as “Heritage Funeral Home.” In this unlicensed establishment, Defendants make arrangements for funeral services and cremations with North Carolina consumers via telephone.

14. As part of a compromised settlement to resolve all of the claims alleged against them in the Complaint, Defendants voluntarily consent to enter into this Consent Judgment and not to engage in “funeral services” as prescribed by N.C. Gen. Stat. § 90-210.25(f), and admit that they have engaged in the practice of funeral service, as alleged in the affidavit attached to Plaintiff’s complaint.

Based upon the foregoing Findings of Facts, the Court makes the following:

CONCLUSIONS OF LAW

1. Plaintiff is charged with regulating of the practice of funeral service in North Carolina and is authorized to bring this action under N.C. Gen. Stat. § 90-210.25, which provides in pertinent part:
 - (g) Whenever it shall appear to the Board that any person, firm or corporation has violated, threatens to violate or is violating any provisions of this Article, the Board may apply to the courts of the State for a restraining order and injunction to restrain these practices. If upon application the court finds that any provision of this Article is being violated, or a violation is threatened, the court shall issue and order restraining and enjoining the violations, and this relief may be granted regardless of whether criminal prosecution is instituted under the provisions of this subsection. The venue for actions brought under this subsection shall be the superior court of any county in which the acts are alleged to have been committed or in the county where the defendant in the action resides.
2. This Court has jurisdiction both over the subject matter of this action and over the parties. Venue is proper.
3. 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.

4. N.C. Gen. Stat. § 90-210.20(h) defines a “Funeral establishment” as follows:

(h) “Funeral establishment” means every place or premises devoted to or used in the care, arrangement and preparation for the funeral and final disposition of dead human bodies and maintained for the convenience of the public in connection with the dead human bodies or as the place for carrying on the practice of funeral service.

5. N.C. Gen. Stat. § 90-210.25(f) makes illegal the unauthorized practice of funeral service:

(f) Unlawful Practices. – If any person shall practice or hold himself or herself out as practicing the profession or art of embalming, funeral directing or practice of funeral service or operating a funeral establishment without having complied with the provisions of this Article, the person shall be guilty of a Class 2 misdemeanor.

6. The conduct of Defendants, as set out in the Findings of Fact above, violates N.C. Gen. Stat. § 90-210.25(f).
7. Defendants acknowledge that they engaged in the practice of funeral services in violation of the above-cited statutes as set forth in the affidavit attached to Plaintiff’s complaint.

IT IS THEREFORE ORDERED that the Defendants ought to be and are hereby PERMANENTLY ENJOINED as follows:

- 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

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shall be entitled to an award for court costs and attorney fees as awarded by the
Court.

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Entered into this 14 day of Sept, 2016.

Donald W. Stephens
Superior Court Judge Presiding

I CONSENT:

HERITAGE CREMATION PROVIDER, LLC

BY: Joan Damiano
[NAME]

LEGACY FUNERAL SERVICES, LLC

BY: Joseph Damiano
[NAME]

Anthony Joseph Damiano
Anthony Joseph Damiano

Joseph Damiano
Joseph Damiano, Sr.

Mark W. Ishtman
~~Bradley A. Wasser~~ MARK W ISHTMAN
Attorney for Defendants

THE NORTH CAROLINA BOARD OF FUNERAL SERVICE

BY: Valdus T. Lockhart
Valdus Lockhart, Board President

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Catherine E. Lee

Attorney for the North Carolina Board of Funeral Service