

**MINUTES**  
**BOARD OF FUNERAL, CEMETERY AND CONSUMER SERVICES**  
**June 26, 2014 - 10:00 A.M.**  
**Department of Financial Services**  
**Tallahassee FL**

**1. Call to Order, Preliminary Remarks and Roll Call**

Mr. Jody Brandenburg, The Chair, called the meeting to order at 10:00 am.

Mr. Doug Shropshire made the following prefatory comments for the record:

My name is Doug Shropshire. I am Director of the Division of Funeral, Cemetery, and Consumer Services. Today is June 26, 2014; the time is approximately 10:00am. This is a public meeting of the Board of Funeral, Cemetery and Consumer Services. Notice of this meeting has been duly published in the Florida Administrative Register. An agenda for this meeting has been made available to interested persons. The meeting is occurring in the Alexander Building in Tallahassee FL. My Assistant, Ms LaTonya Bryant, is recording the meeting and will be preparing minutes of the meeting.

Persons speaking are requested to identify themselves for the record each time they speak. Participants are respectfully reminded that the Board Chair, Mr. Brandenburg, runs the meeting. Persons desiring to speak should initially ask the Chair for permission. Participants are requested to keep in mind the necessary protocol that only one person may speak at a time.

Mr. Shropshire took the roll and the following members were present:

Joseph "Jody" Brandenburg, Chairman  
Keenan Knopke, Vice Chair  
Jean Anderson  
James "Jim" Davis  
Lewis "Lew" Hall  
Powell Helm  
Ken Jones  
Richard "Dick" Mueller  
Vanessa Oliver

**ABSENT:**

Andrew Clark

Mr. Shropshire advised the Chair that there was a quorum present and the Board may proceed to address the matters on the agenda.

**Also noted as present:**

Larry Harris, Board Legal Advisor  
Anthony Miller, Assistant Director  
LaTonya Bryant, Department Staff  
Jim Bossart, Department Counsel  
Melissa Dembicer, Department Counsel  
Jasmin Richardson, Department Staff  
LaShonda Morris, Department Staff  
Christine Moore, Department Staff  
Kawanzasis Henderson, Department Staff

The Chair confirmed that the Board members had received their packets in a timely manner.

**2. Action on the Minutes**

**A. June 5, 2014**

The Chair confirmed that all Board members had read the draft of the minutes of the previous Board meetings held on June 5, 2014.

**MOTION:** Mr. Keenan Knopke moved to adopt the minutes of the meeting. Mr. Ken Jones seconded the motion, which passed unanimously.

**3. Old Business**

**A. Application to Organize a New Cemetery Company**

**(1) Recommended for Approval without Conditions**

**(a) Heartwood Preserve Conservation Cemetery, LLC (New Port Richey)**

Pursuant to s. 497.263, Florida Statutes, an application for a license for a new cemetery is processed in two separate phases: Phase One is at 497.263(2); and Phase Two is at 497.262(3).

This application for a cemetery license was initially presented to the Board for Phase One consideration at the December 5, 2013 Board meeting. The Board gave a conditional Phase One approval. The Board's concerns were as set out in the attached minutes of the December 5, 2013 Board meeting.

On December 6, 2013 the FCCS Division wrote Ms. Wiener, counsel for Applicant, and advised her in regard to the issues.

This application is still at the Phase One stage. Applicant comes before the Board to make a supplemental presentation to address the Board and Division's concerns and issues as raised at the December 5, 2013 Board meeting and the Division's December 6, 2013 letter. Specifically, at the June 26, 2014 Board meeting Applicant seeks acknowledgment by the Board that Applicant has satisfied the Board's concerns for Phase One approval, and that the Board provide unconditional Phase One approval.

The Division believes that Applicant has adequately addressed the issues and concerns raised by the Board and the Division, for Phase One approval. The Division recommends that the Board issue an unconditional Phase One approval.

Ms. Wendy Wiener stated that she is pleased to represent the Applicant, Heartwood Preserve Conservation Cemetery. The Applicant is seeking the Board's unconditional approval of Phase One. The Division was provided with supplemental materials addressing the concerns that the Board had raised and that were set forth in a letter from Mr. Shropshire following the last appearance before the Board. The Applicant is represented today by its principals, Laura and Frank Starkey, and they will happily address any issues that the Board would like to talk about.

Mr. Knopke stated that after speaking with Mr. Shropshire earlier in the week, Ms. Wiener did give him a call to discuss some of the points that he would like to address. The information that has been provided is very helpful. In Page two (2) of the Heartwood Preserve Cemetery Summary of Revisions to License Application dated May 21, 2014, and after speaking with Ms. Wiener this morning, she advised that there was a typo in the Sales/Adjusted pricing: "*For the purposes of projections, the average price is used for both body burial and cremains.*" That seemed to conflict. Ms. Wiener explained that is just the body burial numbers and then down below the cremated remains has been changed.

Ms. Wiener stated that the second sentence in the second bullet point "*For the purposes of projections, the average price is used for both body burial and cremains.*" that should have been under the fourth bullet point. And so the point is that the body burial average price of \$3500 is used for projections and the \$995 average cremains price is used for projections regarding cremains.

Mr. Knopke stated that on the next page, Page three (3), Sales at Honey Creek Woodlands (Conyers, GA), this appears to be similar in size to the marketing area. Mr. Knopke questioned whether they are profitable or whether they line up to what the Applicant is proposing.

Ms. Wiener stated that since her conversation with Mr. Knopke, the principals have had an opportunity to talk with some other conservation cemeteries within the United States and also with Honey Creek specifically about their sales over the course of the last couple of years and the projections do line up nicely. Ms. Wiener suggested that Ms. Starkey address the issue briefly.

Mr. Shropshire requested that the Applicant raise her right hand to be sworn in. "Do you solemnly swear the testimony you are about to give in this proceeding will be the truth, the whole truth and nothing but the truth so help you God?"

Ms. Laura Lynn Starkey answered, "I do." Ms. Starkey stated that she spoke with the Director this week and to clarify more updated sales pace that they have had. They have been open for six (6) years and their average sales per year at full pace is higher than what we are projecting. They are about 290 per year and we are projecting about 235.

Mr. Knopke questioned whether it is a comparable market.

Ms. Starkey stated that it is much more comparable than Prairie Creek.

Mr. Knopke stated that the history of these cemeteries does not show huge growth in the ones in Florida and other places. We all like to believe that we are going to create the one thing that is going to be different. Mr. Knopke questioned how long the Applicant would commit to this as cemeteries are forever. On Page four (4), Financial Summary, Ms. Starkey indicates she would infuse capital as needed. That could go on forever if that is what your commitment is. Mr. Knopke questioned if the cemetery does not become profitable in its current design, is there an intent or ability to convert it to a more traditional cemetery. The zoning from Pasco County keeps it as a conservation cemetery forever so Mr. Knopke questioned whether the Applicant would have to go back to the County to change this.

Ms. Wiener stated that it would be a legal obligation to make that change if that were the intent. It is the intention of the Licensee, based on the projections which are to some degree conservative compared to the other cemetery that they have looked at with a market area roughly the same, Honey Creek, that the venture becomes sustainable and that they maintain the cemetery as a conservation cemetery business going forward.

Ms. Starkey added that as with any business and for the purposes of this approval this is being based on our best guess projection based on all of the research we have done. The one concern Ms. Starkey expressed regarding the ability to change it back into a conventional cemetery is that we are assuring the people that buried and the ones purchasing preneed that this is what they are getting. There would certainly be some legal issues with the families.

Mr. Knopke stated that the consumers would come to the Board to complain. It is a very long term, forever commitment and you are venturing down a road that is somewhat uncharted and somewhat not profitable in some cases or would not appear to be.

Mr. Powell Helm questioned how Prairie Creek had revenue of \$10,946 in year one if there were no burials.

Ms. Starkey stated that Prairie Creek is a non-profit organization and they received donations to help with the start-up of the new venture.

Mr. Helm stated that paragraph twelve (12) under Grave Marking/Locating indicates that "grave space may be limited." Mr. Helm questioned the limitations.

Ms. Wiener stated that this contemplates when a section has sold out and has now been closed.

Ms. Starkey stated that access to the grave space may be limited. Some of the open paths may be a little bit more grown over at that time, but they can certainly still go in there.

Mr. Helm questioned Mr. Johnson's employment since 2008 as it was not reflected on his Historical Sketch.

Ms. Wiener stated that Mr. Johnson operates Conservation Burial Inc. which runs the conservation cemetery. Mr. Johnson has been running Prairie Creek since 2008.

Mr. Jones questioned whether there is an exception to statute in Phase One regarding the monument grid being 100' instead of 200'.

Mr. Shropshire stated that he did not understand it to be an exception to the statute. The Division did not agree to any exceptions.

Ms. Wiener stated that there is no intent to seek an exception or variance from the law.

**MOTION:** Mr. Knopke moved to approve Phase One. Mr. Jim Davis seconded the motion, which passed unanimously.

**4. Disciplinary Proceedings:**

**A. Collective Action – Disciplinary Settlement Stipulation and Preneed Main License Renewal  
(1) Pershing Industries, Inc. (F019231) and Vista Funeral Home, Inc. (F019284)**

- 1) The Subject Licensees appear before the Board seeking two approvals:
  - a) Approval of a proposed disciplinary Settlement Stipulation related to deficits in their preneed trust funds; and
  - b) Approval of renewal of their preneed licenses, subject to the terms of the proposed Settlement Stipulation.
- 2) The Subject Licensees are under common ultimate control. The Subject Licensees sell preneed at a cemetery (Vista Memorial Gardens) located in Miami Lakes, and a funeral home (Vista Funeral Home) located on or immediately adjacent to that cemetery. Both licensees operate from the same administrative offices at 14200 NW 57th Ave., Miami Lakes, Florida 33014.
- 3) At all times relevant hereto, the principals of the Subject Licensees have included Mark Revitz, Janice Revitz, and Les Klein, among others.
- 4) The Preneed Examinations:
  - a) In 2013 the Division of Funeral, Cemetery, and Consumer Services (Division) conducted examinations of the activities of the Subject Licensees, concerning their operations under their respective preneed licenses identified above. The examinations were done pursuant to authority vested in the Division by section 497.150, Florida Statutes. The period examined in both examinations was from April 1, 2008 through December 31, 2012. The examination of Pershing was done under Division assignment number ATN-20357. The examination of Vista was done under Division assignment number ATN-20358. The examination was conducted by Division Examiner Suzie Helms.
  - b) In or about February 2013, subsequent to notice of examination being given to Pershing and Vista, but prior to commencement of field work in said exams, Pershing and Vista contacted the Division, arranged a meeting with the Division, and at said meeting self-reported that their preneed trusts had significant deficits.
  - c) The examination report regarding Pershing found that Pershing had failed to make all required deposits to preneed trust during the period examined (April 1, 2008 through December 31, 2012), and that as of the end of the period examined there was a resulting deficit in Pershing's preneed trust in the total aggregate amount of \$1,878,876.98, in violation of the requirements of s. 497.458(1)(a)-(c), Florida Statutes.
  - d) The examination report regarding Vista found that Vista had failed to make all required deposits to preneed trust during the period examined (April 1, 2008 through December 31, 2012), and that as of the end of the period examined there was a resulting deficit in Vista's preneed trust in the total aggregate amount of \$2,562,304.28, in violation of the requirements of s. 497.458(1)(a)-(c), Florida Statutes.
  - e) The aggregate total end of exam period deficits, for both Pershing and Vista, was thus \$4,441,181.22 (sum of \$1,878,876.98 and \$2,562,304.28).
- 5) The examination reports are attached to the proposed Settlement Stipulation herein.
- 6) The evidence seen by the Division indicates that since at least December 2012, Subject Licensees have been properly depositing to trust for all preneed sales.
- 7) A care and maintenance trust examination also done by Examiner Helms, for the same period as the preneed exams, found a small surplus in the Vista Memorial Gardens care and maintenance trust fund.
- 8) Pursuant to usual Division procedures, subsequent to the preneed examination reports being prepared, copies of same were provided to the Subject Licensees for response. The Subject Licensees provided a joint response, signed by Mark

Revitz, to the exam reports, said response being dated October 13, 2013. In said response the Subject Licensees did not dispute the findings of the exam reports, but submitted in the response a detailed statement of factors which Subject Licensees offer in mitigation of the conduct leading to the deficits. The October 13, 2013 response is attached to the proposed Settlement Stipulation. The Division does not dispute the factual statements by Mark Revitz in said October 13, 2013 letter, as to the problems encountered by Vista Memorial Cemetery.

- 9) Corrective Plan: The said October 13, 2013 response also provided a proposed corrective plan by which the deficits would be corrected by not later than December 15, 2017. The corrective plan, as subsequently refined pursuant to interaction between the Subject Licensees and the Division, and as already partially implemented by Subject Licensees so far, is generally described as follows:

**Part 1 - Sale of Miami Beach Residence**

Pursuant to Pledge Agreement and Debenture No. 3, dated 10-1-12, as revised in October 2013 there was sold the former residence of Maurice Revitz, father of Mark and Janice Revitz, said residence being located on Miami Beach, at 9530 Broadview Drive, Bay Harbor Island, Florida. From the proceeds of the sale of said residence, the amount of \$948,600 has been deposited to the Vista Memorial Gardens Cemetery Pre- Need Trust; and a further amount of \$551,400 has been paid to City National Bank, and has paid off a mortgage on the North Carolina investment properties that are, pursuant to Pledge Agreement and Debenture No. 2 (see below) to be sold and the proceeds paid to preneed trust.

**Part 2 -- Sale of North Carolina Investment Properties**

Pursuant to Pledge Agreement and Debenture No. 2, issued October 31, 2013, the principals of the Respondents, with Tradarama, an entity they control, have pledged to pay to the Vista Memorial Gardens preneed trust, by not later than December 15, 2017, the amount of \$1,051,400, from the sale of seven investment properties located in North Carolina and ultimately owned by the principals of Pershing and Vista.

The seven investment properties, all located in North Carolina, and their 2011 appraised values, are identified as follows:

\$400,000	Townhouse, 201 Woodland
\$195,000	Residential condo unit 3D
\$195,000	Residential condo unit 1D
\$80,000	vacant residential lot 22
\$80,000	vacant residential lot 4
\$80,000	vacant residential lot 5
<u>\$75,000</u>	<u>vacant residential lot 25</u>
\$1,105,000	Total appraised values

The seven investment properties, the sale of which, are contemplated by Pledge Agreement and Debenture No. 2, are hereinafter identified as the "seven North Carolina investment properties."

**Part 3 -- Mortgage Loan on Pershing Administrative Building**

Pursuant to Pledge Agreement and Debenture No. 1, issued October 1, 2012, Pershing and Vista have pledged to pay to the Vista Funeral Home, Inc. preneed trust, the amount of \$2,600,000, on or before December 15, 2017, from the proceeds of the sale or mortgaging of the Pershing Administration Building, which by an appraisal dated October 14, 2011, by a licensed Florida appraiser, has an estimated market value of \$3,385,000.

**Summary of Corrective Payments:**

\$2,600,000	Pursuant to Debenture 1
\$1,051,400	Pursuant to Debenture 2
<u>\$948,600</u>	<u>Already deposited to trust from sale of Miami Beach Residence</u>
4,600,000	Total

As noted, the aggregate deficit in the preneed trusts was \$4,441,181.22 (aggregate of both exams).

- 10) Division Analysis:

- a) The Division has reviewed its records and finds it has no record of any consumer complaints alleging nonperformance or delay in performance, of any preneed contracts sold by the Subject Licensees. The Subject

Licensees assert that notwithstanding the deficits, the subject preneed trusts have adequate resources to allow the honoring of all preneed contracts.

- b) The Division believes the proposed corrective plan offers a significant likelihood of correcting the deficits.
- c) The Subject Licensees have no previous disciplinary record, and have been licensed for several decades.
- d) The Subject Licensees have been forthcoming and cooperative throughout the exam and post-exam process.

11) Terms of proposed Settlement Stipulation: The proposed Settlement Stipulation calls for, among other things, the following:

- a) The proposed Settlement Stipulation describes the proposed corrective plan in detail and binds the Subject Licensees, their principals, and a related firm also controlled by the Revitzs (Tradarama), to fully implement the proposed corrective plan.
- b) The proposed Settlement Stipulation requires the Subject Licensees to submit to the Division quarterly reports regarding implementation of the proposed corrective plan.
- c) The proposed corrective plan provides that Pershing and Vista shall each be subjected to special examination of their preneed operations, by the Division, once every 12 months, until both Pledge Agreement and Debenture No. 1 and No. 2 are fully performed
- d) The proposed Settlement Stipulation provides that Subject Licensees shall be on probationary status until there is full performance of Pledge Agreement and Debenture No. 1 and No. 2, and payment of all fines due under the proposed Settlement Stipulation.
- e) The proposed Settlement Stipulation imposes on Pershing a fine of \$20,000, and imposes on Vista a fine of \$20,000. The aggregate fines are thus \$40,000. The fines shall be paid to the Department of Financial Services. The fines imposed shall be due on the earlier of the following dates:
  - 1. Thirty days after completion of performance under both Pledge Agreement and Debenture No. 1 and No. 2.
  - 2. December 15, 2017
- f) For each full 30 days by which both Pledge Agreement and Debenture No. 1 and No. 2 are fully performed sooner than December 15, 2017, each fine shall be reduced by \$500; provided, neither fine shall not be reduced lower than \$5,000. The payment of the fines is thus delayed to provide an incentive to the Subject Licensees to complete the proposed corrective plan at the earliest possible date and thereby reduce the amount of the fines.

12) The Preneed License Renewals:

- a) The Subject Licensees seek renewal of their preneed licenses. The Division believes that as a practical matter, if their preneed licenses are not renewed, there is little chance that the proposed corrective plan will work. Accordingly, the Division suggests that the Board not accept the proposed Settlement Stipulation unless it also grants renewal of the preneed licenses.
- b) The Subject Licensees assert that notwithstanding the trust deficits, the Subject Licensees meet the net worth requirements for renewal of their preneed licenses. The Division does not necessarily agree with the Subject Licensees in that regard. But the Division believes that in any event their preneed licenses may be renewed under s. 497.453(2)(b)2, which authorizes the Board to accept a wide variety of alternative to net worth. The Division believes that Pledge Agreement and Debenture No. 1 and No. 2 may be accepted by the Board as alternatives to the required net worth.

The Division recommends a single motion by the Board, made and carried, that the Board accept the Settlement Stipulation and that the preneed licenses of the Subject Licensees be renewed subject to compliance with the Settlement Stipulation.

Mr. Shropshire added that the Licensees are being represented today by John Rudolph and Paul Mitchell and it would be appropriate at this time to hear from Mr. Rudolph.

Mr. John Rudolph stated that he was somewhat embarrassed to come before the Board today regarding this matter. Vista has been around since 1968 and has been owned by the Revitz family. In 1978, a funeral home was added. Vista has not had a single disciplinary action before the Board until now and they have always had clean examinations. In 2008 through 2010 they were faced with some extraordinary circumstances that required them to pay enormous amounts of money all relating to the repairs to the funeral home and cemetery. In 2005, Hurricane Wilma hit that area. It was a category 3 hurricane and it did extensive damage to Vista. Vista had an insurance policy with Zurich. They filed a claim but were closed down for two and a half weeks. They had to hire people to come in and guard it. There was tremendous damage to all of the buildings but also to

the rest of the cemetery. So they filed a claim with Zurich, who is also dealing with problems in Pensacola and New Orleans, was not being responsive enough. They filed a claim well within their insurance limits, which were quite high, and kept waiting and waiting. When nothing happened, they were advised to hire a lawyer and sue Zurich, which is what Vista did to get these damages. They also hired East Coast Public Adjuster to go in and talk to them about how they could get more money out of that insurance policy. While the lawsuit was pending in 2008, Mark Revitz called and asked me to draft a rule to address a cemetery, in a natural disaster, being able to take out up to twenty (20%) percent of the care and maintenance trust fund to take care of the cemetery. The rule was presented to the Rules Committee. There were some changes made to the rule. The withdrawal would have to be secured by insurance or if it was not it would have to be paid back within two (2) years. The rule passed through Rules Committee, but Staff then advised that a statutory change was required. Legislation was drafted and taken to the Legislative Partnership Committee and it was not agreed upon to move forward with the legislation. If the legislation had passed, Vista would have been able to pay the damages that they had suffered as a result of Hurricane Wilma, because in 2008, when they finally settled, all they paid was \$4.2 million and all that they would do was fix the administration building and the funeral home. Vista had to go in and repair the roads, fences, ground markers, repair or replace a large number of mausoleum and ground bases, replace an outdoor security system, major repairs to the prep rooms and irrigation systems, they had to replace the entire sprinkler system throughout the property. They had stored onsite a large number of Westminster's that were totally damaged, so they had to remove all those. They had to repair damages to the mausoleums which were not covered by insurance. In addition to that, in 2008, Vista had 300 large oak trees on their property. A limb fell off and almost hit a lady visiting at a gravesite service. Vista had to hire an expert in trees to assess the trees to determine whether the limb fell because of damages from the hurricane. The expert confirmed that it was. They tried to get the insurance to pay it but they refused so Vista then had to go out and assess all 300 trees, remove some to remove the damages. The total amount of damages was \$1.8 million.

Mr. Rudolph stated that in the lawsuit, they were claiming a lot more than that to repair everything. When Vista got hit by the hurricane they did not have any electricity and were not going to get any for a while so they purchased some smaller generators to run certain computers. Those generators would suddenly surge so they had to go out and purchase huge generators. Around 2008, Vista found out there were glitches in their computers so they decided to go to HMIS for a quote to put in a new system and it was well over \$250k. Instead, they looked for a person who was an expert in Cobalt and that is not an easy person to find. However, they found someone who was able to fix everything and it cost \$250k to complete. During this time period there was an issue with pitting of crypt plates. They had a vendor that they used for twenty-five (25) years. Vista called in a representative from the vendor to address the issue. The representative advised that it was a manufacturing issue. Instead of replacing the crypt plates, the vendor suggested Vista replace them and they would take it off as a credit against open invoices. In 2009, all upper management changed at this vendor, so the person who made those statements was no longer around. The Vendor wrote a demand letter for Vista to pay all the outstanding invoices. The amount of things that Vista had done to replace the crypt plates exceeded the amount of the outstanding invoices, so Mr. Rudolph sent the vendor a letter explaining that the vendor owed Vista money. With that, the vendor filed a lawsuit in Philadelphia, which forced Vista to hire a lawyer in Philadelphia to file a counter claim in that federal lawsuit. In 2010, the case was resolved against Vista because they split the claims. The result of that, which included attorney's fees, payment of the judgment and paying all the experts, was \$1.5 million, all of which had to come out of that.

Mr. Rudolph added that in April 2010, the Department of Environmental Resources Management (DERM) told Pershing to change out the 3000 gallon fuel tank in the maintenance area of the cemetery. The new fiberglass tank for the fuel had to comply with the California standards adopted by the County and in addition they had to replace the above ground diesel tanks. In October 2010, DERM filed a Cease and Desist Order for them using their septic tank. Mr. Rudolph was called because the County could not find the permit for the septic tank that was issued in 1980. Mr. Rudolph did not have the permit but advised the County to submit a public record request to obtain the permit but they did not have it. Instead, they appealed to the County and DERM, hired lawyers trying to say that Pershing was grandfathered in and are entitled to do this and they ruled against them. They constructed a temporary holding facility and had to hire a hazardous waste removal company to pump it out and haul it to a hazardous waste facility while they were doing all this so that they could operate. In April 2011, Vista Funeral Home had to conform to DERM's requirements. This again resulted in Vista, in addition to the new system, paying legal fees and expert witness fees resulting in an overall loss of \$400k during this period. In overhead expenses, from the period of 2008 through 2010, Pershing and Vista Funeral Home experienced significant increases in overhead expenses and material decreases in sales. Their insurance, after they filed their claim, used to be \$100k annually but it went to \$300k annually. They also had a substantial decrease of approximately 18-20% with an overall rise in merchandise cost in customers shifting to more heavily service contracts. So with sales going down but trusting going up they also had a substantial number

of cancellations, more so in 2008 – 2010. In 2008 they had an increase of \$136,057 cancellations, \$773,786 cancellations in 2009 and \$762,803 in 2010. In addition they had over 100k bankruptcies filed and they had to hire lawyers to come in and fight those. There was a substantial increase in charges from vendors and overhead expenses. Health care coverage and utilities also had a significant increase. Because vendor costs went up for merchandise even though sales were down, trusting obligations went up because of the increase in service contracts. All of this resulted in more money coming out of operating expense, which is about \$700k.

Mr. Rudolph addressed the solution to the deficit. Mr. Rudolph was called to go down to Vista in 2009. In 2009, Mr. Rudolph was told that they had issues and were not able to put monies into trust but was assured that they would sell some properties in North Carolina and put a mortgage on the administration building which would cover the trust. Well, I did not hear anything until 2012. I went down for a meeting and found out that they hired a group of lawyers to create debentures. I also found out that the problems they had with the vendor lawsuit and some other issues had been going on after they met with me in 2009, so that is when I learned there was a \$4.4 million deficit. They then talked to these lawyers who suggested they put them in debentures to the trust for the net sales for the proceeds from Mark Revitz's home, which was going to be \$1.5 million, then another debenture for \$2.6 million on the administration building for the sale or mortgage of the administration building that would go to the funeral trust. Finally, there was \$500k in a debenture for the properties up in North Carolina and that was in 2012. In 2013, Mark Revitz's house sold. At the time it sold there was a mortgage of \$551k due on the North Carolina properties. So they paid off that mortgage thus raising the value of the North Carolina properties to the \$1,151,000 and put the remainder into the trust. Then they reissued the other two (2) debentures to the Department and it still is sufficient to pay off the deficit when those two (2) issues rise. One, we put it at 2017 because the market in North Carolina is like a three (3) month when you can sell things and we have had these up for sale for two (2). We are waiting for the market in North Carolina to get better. In addition, when we first went to go get a mortgage, the mortgage regulations grew and grew and grew to where we could not get a mortgage so we kept going to different banks. We have been negotiating with a number of banks and are hoping to get a bank that will lend us \$2.6 million on a \$3.4 million building but we want time to be able to get that or to sell the building. We understand that this is a Settlement Stipulation where we have to file reports with the Department, be audited every year and give reports on how, what and when we are doing anything. It is in our best interest, as I have explained to my clients and they agree, to pay this deficit off as soon as possible. I would love if tomorrow someone was interested in purchasing all the North Carolina properties or if someone was interested in purchasing the administrative building and leasing it back to us and pay us the fair market value for it or that we get a mortgage for \$2.6 million and then we could pay it back. I do not think that there is any doubt that they will pay that back. I think we are over secured with these debentures. This has been delivered to the Division. The Division has the debentures and we will move forward with it. In 2008, they did cut way back. They quit issuing 401k payments. They reduced salaries by up to 20% all across the board. They cut back on hours requiring employees to seek part time work. They even cut back on their lawyer. I had a retainer agreement with them for a number of years and they reduced my retainer and hourly rate, which I did not understand in 2008 but now I do.

Mr. Rudolph questioned whether the Respondent would like to add anything.

Mr. Shropshire requested that the Respondent raise his right hand to be sworn in. "Do you solemnly swear that the testimony you are about to give in this proceeding will be the truth, the whole truth and nothing but the truth so help you God?"

Mr. Les Klein responded, "Yes." Mr. Klein stated that the company has been under one family control since 1968. I came aboard in 1989 from Peat Marwick where I served as their outside accountant. Throughout that time, we have never been subject to any proceedings. In fact, I have never been in front of the Board. We have always had clean examinations and very low customer complaints. We pride ourselves on that. In 2008 – 2010, we experienced tremendous hardships. These hardships were magnified by the change in the economy, the decrease in the real estate market in North Carolina, the banks constricting the mortgages that they are writing. We had plans in 2009 that completely changed based upon these external factors. Mr. Klein stated that he is totally embarrassed to be here but he feels that the plan in the stipulation will give them a chance to be that cemetery they were since 1968. I am confident it will be implemented. All I am asking for is the Board's help.

Mr. Rudolph added that Mr. Klein did an analysis of the preneed trust, both for the funeral home and the cemetery, and because they have been doing very well in the market with both those trusts, they can service every existing preneed contract

right now with what is in trust and have a surplus. There is no chance that these preneed contract holders will not get what they are supposed to get. Mr. Rudolph requested that Mr. Revitz address the Board.

Mr. Shropshire requested that the Respondent raise his right hand to be sworn in. "Do you solemnly swear that the testimony you are about to give in this proceeding will be the truth, the whole truth and nothing but the truth so help you God?"

Mr. Mark Revitz responded, "Yes." Mr. Revitz stated that once upon a time he served on the Board alongside Mr. Knopke. I understand your concerns as I would have the same if I were sitting on the Board. However, humbly I stand before you because we had issues, as narrated by Mr. Klein and Mr. Rudolph. Mr. Rudolph usually speaks fluently but today he is a little nervous because he is concerned for me. We were in the situation, we tried to get out of the situation, we went to many banks, tried to sell the properties in North Carolina. I sold the home that I grew up in that my father left me upon his passing with great emotion on October 13<sup>th</sup>. Nothing always goes as smooth as you plan in life, and possibly with the \$4 million, \$4.1 million was for the cemetery and the people that were working with us for the last 46 years. Mr. Gary Bartholomew has been with me for 39 years. I have two (2) secretaries that have been with me since they were fifteen (15) years old. We made some hard cuts, some major changes and we have been suffering through this trying to get on an even keel to resolve the matter. As Mr. Rudolph stated, we went through this plan with attorneys in Miami, Mr. Klein has done the evaluation with the numbers and there is no more that we can do than what we have presented to the Board to work out this problem at this time and I assure you that we will be committed to the plan and get it done.

Mr. Rudolph questioned whether all of the money that was part of the deficit related to the funeral home and the cemetery.

Mr. Revitz concurred and added that he signed an affidavit to that effect also.

The Chair stated that the Board has heard information on the North Carolina properties, the debentures and the administration building but the Board has not heard any information on the funeral home, its real estate and building.

Mr. Klein stated that the funeral current has a mortgage on it as it stands. The funeral home is appraised approximately at \$3 million and there is a \$1.5 million mortgage that has been in existence for a while.

The Chair questioned whether the Licensee considered a debenture on the funeral home as part of the plan.

Mr. Klein stated when they first came out with the debentures they took a look at the assets they currently had and could sell.

The Chair questioned whether there is a reason the Licensee wanted the funeral home separate from the other debentures and not a part of it.

Mr. Klein stated that the original debentures were properties that they wanted to sell and feel we can sell. The North Carolina properties, Mr. Revitz's house, which we did sell, a mortgage on the administrative building, which is free and clear right now and is worth about \$3.3 million. We felt that that was a faster way and easier way to keep the company operations the same.

Ms. Vanessa Oliver questioned whether there is anything that would show up on a title search for these properties showing that the trust has a security interest in the sale of the properties.

Mr. Rudolph stated that there is not because if you put a mortgage on it and these debentures right now they do not have a mortgage on them but what we wanted to do is when somebody came in and looked at it and saw that there were no mortgages on it that they would sell quicker. That way you did not have to deal with paying off a mortgage. We know it is secure because we have delivered them to the Department, it goes to the trust and we theoretically could have put those into the trust because they are just like a negotiable instrument but we did not do that. If we had done that, this would not have come to the Board.

Ms. Oliver stated that maybe she is not reading it correctly and confusing the properties. Pledge Agreement #3 seems to be for \$1.5 million, which was supposed to go into trust upon the sale of that resident but I did not see an amendment to the agreement. Only \$948,600 went into the trust upon that sale.

Mr. Rudolph concurred. At the time they had that sale, they had a mortgage on one of the North Carolina properties that was coming due. They knew that if they did not pay off that mortgage that it would hurt them trying to get a new mortgage down here on the building.

Ms. Oliver stated that she is not questioning the reasoning behind it. It is just that the agreement is set for \$1.5 million but there is nothing else in writing showing an authorization or a reason to deposit less.

Mr. Rudolph stated that if you look at the original debenture for the North Carolina properties was \$500k. We reissued another debenture now that that has been paid off and it is now \$1.51 million. The \$1.5 million, which was pledged, was part of the collective \$4.65 million. So when we sold the home we paid off the mortgage and then we transferred that to another pledged item, which increased its value. That amount of money is still pledged to the trust.

Ms. Oliver stated that she was just concerned with not having a lien or something that is going to show up on a title search so that if you sell another property and suddenly there is another "good reason" to use those funds that it is not going to do to the trust it is going to go to that other good purpose.

Mr. Rudolph stated that now there is a settlement agreement. We have to give annual reports on what is going to happen. Imagine what the report would be if we came back and said we got a mortgage for \$2.6 million and we are going to give you \$2 million and use the other \$600k. No, we have to give the full \$2.6 million. If we sold one of the North Carolina properties we would have to give that money too. We would be giving our reports to the Division. I can tell you as soon as something sells we are going to notify the Division.

Ms. Oliver questioned whether the money would be held in escrow or what is going to happen with the proceeds.

Mr. Rudolph stated that theoretically, right before the sell, we are going to change the ownership of the seller to the trust so that the monies will go directly to the trust.

Ms. Oliver questioned the reason why the owner is not changed now.

Mr. Rudolph stated if the ownership was changed now then that would be a trust asset and then we may be running into the 25% rule. One thing we thought about was putting everything into the trust, because we already do have some real estate investments in the care and maintenance trust where we have a contract on one of those that we are going to sell and get a substantial profit. We thought about that but then you got the issue with the trust holding the asset.

Mr. Shropshire stated that he had those discussions with the Respondent about whether there should be something in the real estate records in North Carolina noting an encumbrance on those properties. Mr. Shropshire stated that he understood the Respondent to indicate that if that was important to the Board that the Licensee would be willing to accommodate the Board by putting something in the record like a mortgage or a notice of encumbrance from a real estate attorney to protect those assets.

Mr. Rudolph stated that he would have to talk to the North Carolina properties but is sure they could put in a notice that all the proceeds are subject to a lien by the Vista Funeral Home trust or the cemetery trust we can do that if it pleases the Board.

Mr. Lew Hall stated that his deep concern on this case, understanding the issues with the storms, is that there are two (2) principals here that are very knowledgeable in this industry, served on the Board and are very knowledgeable about preneed. Mr. Klein even chaired the Preneed Committee for the Board, so you had to know that this money was not yours to spend. It was preneed money that was taken and spent on the funeral home and cemetery. This has come up in the past where Licensee's used the monies to keep the doors open but they were fined or turned over to the State Attorney's Office because this is not a petty cash drawer. As Ms. Oliver pointed out, the Board cannot be certain that proceeds from the real estate sales would not be used somewhere else just as it was done regarding the sale of Mr. Revitz' home. The Licensee used \$500k of the \$1.5 million to pay off the properties in North Carolina releasing them of some more indebtedness and responsibility there but that \$500k should have went straight to the trust along with the \$984k.

Mr. Rudolph stated that the \$551k that was used to pay off the mortgage increased the value of that asset.

Mr. Hall stated that the Board does not want that asset.

Mr. Rudolph stated that the Licensee wants to be able to sell that asset.

Mr. Hall stated that cash liquidity would have been better in the trust to make it whole again. Then my concern is that this has gone on for years already and there has been no headway other than the one resident. Mr. Hall questioned whether when this money is replaced would it be made whole by fulfilling the interest that the trust would have paid on that money.

Mr. Rudolph state that the trust would be made whole by paying the amount that is in there, the principle.

Mr. Hall stated that for the last four (4) or five (5) years that \$4 million would have earned interest in that trust. The Licensee should go back to the trust company to determine what the interest was during that period of time. Now it is being stretched out two (2) more years when it should not have been taken out to begin with. The approach should have been for the Licensee to come before the Board after the hurricane and present the issues like it was done today to request the Board's assistance.

Mr. Rudolph stated that this was done in 2008 when we came back to take money out of the care and maintenance trust fund. That was the rule that we passed and we went to the Legislative Partnership Committee with a statutory change and it was not allowed. The Licensee did go and try to get some use of the care and maintenance trust fund to pay for these damages and we did put personal assets, sold a personal asset of Mark Revitz and the personal assets of Mark and Janice Revitz in North Carolina. I understand your point. The deficit is 100% secure and is probably over secured.

Mr. Hall stated that Mr. Rudolph is basing that on appraisals that were issued in 2011 but if you go to the bank today you would need an appraisal that was issued within the last three (3) to six (6) months.

Mr. Rudolph concurred. If you have looked at appraisals in the last three (3) months, they are higher than they were back then. In some areas the market is improving but you are going to run into issues with North Carolina because those are vacation homes. They are not homes that people want to come to every time. When it snows, people are up there and they are looking at the For Sale signs.

Mr. Hall questioned the location of the administration building.

Mr. Rudolph stated that the building is in the cemetery but it is not a part of the cemetery property. It is right next to it.

Mr. Hall questioned what the prospects of that happening are.

Mr. Klein stated that they are dealing with some banks and they have a current appraisal on the property for 2013 which has it appraised at \$3.3 million. The banking industry right now is getting better mortgage wise and we are trying to see if we can get the \$2.6 million on the \$3.3 million piece of property. Right now we have run into a situation with one bank that will only give you 50% of the value but we are dealing with other banks right now to obtain that mortgage.

Mr. Hall stated that Mr. Klein has been described to him as a financial genius. Mr. Hall questioned how Mr. Klein missed this prior to the inspection by the Division.

Mr. Klein stated that he knew about the situation and that was their reason for contacting attorneys to see what we could do to get the trust secured, so that is why we went out right away and did the debentures. Prior to the examination, I quantified the numbers and how much we were behind in the trust.

Mr. Rudolph stated that they did come to the Division for a meeting prior to the examination.

Mr. Hall questioned whether there is a reason the Board was not provided with financials for this company.

Mr. Rudolph stated that the financials were filed but he did not see them in the Board packet.

Mr. Shropshire stated that the Division does have the financials and they show the net worth being adequate of meeting the statutory minimum. The Division could provide the financials if it pleases the Board. Mr. Shropshire confirmed that in the 2009-2010 timeframe that the Licensee did approach the Division and ask for permission to use some of the care and maintenance trust fund, they described the hurricane damage, but they were denied that permission. Mr. Shropshire stated that he could not recall if that issue came before the Board.

Mr. Rudolph stated that they went to the CFO and talked to him. Mr. Shropshire was called into that meeting. The CFO questioned what could be done to get it accomplished and we decided we would do it through a rule.

Mr. Shropshire added that the initial request was to just borrow some money from the care and maintenance trust fund for these emergency expenses but that request was denied.

The Chair questioned the date of the last inspection and audit prior to the 2012 audit.

Mr. Rudolph responded that it ended March 2008.

The Chair questioned whether there were any findings on that examination.

Mr. Klein stated that there were no findings. We have never had any findings.

Mr. Rudolph stated that there was a surplus in the fund at that time.

Mr. Helm questioned whether the Division knew anything about this discrepancy before the audit.

Mr. Shropshire stated that the Division did not know that there was a deficit and were not paying properly into the trust. The Division knew that they were having exceptional expenses, hurricane related, but we did not put that together with the shortage in the trust.

Mr. Rudolph stated that he told Mr. Shropshire the total amount at that meeting.

Mr. Shropshire stated that Mr. Rudolph did not advise that they were not making deposits to trust.

Mr. Rudolph stated that they did advise of the deficit.

Mr. Shropshire responded that he is referring to the meeting that occurred early on in 2009 when Mr. Rudolph approached the Division to borrow money from the care and maintenance trust fund.

Mr. Rudolph concurred. At that point, I knew that they wanted to borrow it but I did not know that there was a deficit. It was not until later when I went down there in 2009 and found out that they had a deficit and were going to sell the North Carolina properties and mortgage the administration building and if need be sell Mark Revitz's property.

Mr. Helm responded that Mr. Shropshire stated that he did not know about the deficit but Mr. Rudolph indicated that he did.

Mr. Rudolph stated that they were waiting for the audit to come out to find out what the final deficit was. So when they came in and did the audit we wanted to find out what their number was.

Mr. Helm questioned whether the Division knew of the deficit prior to the audit being completed by Ms. Helms.

Mr. Rudolph stated that the Division did not know the amount of the deficit.

Mr. Shropshire stated that Page 1 of the coversheet, paragraph 4 of reads, "subsequent to notice of examination being given to Pershing and Vista, but prior to commencement of field work in said exams, Pershing and Vista contacted the Division, arranged a meeting with the Division, and at said meeting self-reported that their preneed trusts had significant deficits."

Mr. Helm questioned why the Licensee waited until they were about to get caught before they admitted they were in trouble.

Mr. Rudolph stated that they were hoping that they could get some of the properties sold to avoid even coming before the Board.

Mr. Helm stated that they were hoping they could get it done before they got caught.

Mr. Rudolph stated that the audit would still come through but they were hoping they could get some of the properties sold and the Revitz property did sell, but we wanted to find out the full amount of the deficit from the Department because we had some idea but not an actual number.

Mr. Klein stated that prior to the examination they were in negotiation discussions with BBVA Bank and we thought we had a mortgage done but it fell apart at the last minute. We felt we could get these things done quickly and put the money into trust.

Mr. Rudolph stated that they would still be here because of a failure to deposit because that was clear from the exam.

Mr. Helm questioned whether the Licensee would have still been quiet had the exam not taken place.

Mr. Rudolph answered, "No." Mr. Rudolph stated that they have been trusting since 2011.

Mr. Klein stated that they have been on point. We made those cuts and have restructured the company financially. Unfortunately we had to let go people who have been with us longer than I have been working with the company but we went in, made the cuts, got everything arranged and have been on point since 2012.

Mr. Helm stated that he would feel a lot better about this had the Licensee advised they were in trouble. That gives me a lot of concern.

Mr. Jones stated that re the Settlement Stipulation, there is a payback as of December 15, 2017 and you got the debentures but I do not see anything as to what happens if it is not met as of December 15, 2017, if the Board agrees to this.

Mr. Shropshire stated that the Licensee would be in violation of an Order of the Board and would be back before the Board.

Mr. Rudolph stated that there would be an immediate summary suspension of license.

Mr. Jones stated that he is questioning the payment back to the trust.

Mr. Rudolph stated that it would be a summary suspension of license for violation of probation.

Mr. Shropshire stated that they would be back before the Board. It would depend upon the facts of the case.

Mr. Jones questioned whether the Licensee agrees to speak with the realtors in North Carolina to put some type of assurance on the debentures.

Mr. Rudolph stated if it pleases the Board they would.

The Chair stated that would need to be made in the form of a motion.

Mr. Knopke questioned whether the estimated deficit was higher or lower than what the Division came up with.

Mr. Klein stated that it is very close. If you take a look at the total debentures, we left some flexibility in the total amount. If you add up all the debentures it far exceeds what the deficit is.

Mr. Knopke questioned whether \$4.441 million is the outstanding amount today after the pay down.

Mr. Rudolph responded that the amount is \$3,492,580 and there is \$3,651,000 between the North Carolina properties and \$2.6 million.

Mr. Knopke questioned whether the trust deposits are being made and are current.

Mr. Klein concurred.

Mr. Knopke questioned when the Licensee started to make timely deposits.

Mr. Klein stated that it was around 2011 or 2012.

Mr. Knopke questioned whether they have made timely deposits since then.

Mr. Klein stated that they had.

Mr. Knopke questioned whether the reasoning behind the Department to inspecting on a twelve (12) month basis as opposed to more frequent inspections.

Mr. Shropshire stated that it is primarily a resource issue. If the Board required more frequent inspections the Division would comply.

Mr. Knopke stated that the fine seems willfully low concerning the magnitude of the issue and even the payment of the fine at the end.

Mr. Rudolph stated that they did not suggest the fine. The Division did. The fine is \$20k for both totaling \$40k. It was structured with an incentive for us to get it done earlier. For every month that we are early we get \$250 with a maximum of \$5000 taken off the fine.

Mr. Knopke stated that it seems like a bonus. It is an encouragement, obviously to get the fine paid and get the whole thing resolved. The whole thing troubles me because I have a world of respect for Mr. Klein, Mr. Revitz and even Mr. Revitz's father who I was privileged to meet on occasions. When I read this thing I was stunned. Mr. Knopke questioned whether there was talk of receivership in any of the negotiations or at the end that if it is not paid the companies would automatically go into receivership. We look at companies all the time and I understand Mr. Revitz's point that there is money there if everybody dies today but the reality is that is not going to happen and if it does money would not be a problem. If down the road, for whatever reason, this property does not get mortgaged or sold, just to come back and find a new group of Board members to try and understand what is going on at that moment, it just seems there ought to be a different trigger or something that says this is not going to be a part of Pershing or the Revitzs any longer, it is going to be sold. If nothing else, it keeps the pressure on. Not that I doubt that Mr. Klein or Mr. Revitz will be focused on this, but still again, next month or the month after when someone else walks in with a similar problem, this kind of lays the ground work for someone else to come forward with these issues and that is a part of my concern.

Mr. Rudolph stated that he understands that as I called it the perfect storm because they not only had a hurricane, they had issues with the economy, DERM issues, vendor issues and overhead issues that all collapsed at one time in this one specific area that resulted in this.

Mr. Knopke stated that having dealt with DERM in a previous life with a different company, they are worse than anyone could ever imagine from a County regulatory agency. They are just nasty people. Living in Florida, there are going to be storms. We have all had them at some point. Everyone in this room suffered through the economy. I can appreciate the DERM issue a whole lot. I am not disputing what the Licensee is saying about the issues but it is just amazing. The Board is setting the future steps for decisions in a big way. This is big money. It is not play money.

Mr. Rudolph stated that he understands that. When you have the debentures that are securing in excess of the deficiency, and these are on personal assets of some of the principals and the asset of Pershing, that those two (2) things are the difference. Technically, once we file something in the court to put it on notice to anybody buying that the proceeds must go to this or that,

then there is no chance that it would go through us. I think that is something that we would be willing to do. I was trying to figure out how the amount of the fine was derived because this is their first violation ever. It is a substantial amount.

Mr. Knopke stated that it is a substantial amount, but when I look at the deficit to the fund and that is not their money it's the consumer's, \$40k seems low and it may not be, but the payback at the end as opposed to paying it now again seems like a bonus.

Mr. Mueller questioned what would happen if the Board did not come to an agreement today on this issue.

Mr. Shropshire stated assuming the Board does not approve this settlement and does not make a counter offer of settlement that they accept today then we would go back, prepare the file and exam reports then forward them to our Legal Division for formal prosecution. Presumably, they would approve it, prepare an administrative complaint and submit to the Probable Cause Panel for approval. Mr. Rudolph on their behalf would make a decision as to whether they would like a formal hearing and so on and so forth. If they go to DOAH, it could take twelve (12) to eighteen (18) months to get that done. Eventually, one way or another they may opt for an informal hearing but I doubt that at this point. The issue would then come back to the Board for final decision then the Licensee would decide whether they want to appeal that to the District Court. If they appeal it that could perhaps take another twelve (12) to eighteen (18) months to get a District Court opinion.

Mr. Mueller questioned whether eventually there would be a Cease and Desist Order issued or a receivership.

Mr. Shropshire stated that that is certainly a possibility but he would be more inclined to think that if the Board gets to that point they would just issue an Order advising that the license is revoked effective \_\_\_\_\_ and they are going to see the light, sell the thing and get somebody who will pay enough to fill the hole and get something put in their pockets in addition. That would probably be a cleaner and more efficient way to do it than a receivership. Only if they walked away from it would I recommend a receivership.

Mr. Mueller stated that Ms. Oliver questioned the possibility of the trust owning the debentures and Mr. Rudolph mentioned something about 25%.

Mr. Rudolph stated that Ms. Oliver was talking about securing it. Mr. Rudolph stated that they could have put the debentures into the trust but they did not because of the 25% rule. The debentures, even though they are a negotiable instrument, are secured by real property.

The Chair requested Mr. Rudolph explain the 25% rule.

Mr. Rudolph stated that you cannot put more than 25% of your trust fund into a real estate investment.

Mr. Mueller stated that he would be more comfortable with the trust fund owning something. Mr. Mueller questioned whether the debentures could be structured such that the trust owns enough of them to get to 20% of the value of the trust leaving only the balance hanging. Mr. Mueller questioned what those numbers might look like.

Mr. Rudolph stated that they could talk to the trustee and deliver them the two (2) advising that we have the funeral trust and the cemetery trust and question whether they would like to put the debentures into the trust. If the trustee says yes then the deficit is gone.

Mr. Hall questioned whether the issue would be how do you establish the value if they only sale for half of the amount and you get credit for the other half then that is an issue.

Mr. Rudolph stated that if you read the debenture, it is pledging the net proceeds of the sale to the trust.

Mr. Shropshire stated that it is pledging a specific amount not the net proceeds and if that sale does not produce that amount, it is incumbent upon the owners to come up with the difference. That has always been the understanding.

Mr. Mueller stated that if the Board asked the trust to own the debentures then the value goes down and they sell for less that deficit would not be made up.

Mr. Shropshire stated that it could certainly be structured that they go into the trust and yet the Licensee retains the obligation to make up the difference. The Board could certainly do that. It is a bit of a red herring to cite the statute because this is the Board that would be offended by over 25% and if they are willing to waive that in this instance I do not see any reason why they could not all be put into trust.

Mr. Mueller stated that he is also concerned with the lack of growth over the period of time that the money has not been in trust. There should be something in our agreement to make up the interest had the money been trusted properly.

Mr. Hall questioned whether the Licensee is willing to use the amount from the trust company to make the trust fund whole.

Mr. Klein stated that the return of investment on each trust can easily be computed based upon the trust statements. The amount of the debentures exceeds the amount of the deficit so we have that flexibility to do that.

Mr. Davis questioned the disagreement expressed by the Division in 12(b) of the Coversheet: *"The Subject Licensees assert that notwithstanding the trust deficits, the Subject Licensees meet the net worth requirements for renewal of their preneed licenses. The Division does not necessarily agree with the Subject Licensees in that regard."*

Mr. Shropshire stated that it depends upon whether you accept the debentures and the pledge agreements as valid assets. If you do not then they do not have the net worth but if you do then arguably that conceptually clears up the deficit so they would have the net worth.

Mr. Klein stated that not only do they have \$5 million net worth but their assets far exceed the market value. The funeral home is on the books for \$30k but it is worth \$3 million. The administration building is on the books for \$150k but it is worth \$3.3 million. We have the net worth on our books plus we have those increases in values as well on our books.

Mr. Hall stated that his concern is if we take the debentures into the trust whether the Board assumes the responsibility of maintenance and insurance of the properties until they are sold.

Mr. Rudolph stated that it is the owner's responsibility to maintain the properties before they are sold so that they sell for the maximum amount possible. All you are doing is transferring the debenture, which is a pledge to pay a certain amount to the trust and it is secured by properties. One is a sale or mortgage of the administration building and the other is seven (7) properties up in North Carolina. There would still be the obligation to maintain those properties. They are using the cemetery office building as their office so they are going to keep that insured.

Mr. Hall questioned whether there is a timeframe when the Licensee will know something about the cemetery building.

Mr. Klein stated that they are in negotiations with two (2) banks. It just depends. I am seeing that the banking industry is getting looser and they are writing mortgages so I am hopeful within a year.

Mr. Hall stated that if the Licensee is providing the bank with a net worth of \$5 million and financials, the bank could probably tell you if they are going to do it within the next thirty (30) to forty-five (45) days.

Mr. Klein stated that they have sent in the financials but sometimes the banks get restricted on what they can write a rate for. It used to be, when we first did this, less than 50% of the value. Now I see that is getting better and they are writing for more than 50% of the value. It is not the net worth it is just what the bank is required.

Mr. Hall stated that the appraisal is usually what takes the longest so with the financials in place the bank should be able to provide an answer within (30) to forty-five (45) days instead of a year.

Mr. Klein stated that they have been in negotiations with several banks and want to get this thing done ASAP. It used to be that the banks just looked at the appraisal and the financial statements but it gets to be more than that nowadays. They are looking at more information.

Mr. Hall questioned whether the Licensee would be open to doing the 50% with the idea that they are going to continue to shop it to other banks to try to get that 70%-80%.

Mr. Klein stated that right now they are in negotiations with hopes that they can get something bigger than that. Hopefully we can get the whole thing taken care of. That is our goal.

Mr. Knopke stated that listening to the comments around the room from the Board members there are different issues. Everyone is trying to understand the different funds and the time to get it resolved, whether they put the debentures into the trust fund or not and what rule or statute it may impact.

Mr. Helm stated that there may be more views that have not been expressed. Mr. Helm stated that he does not like the idea of the fund being paid in 2017 as it should be paid in 2014. If they want an incentive then they should be assessed another fine to be due in 2017. The \$40k fine is very gracious but should be paid now.

Mr. Davis stated that he has not been on the Board long enough to know what the history has been but he is concerned about this setting a precedent.

The Chair reminded the Board not to over think the precedent part because regardless of what happens, each case will be considered individually and not necessarily setting a precedent. The Board does have the clear ability to consider each case individually.

Mr. Mueller stated that his issues are that the assets are put into the trust fund to make the fund whole and picking up the interest that was lost.

Ms. Oliver stated that her only concern is that she is not really clear on the ownership of the two (2) bundles of property being discussed. Ms. Oliver stated that she wanted to make sure that no other encumbrances come up. Ms. Oliver questioned whether the funeral home owns the first one.

Mr. Rudolph stated that the first one is owned by Pershing Industries, so that is the Licensee. That is the cemetery administration building. The other buildings in North Carolina are owned by Tradarama, which is owned by Mark and Janice Revitz.

Ms. Oliver questioned whether that is a real estate holding company that they own, do they have other assets, is it something where they could get sued and get a judgment lien placed on that.

Mr. Klein stated that Tradarama pretty much does no business at all. Tradarama is just involved with paying the bills in North Carolina and if anything is being rented they collect the money on that as well.

Mr. Hall questioned whether the Division would supply the Board with financials prior to the next in person meeting.

Mr. Shropshire concurred.

Mr. Knopke questioned whether there was a deemer issue on this item.

Mr. Rudolph stated that the preneed license would have to be continued until we get to the next meeting.

**MOTION:** Mr. Knopke moved to defer the item to August 7<sup>th</sup> Board meeting to allow the Division, the Licensee and one (1) Board member time to take in the considerations and concerns expressed by the Board members, to try and come up with a settlement agreement that is workable. Also, the preneed license will be continued until the Board makes a decision at the August 7<sup>th</sup> meeting. Mr. Mueller seconded the motion, which passed unanimously.

Mr. Shropshire stated that the preneed license is only renewed until the next in person meeting and the Board then has the further jurisdiction to consider whether they will approve.

**B. Settlement Stipulation(s)**

**(1) Waiver of Probable Cause**

**(a) David-Russell Funeral Home: Case No. 149527-14-FC, Division #ATN-21964 (F041696)**

The Chair confirmed that the Board received the ancillary page presented at the meeting by the Department.

Mr. Jim Bossart stated that the Department conducted an investigation of Respondent's activities in the death care industry. As a result of the investigation, it was determined that Respondent had failed to timely pay its bio-medical waste permit fee in accordance with Section 381.0098, Florida Statutes. This is a statute that is governed by the Department of Environmental Health. As a result, this could have been considered a violation of s. 497.152(4)(h), F.S. The permit fee of \$315, which represented three (3) years of arrears and the fees has now been paid. The Respondent has entered into the proposed stipulation to pay a \$500 administrative fine to the Department and has agreed to waive probable cause.

**MOTION:** Mr. Helm moved to approve the Settlement Stipulation as recommended by the Department. Mr. Knopke seconded the motion, which passed unanimously.

**(2) Probable Cause Panel B**

Ms. Jean Anderson recused herself from all cases involving Probable Cause Panel B, as she served on that Panel.

**(a) Alphonso West Mortuary, Inc.: Case No. 144438-13-FC, Division #ATN-20488 (F040607)**

Ms. Melissa Dembicer stated that at the June 28, 2012, Funeral and Cemetery Board Meeting, Alphonso West Mortuary's application for renewal of its Preneed Main License was approved but simultaneously suspended pending compliance with certain conditions set forth in an Order. The conditions required by the Order were that the Licensee provides answers for the renewal application fields that were left blank; make good the returned, unpaid check that was to pay the renewal fee and additional processing fees; and pay applicable fees for the late filing of its annual financial statement. The Licensee failed to respond to the Order and failed to comply with the conditions.

Alphonso West Mortuary sold six (6) preneed funded insurance policies after their Preneed Main License expired and one (1) preneed funded insurance policy after their Preneed Main License was suspended. Alphonso West Mortuary failed to make timely and sufficient remittances to the Consumer Protection Trust Fund (CPTF) and to the Regulatory Trust Fund on a total of twenty-one (21) sales of preneed insurance funded contracts in 2008, 2011, 2012 and 2013. The Department filed an Administrative Complaint on February 28, 2014. The Respondent was served on March 11, 2014.

On April 28, 2014, the Respondent and the Department entered into a Settlement Stipulation for resolution of this matter. The terms of the Settlement Stipulation require the Respondent to pay an administrative fine of \$2500 within thirty (30) days of the entry of the Consent Order to be issued in this case. The terms of the Settlement Stipulation are reasonable under the facts and circumstances of this case and the Department requests that the Board approves the settlement and issue the Consent Order to conclude this matter.

The Chair questioned whether there was anyone present representing the Respondent.

Mr. Bryan DeMaggio, of Sheppard, White & Kachergus, P.A representing the Ms. Daniels, stated that he stood by Ms. Dembicer's statement. The settlement is very just and we would ask that the Board approve it.

Mr. Helm questioned whether the check was made good.

Ms. Dembicer responded that the check has not been made good but it is a part of the stipulation that will be addressed under the next case.

**MOTION:** Mr. Mueller moved to approve the Settlement Stipulation as recommended by the Department. Mr. Davis seconded the motion, which passed unanimously.

*(b) Debra West Daniels: Case No. 144434-13-FC, Division #ATN-20488 (F046836)*

Ms. Dembicer stated that at the June 28, 2012, Funeral and Cemetery Board Meeting, Alphonso West Mortuary's application for renewal of its Preneed Main License was approved but simultaneously suspended pending compliance with certain conditions set forth in an Order. The conditions required by the Order were that the Licensee provides answers for the renewal application fields that were left blank; make good the returned, unpaid check that was to pay the renewal fee and additional processing fees; and pay applicable fees for the late filing of its annual financial statement. The Licensee failed to respond to the Order and failed to comply with the conditions.

Alphonso West Mortuary sold six (6) preneed funded insurance policies after their Preneed Main License expired and one (1) preneed funded insurance policy after their Preneed Main License was suspended. Alphonso West Mortuary failed to make timely and sufficient remittances to the Consumer Protection Trust Fund (CPTF) and to the Regulatory Trust Fund on a total of twenty-one (21) sales of preneed insurance funded contracts in 2008, 2011, 2012 and 2013. The Department filed an Administrative Complaint on February 28, 2014. The Respondent was served on March 11, 2014.

On April 28, 2014, the Respondent and the Department entered into a Settlement Stipulation for resolution of this matter. The terms of the Settlement Stipulation require the Respondent to pay an administrative fine of \$2500 within thirty (30) days of the entry of the Consent Order to be issued in this case. Additionally, Respondent shall make a payment of \$126 to the Regulatory Trust Fund, \$102.50 to the Consumer Protection Trust Fund and provide answers for the renewal application fields left blank, make a payment of \$20.40, charged by the Department as a result of a returned check and make a payment of \$1000 for the late filing of the annual financial statement. The terms of the Settlement Stipulation are reasonable under the facts and circumstances of this case and the Department requests that the Board approves the settlement and issue the Consent Order to conclude this matter.

Mr. DeMaggio reiterated what he said the first time.

**MOTION:** Mr. Jones moved to approve the Settlement Stipulation as recommended by the Department. Mr. Hall seconded the motion, which passed unanimously.

*(c) Hickson Funeral Home: Case No. 146249-12-FC, Division #ATN-21715 (F040342)*

Ms. Dembicer stated that on November 19, 2013, the Department conducted a routine funeral establishment investigation and as a result of that investigation the Department found that the Licensee did not practice proper management of biomedical waste transport and treatment and did not complete a Monthly Report of Cases Embalmed and Bodies Handled for the previous fifteen (15) months. These are violations of Sections 497.152(1)(a), 497.152(1)(b), 497.382, F.S. and Rules 69K-20.001 and 69K-21.003(5), FAC.

The Respondent believes it is in its best interest to enter into a Settlement Stipulation for Consent Order and waives the right to a hearing in this matter. On May 20, 2014, the Respondent and the Department entered into a Settlement Stipulation for resolution of this matter. The terms of the Settlement Stipulation require the Respondent to pay an administrative fine of \$3500. Payment shall be made in the form of a cashier's check or money order to the Executive Director of the Board of Funeral, Cemetery and Consumer Services within thirty (30) days of the date the Final Order adopting this Settlement Stipulation for Consent Order is executed. Failure to make the total payment within the provided time frame will result in immediate suspension of Respondent's license by the Department without further action by the Board. The terms of the Settlement Stipulation are reasonable under the facts and circumstances of this case and the Department requests that the Board approves the settlement and issue the Consent Order to conclude this matter.

Mr. Jeffrey Howell, of the Tallahassee law firm Phipps and Howell representing the Respondent, stated that these cases have two (2) issues, primarily the medical waste. When a routine inspection occurred last year, the medical waste issue was brought to Mr. Hickson's attention. The problem was with a company called Stericycle. Mr. Hickson terminated that contract and went with Med Pro Disposal. Regarding the Bodies Handled Reports, after her inspection, the inspector telephoned Mr.

Hickson requesting certain reports which he faxed to her several days later at her request. Mr. Hickson is now on the EDRS so that is no longer an issue. Under the Board's rules, 69K, the Board is allowed to look into mitigating circumstances or mitigating factors. Mr. Hickson has been a funeral director for many years and this is the first time he has appeared before the Board. The Department confirmed that Mr. Hickson has no priors. Based on his long years of service, the fact that he has no priors and that he promptly took action once these items were pointed out to him, we would ask that the Board approves the settlement. Mr. Hickson fully understands the nature of the violations and the fact that it landed him here for the first time ever in front of this Board. Mr. Hickson is present to answer any questions that the Board may have.

**MOTION:** Mr. Knopke moved to reject the Settlement Stipulation as recommended by the Department. The Chair seconded the motion, which passed unanimously.

**MOTION:** Mr. Knopke moved to offer a counter-offer to the Settlement Stipulation with a reduced fine of \$2000. Mr. Knopke seconded the motion, which passed unanimously.

Mr. Howell accepted the counter-offer.

Mr. Shropshire stated that the Department is fine with the counter-offer.

Ms. Dembicer concurred.

*(d) Hickson, Eugene: Case No. 146247-12-FC, Division #ATN-21715 (F043837)*

Ms. Dembicer stated that on November 19, 2013, the Department conducted a routine funeral establishment investigation and as a result of that investigation the Department found that the Licensee did not practice proper management of biomedical waste transport and treatment and did not complete a Monthly Report of Cases Embalmed and Bodies Handled for the previous fifteen (15) months. These are violations of Sections 497.152(1)(a), 497.152(1)(b), 497.382, F.S. and Rules 69K-20.001, 69K-21.007(3) and 69K-21.003(5), FAC.

The Respondent believes it is in its best interest to enter into a Settlement Stipulation for Consent Order and waives the right to a hearing in this matter. On May 20, 2014, the Respondent and the Department entered into a Settlement Stipulation for resolution of this matter. The terms of the Settlement Stipulation require the Respondent to pay an administrative fine of \$2000. Payment shall be made in the form of a cashier's check or money order to the Executive Director of the Board of Funeral, Cemetery and Consumer Services within thirty (30) days of the date the Final Order adopting this Settlement Stipulation for Consent Order is executed. Failure to make the total payment within the provided time frame will result in immediate suspension of Respondent's license by the Department without further action by the Board. The terms of the Settlement Stipulation are reasonable under the facts and circumstances of this case and the Department requests that the Board approves the settlement and issue the Consent Order to conclude this matter.

**MOTION:** Mr. Jones moved to approve the Settlement Stipulation as recommended by the Department. Mr. Knopke seconded the motion, which passed unanimously.

\*\*\*\*\*BREAK\*\*\*\*\*

The Chair, on behalf of the Board, thanked Mr. Clark Jennings for serving as Board Counsel. The Board appreciates what Mr. Jennings has done with and for us and it has been a pleasure.

Mr. Jennings stated that it has really been a privilege and an honor to work with this Board. It is always difficult to leave when you have a Board comprised of individuals you like and respect. There are some Boards where that is not always the case but in this situation I really do admire and respect all of you and it has been a great ride and I am so grateful that I was able to work with you all. I have to say that the Division staff is probably one of the best that I have ever had the pleasure of working with in State government. Mr. Shropshire does not know how lucky he is. There are not enough superlatives to throw their way and that is another reason why it is so difficult to leave because they make my life easy.

The Chair questioned whether Mr. Jennings would like to tell the Board about Mr. Harris.

Mr. Jennings stated that Mr. Harris substituted for him once before, so the Board has some feel as to Mr. Harris' legal acumen, which is stellar. The Board will enjoy working with him as he is a good man. I have not had the pleasure of knowing Mr. Harris as long as I have known Mr. Shropshire and Mr. Miller, but he has impressed me since he has been with our Bureau. The Board is in very good hands and for what it is worth Mr. Harris is two (2) doors down from me so if he has any questions I know where he is going for answers.

The Chair welcomed Mr. Harris.

**C. *Material Facts Not Disputed (Section 120.57(2) Hearings) (Probable Cause Panel B)***

**(1) *Guerry Funeral Home of Macclenny, LLC d/b/a Guerry Funeral Home: Case No. 143487-13-FC, Division #ATN-19835 (F019322)***

Ms. Dembicer stated that on May 22, 2013, the Department conducted an investigation of the Respondent's preneed activities and as a result of that investigation the Department found that the Licensee failed to do the following: enter the establishment's phone number, street address and contract date on five (5) contracts; properly amend preneed contracts; make available records for the purpose of conducting a financial examination; to retain at-need contracts for at least two (2) years and to furnish a written agreement for funeral arrangements to a customer.

The Administrative Complaint was filed on April 14, 2014, charging Respondent with violations of Sections 497.152(1)(a), 497.152(1)(b), 497.152(4)(c), 497.152(11)(a), F.S. and Rules 69K-6.005, 69K-8.004 and 69K-21.006, F.A.C. The Respondent was served on April 16, 2014 and on April 24, 2014 the Department received an Election of Proceedings from Respondent. The Respondent elected to have an informal hearing before the Board and did not dispute any of the Department's factual allegations. The Department believes it is appropriate at this time for the Chair to entertain a motion adopting the Allegations of Fact as set forth in the Administrative Complaint.

**MOTION:** Mr. Mueller moved to adopt the Findings of Fact. Mr. Helm seconded the motion, which passed unanimously.

Ms. Dembicer stated that the Department contends that the Board's Findings of Fact support a finding of the violations of Chapter 497, F.S. and Rule 69K, F.A.C. as charged in the Administrative Complaint and that the Respondent is in violation of those statutes and codes as set forth in the Administrative Complaint. The Department feels it is appropriate at this time for the Board to entertain a motion adopting the Conclusions of Law as alleged in the Administrative Complaint.

**MOTION:** Mr. Helm moved to adopt the Conclusions of Law. Mr. Hall seconded the motion, which passed unanimously.

Ms. Dembicer stated that at this time it is appropriate for the Respondent to address the Board concerning legal arguments or mitigating evidence.

The Chair requested that the Respondent be sworn in.

Mr. Shropshire requested that the Respondent raise his right hand to be sworn in. "Do you solemnly swear that the testimony you are about to give in this proceeding will be the truth, the whole truth and nothing but the truth so help you God?"

Mr. William L Guerry responded, "So help me God." Mr. Guerry stated that there is no doubt that the examination of the funeral home was handled sloppily by his employees. When we received an email from the examiner that we had a problem and needed to respond to it, we did. In that email, the examiner asked that we respond in writing. My manger and I responded that we would make a move to correct what we knew had to be corrected and I have done so personally. Some of the files were not found. I am here to ensure the Board that this is a temporary problem that is going to be corrected and I would like the Board's understandings. Trailing paper and files sometimes can be a problem for anyone. We do not do anything on the computer. It is all handwritten and put in paper files that have to be tracked down.

The Chair questioned whether the correction has been made to include the name, phone number and address on the preneed contracts.

Mr. Guerry stated that he has an option to either trust the monies or write life insurance policies. I am a life insurance salesman. If someone walks into my office to prepay a funeral or to buy insurance that is where we are at. My office manager and I are appointed by National Guardian Life here in the state of Florida to write insurance policies. National Guardian Life furnishes us the paperwork to do so. My funeral home's name is not on the initial application and there is no place for a phone number. I am an agent and I sign off on receiving the premium. Then they give us a separate form that is for the statement of goods and funeral services. On the bottom right hand corner, I do sign it as the funeral home but then we write in the funeral home name. During the examination, some dates and phone numbers were left off. We do not have a place on these applications, which are approved by the Department of Insurance and they are given to us by NGLI. Mr. Guerry stated he did not know how to answer The Chair's question other than that.

Mr. Hall questioned whether the forms were approved by this Board.

Ms. Wiener, representing National Guardian Life Insurance Company (NGLI), stated that they have submitted preneed contracts for approval but she did not know for a fact whether the one Mr. Guerry is holding is one that has been approved by the Board.

Mr. Shropshire concurred.

Mr. Guerry stated that the form he is holding has to be the one approved as they are currently using them and could be in violation. These are the forms we received from the company.

The Chair stated that the Respondent should not confuse the Division of Insurance with the Division of Funeral, Cemetery and Consumer Services and what is required by Chapter 497, F.S.

Mr. Hall suggested that Mr. Guerry would make his contract available to Mr. Shropshire so that he could compare it to the contract on file with the Division.

The Chair questioned whether Mr. Guerry is agreeable to Mr. Hall's suggestion.

Mr. Guerry concurred. Mr. Guerry stated that he was under the assumption that if the contract was approved by the Division of Insurance then surely it was approved by this Division. Mr. Guerry stated that they have been writing these contracts for years.

Ms. Wiener stated, for clarification purposes, that the Department of Financial Services, Office of Insurance Regulation, which is what used to be known as the Department of Insurance, does approve the application forms, so there is a dual approval. NGLI is good about following up with their Florida Licensees to ensure that they have the right forms at hand. Ms. Wiener offered her assistance in clarifying that once Mr. Shropshire receives the forms.

Mr. Helm questioned whether the lost files were found.

Mr. Guerry stated that they were and that he had them with him. Mr. Guerry added that this was an error on his staff as well as him.

Mr. Helm questioned whether the Division has checked the item to verify them.

Mr. Guerry stated that they had not. Mr. Guerry added that this is what perplexed him in the written response. Mr. Guerry stated that they would probably have to be reexamined.

Mr. Helm questioned whether the establishment would be reexamined now that Mr. Guerry alleges that he has found the missing items.

Mr. Shropshire stated that normally when the exam is complete, the report is provided to the Licensee for comment and rebuttal. It is unclear whether the items in question were presented to the examiner and they rejected or if the Licensee subsequently found these things.

Mr. Guerry questioned the best way to get the information to the examiner. These are the files in the report that were supposedly not found.

Mr. Shropshire stated that Mr. Guerry has already had an opportunity to supply all that material as he received a copy of the report and was invited to comment.

Mr. Guerry questioned whether the Division wants proof that the documents have been found.

Mr. Shropshire stated that the Division would accept the documents. Examiner Chris McMurray will be in touch with Mr. Guerry to discuss the files found that are believed to correct some of the deficiencies noted, but it is being offered as exculpatory material as it is not appropriate at this point in time.

Mr. Knopke questioned the Board's options at this point.

Ms. Dembicer stated that based on the disciplinary guidelines, as to the penalty, the Department recommends an Administrative Fine of \$1500 to be paid within 30 days and one (1) year of probation to commence upon execution of the Final Order.

Mr. Helm questioned whether the Respondent has had any previous disciplinary action.

Ms. Dembicer stated that there was a disciplinary action in 2011 where the Respondent was fined \$2500 for not properly surrendering a body under the expressed order of the legally authorized person to its custody.

**MOTION:** Mr. Knopke moved for a penalty of a \$1500 administrative fine to be paid within 30 days of the execution of the Final Order and one (1) year probation. Ms. Oliver seconded the motion, which passed unanimously.

***(2) Guerry, William: Case No. 143486-13-FC, Division #ATN-19835 (F044044)***

Ms. Dembicer stated that on May 22, 2013, the Department conducted an investigation of the Respondent's preneed activities and as a result of that investigation the Department found that the Licensee failed to do the following: enter the establishment's phone number, street address and contract date on five (5) contracts; properly amend preneed contracts; make available records for the purpose of conducting a financial examination; to retain at-need contracts for at least two (2) years and to furnish a written agreement for funeral arrangements to a customer.

The Administrative Complaint was filed on April 14, 2014, charging Respondent with violations of Sections 497.152(1)(a), 497.152(1)(b), 497.152(4)(c), 497.152(11)(a), F.S. and Rules 69K-6.005, 69K-8.004 and 69K-21.006, F.A.C. The Respondent was served on April 16, 2014 and on April 24, 2014 the Department received an Election of Proceedings from Respondent. The Respondent elected to have an informal hearing before the Board and did not dispute any of the Department's factual allegations. The Department believes it is appropriate at this time for the Chair to entertain a motion adopting the Allegations of Fact as set forth in the Administrative Complaint.

**MOTION:** Mr. Helm moved to adopt the Findings of Fact. Mr. Hall seconded the motion, which passed unanimously.

Ms. Dembicer stated that the Department contends that the Board's Findings of Fact support a finding of the violations of Chapter 497, F.S. and Rule 69K, F.A.C. as charged in the Administrative Complaint and that the Respondent is in violation of those statutes and codes as set forth in the Administrative Complaint. The Department feels it is appropriate at this time for the Board to entertain a motion adopting the Conclusions of Law as alleged in the Administrative Complaint.

**MOTION:** Mr. Mueller moved to adopt the Conclusions of Law. Mr. Helm seconded the motion, which passed unanimously.

Ms. Dembicer stated that based on the disciplinary guidelines, as to the penalty, the Department recommends an Administrative Fine of \$1500 to be paid within 30 days and one (1) year of probation to commence upon execution of the Final Order.

**MOTION:** Mr. Helm moved for a penalty of a \$500 administrative fine to be paid within 30 days of the execution of the Final Order and six (6) month probation. Mr. Jones seconded the motion, which passed unanimously.

Ms. Dembicer stated that the Department is in agreement with the Board's decision.

**(3) Newsome, Daniel A: Case No. 147248-14-FC, Division #ATN-21440 (F047632)**

Mr. Ashley Peacock stated that on March 7, 2014, the Department filed an Administrative Complaint, alleging that Daniel A Newsome, a previously licensed monument establishment sales agent (hereinafter "Respondent"), entered into a contract and received a \$4850 payment from a consumer for installation of a monument. Respondent failed to install and provide the monument to the consumer and Respondent did not provide a refund that the consumer requested.

The Administrative Complaint was received by Respondent on March 11, 2014, by certified mail. Provided in the Administrative Complaint was a Notice of Rights informing the Respondent that failure to respond in writing, within twenty-one (21) days of its receipt of the notice in the Administrative Complaint, would constitute a waiver by the Respondent of the right to request a proceeding on the matters alleged in the Administrative Complaint and an Order of suspension or revocation by the Board would be entered.

Respondent did not file an Election of Proceeding form or other responsive pleading in this case within the statutory time frame to dispute the allegations contained in the Administrative Complaint. Additionally, Respondent did not file a response after the twenty-one (21) day time period. Therefore, the Department requests that the Chairman of the Board entertain a motion finding that the Respondent was served with an Administrative Complaint containing Notice of Rights, that the Respondent failed to respond within the twenty-one (21) day time period and Respondent has waived his right to request a proceeding involving disputed issues of material facts in this matter.

Mr. Helm recused himself from this matter.

**MOTION:** Mr. Jones moved to find that the Respondent waived its rights to request a proceeding in this matter. Mr. Hall seconded the motion, which passed unanimously.

Now that the Board has determined that the Respondent has waived its right to request a proceeding, the Department believes it is appropriate at this time for the Chair to entertain a motion adopting the Allegations of Fact as set forth in the Administrative Complaint.

**MOTION:** Mr. Knopke moved to adopt the Findings of Fact. Mr. Mueller seconded the motion, which passed unanimously.

Now the Department contends that the Board's Findings of Fact support a finding of the violations of the alleged sections of Chapter 497, F.S. as charged in the Administrative Complaint. The Department requests that the Board entertain a motion adopting the Conclusions of Law as alleged in the Administrative Complaint.

**MOTION:** Mr. Hall moved to adopt the Conclusions of Law. Mr. Mueller seconded the motion, which passed unanimously.

Mr. Peacock stated that the Department would like to suggest proposed penalties and sanctions in this matter and the Department is asking the Board to go outside the guidelines as there are aggravating factors present:

- 1) The severity of the violation is great. The consumer was defrauded of almost \$5000.
- 2) The degree of harm to the public is great. It has come to our attention that Mr. Newsome has been issued an arrest warrant by the 12<sup>th</sup> Judicial Circuit for Desoto County Florida for similar facts involving another consumer where an amount of \$2585 was taken for the purchase of a monument in November 2013. This consumer was also not provided the monument or a refund of the monies paid to Mr. Newsome. The warrant is seeking his arrest. They have determined that Mr. Newsome is now located in Magnolia IL. As of yesterday Mr. Newsome has not yet been arrested. The Department has concerns that there may be other consumers out there that may have been defrauded by similar activity.

Mr. Peacock added that the Respondent has abandoned the business as of June 9, 2014. The business was closed and the investigator spoke with businesses around who advised that the Respondent had not been there for at least two (2) months. The investigator spoke with Mr. Newsome's father who advised that as of June 2014, Mr. Newsome had left the state two (2) months previously. This shows Mr. Newsome's intent not to resume the business of being a monument establishment sales agent and his intent to keep the money. Mr. Peacock stated that the Department would ask that the sanction be revocation and to have restitution, in the amount of \$4850, to the victim in the matter.

**MOTION:** Mr. Jones moved for a penalty of revocation and restitution in the amount of \$4850, based on the aggravating factors enunciated by the Department. Mr. Hall seconded the motion, which passed unanimously.

Mr. Mueller requested that the Department advise the State Attorney's Office of the other case mentioned so that it ends up on Mr. Newsome's record once they try the other case.

Mr. Peacock stated that the Department has been in communication with the Division and the investigator has been in touch with the law enforcement officials and the State Attorney's Office and are providing the information regarding our victim so that once Mr. Newsome is arrested and arraigned, they can consider payment or restitution to our victim in their matter as well.

***(4) Stone, Janorise: Case No. 144432-13-FC, Division #ATN-20713 (F044261)***

This item was withdrawn from the Agenda.

The Chair disclosed his affiliation with SCI Funeral Services of Florida, Inc and stated that it would not affect his ability to render fair and impartial judgment on matters to come before the Board today.

Mr. Mueller proudly disclosed his 37 year affiliation with Evergreen Cemetery Association and stated it would not affect his ability to remain fair and impartial on any matters before the Board today.

**5. Application(s) for Preneed Sales Agent**

***A. Informational Item (Licenses Issued without Conditions) – Addendum A***

The application(s) presented are clean and have been approved by the Division. This item is informational only and does not require Board action.

***B. Recommended for Approval with Conditions (Criminal History)***

***(1) Suber, Joshua B (Appointing Entity: SCI Funeral Services of Florida, Inc.)***

On April 4, 2014, the Department received an online application from Mr. Joshua Suber for a preneed sales agent license. In the online application, Mr. Suber indicated he did not have a reportable criminal history. However, his fingerprints revealed a criminal history, as follows: Mr. Suber pled nolo contendere to Manslaughter DWI in September 1998, and his sentence included probation, community control, jailed for 11 months and 29 days, random urinalysis, court cost and fines, which occurred in Leon County, Florida. He has satisfied all conditions of his criminal cases sentencing.

Mr. Suber was asked to provide an explanation for the inaccuracy on his application concerning his criminal record. Mr. Suber's explanation was to the effect that he had revealed the information to the Department of Financial Services in 2013 when applying for an insurance agent license; which license was eventually granted. Applicant indicates that since he revealed to the Department in 2013, he did not have to report it again on his preneed sales agent application.

Mr. Kissoon, with Service Corporation International, who intends to appoint Mr. Suber to represent them as a preneed sales agent, advises that Mr. Suber did reveal his criminal record to SCI in his employment application to SCI.

Applicant has several strong references. His references include one from his employer, SCI, who would employ him if he gets his PSA license; SCI indicate they know of his past record but feel he is rehabilitated.



**8. Application(s) for Internship**

**A. Informational Item (Licenses Issued without Conditions) – Addendum D**

- (1) *Funeral Director and Embalmer*
  - (a) *Cahill, Eric S (F069750)*
  - (b) *Dell, Rose (F079334)*
  - (c) *Foster, Jason A (F079418)*
  - (d) *May, Rebecca A (F079240)*
  - (e) *Roy, Jane B (F079281)*

The application(s) presented are clean with no indication of a criminal or disciplinary history and have been approved by the Division pursuant to delegation by the Board. This item is informational only and does not require Board action.

**B. Request to Extend Concurrent Internship License**

- (1) *Recommended for Approval with Conditions*
  - (a) *Foster, Amos J*

Amos Foster was approved for a Concurrent Internship at the December 5, 2013 Board meeting. He was approved with a condition of serving 12 month probation. Mr. Foster submitted a statement that once he was approved for the internship, his employer informed him they wouldn't be able to accommodate a full time schedule. He has secured a position at Emmanuel Funeral Home. .

The Division is recommending approval with conditions of serving the entire year of internship, ending June 26, 2015 and that his license remain on probation for the duration of the internship.

**MOTION:** Mr. Knopke moved to approve the application subject to the conditions that the Applicant serves the entire year of internship, ending June 26, 2015 and that his license remain on probation for the duration of the internship. Mr. Jones seconded the motion, which passed unanimously.

**9. Application(s) for Embalmer Apprenticeship**

**A. Informational Item (Licenses Issued without Conditions) – Addendum E**

- (1) *Bex, Wende L (F079270)*
- (2) *Brooks, Marc W (F020871)*
- (3) *Evans, Christopher M (F079271)*
- (4) *Hallquist, George (F079391)*
- (5) *Starke, Nathan (F079331)*

The application(s) presented are clean with no indication of a criminal or disciplinary history and have been approved by the Division pursuant to delegation by the Board. This item is informational only and does not require Board action.

**10. Application(s) for Registration as a Training Agency**

**A. Recommended for Approval with Conditions (Request for Waiver)**

- (1) *Legacy Funeral Holdings of Florida LLC d/b/a Carey Hand Colonial Funeral Home (Orlando) (F079241)*
- (2) *Legacy Funeral Holdings of Florida LLC d/b/a Carey Hand Cox–Parker Funeral Home (Winter Park) (F079243)*

Legacy Funeral Holdings of Florida LLC submitted and was approved for a Change of Ownership Application for the following funeral establishments at the April 3, 2014 Board meeting pending receipt of the closing documentation. Receipt of closing documentation was received and the following licenses were issued on May 29, 2014.

The following locations are training agencies with interns in training. Applicant has also submitted herein requests (Petitions) that the training agency status of these locations be continued and has been duly published in the Florida Administrative Register as of June 11, 2014.

The Division is recommending approval subject to the condition(s) that the Petitions relating to continuation of training agency status be approved, so that the training agency status of said locations are continued under the new owners, provided there has been no dispute by the public within 30 days of the date waivers were published.

**MOTION:** Mr. Davis moved to approve the applications subject to the condition(s) that the Petitions relating to continuation of training agency status be approved, so that the training agency status of said locations are continued under the new owners, provided there has been no dispute by the public within 30 days of the date waivers were published. Mr. Jones seconded the motion, which passed unanimously.

**11. Consumer Protection Trust Fund Claims**

**A. Recommended for Approval without Conditions – Addendum F**

The Division recommends approval of the claim(s) for the amounts indicated on the Addendum.

**MOTION:** Mr. Mueller moved to approve the claim(s). Mr. Hall seconded the motion, which passed unanimously.

Mr. Helm questioned Reduction Code #4, "Claim reduced by amount of trust funds available."

Mr. Shropshire stated that these are trust funds with a preneed trustee.

Mr. Helm questioned whether this is a claim to the Consumer Protection trust fund.

Mr. Shropshire responded, "Yes." The Licensee is out of business and there is not enough money in the trust fund to perform the contract. The Department is going to have to refund the amount of the contract. The claimant claims for the full amount of the preneed contract but the Division advises there is some money in trust so the amount of the claim is reduced by the money in trust that they will receive.

Mr. Knopke added that there is some money in trust by the former Licensee that does not exist any longer. They did put some money into trust but not all of it so the consumer will get some money from the Consumer Protection Trust Fund.

**12. Application(s) for Direct Disposal Establishment**

**A. Recommended for Approval with Conditions**

**(1) Cremations America Central Florida LLC (Kissimmee)**

An application for a Direct Disposal Establishment was received on May 15, 2014. The application was complete when submitted. The fingerprint cards for all principals were returned without criminal history. The Funeral Director in Charge will be Josette Freyre (F047649).

The establishment is recommended for approval subject to the condition that the establishment passes an onsite inspection by a member of Division Staff.

**MOTION:** Mr. Jones moved to approve the application subject to the condition that the establishment passes an onsite inspection by a member of Division Staff. Mr. Hall seconded the motion, which passed unanimously.

**13. Application(s) for Funeral Establishment**

**A. Recommended for Approval with Conditions**

**(1) Coral Springs Funeral Home LLC (Coral Springs)**

An application for a Funeral Establishment was submitted on January 6, 2014. The application was incomplete when submitted. All deficient items were returned on February 4, 2014. The fingerprint cards for all principals were returned without criminal history. The Funeral Director in Charge will be William Savino (F036730). This funeral establishment is the qualifying entity for a preneed Licensee and an application for Transfer of a Preneed License has already been submitted. The preneed Licensee name and license number are Coral Springs Funeral Home LLC (F073820).

The Division is recommending approval subject to the condition(s) as follows:

- 1) That the closing on the transaction to acquire ownership shall occur within 60 days of the date of this Board meeting.
- 2) That the closing on the transaction shall be on terms and conditions as represented to the Board at this Board meeting.
- 3) That Applicant shall assure receipt by the Division within 75 days of the Board meeting, of a letter signed by Applicant or Applicant's attorney, addressed to the Division, certifying that closing has occurred and stating the date of closing, and stating that closing occurred on terms and conditions not inconsistent with those as represented to the Board at this Board meeting, and providing a copy of the fully Bill of Sale, Asset Purchase Agreement, or other document by which the acquisition transaction is consummated, executed by all parties, and any and all amendments, schedules, and other attachments thereto, also fully executed.
- 4) That the Director of the Division of Funeral, Cemetery, and Consumer Services may extend any deadline set out in these conditions, by up to 90 days, for good cause shown. The Director shall report any such extensions to the Board as an informational item.
- 5) That all representations by the Applicant in the application and related materials provided to the Board or FCCS Division by the Applicant, in support of the application(s), are deemed material to the Board's action herein.
- 6) That the establishment under the application herein passes an onsite inspection by a member of Division Staff.

Mr. Helm stated that the establishment that would be making arrangements for cremations was not listed on the application.

Ms. Jasmin Richardson concurred but not that there was an agreement for refrigeration and cremation with Everglades Crematorium included in the packet.

**MOTION:** Mr. Knopke moved to approve the application subject to the condition(s) recommended by the Division. Ms. Oliver seconded the motion, which passed unanimously.

***(2) Global Final Care Consultants Inc d/b/a Berryhill Funerals and Cremations (Ft Lauderdale)***

An application for a Funeral Establishment was received on April 21, 2014. The application was incomplete when submitted. All deficient items were returned on May 12, 2014. The fingerprint cards for all principals were returned without criminal history. The Funeral Director in Charge will be Ronne Berry (F032056).

The establishment is recommended for approval subject to the condition that the establishment passes an onsite inspection by a member of Division Staff.

**MOTION:** Mr. Mueller moved to approve the application subject to the condition that the establishment passes an onsite inspection by a member of Division Staff. Mr. Jones seconded the motion, which passed unanimously.

***(3) S&A Funeral Services LLC d/b/a Glades Funeral Chapel (Palm Beach)***

An application for a Funeral Establishment was submitted on May 16, 2014. The application was complete when submitted. The fingerprint cards for all principals were returned without criminal history. The Funeral Director in Charge will be Cedric Cosby (F045179). This funeral establishment is not the qualifying entity for any preneed Licensee. The establishment is currently owned by the parents, Ernest and June Campbell and is being sold to the children, Sean and Angela Campbell.

The Division is recommending approval subject to the condition(s) as follows:

- 1) That the closing on the transaction to acquire ownership shall occur within 60 days of the date of this Board meeting.
- 2) That the closing on the transaction shall be on terms and conditions as represented to the Board at this Board meeting.
- 3) That Applicant shall assure receipt by the Division within 75 days of the Board meeting, of a letter signed by Applicant or Applicant's attorney, addressed to the Division, certifying that closing has occurred and stating the date of closing, and stating that closing occurred on terms and conditions not inconsistent with those as represented to the Board at this Board meeting, and providing a copy of the fully Bill of Sale, Asset Purchase Agreement, or other

document by which the acquisition transaction is consummated, executed by all parties, and any and all amendments, schedules, and other attachments thereto, also fully executed.

- 4) That the Director of the Division of Funeral, Cemetery, and Consumer Services may extend any deadline set out in these conditions, by up to 90 days, for good cause shown. The Director shall report any such extensions to the Board as an informational item.
- 5) That all representations by the Applicant in the application and related materials provided to the Board or FCCS Division by the Applicant, in support of the application(s), are deemed material to the Board's action herein.
- 6) That the establishment under the application herein passes an onsite inspection by a member of Division Staff.

**MOTION:** Mr. Jones moved to approve the application subject to the condition(s) recommended by the Division. Mr. Helm seconded the motion, which passed unanimously.

***(4) SCI Funeral Services of Florida Inc d/b/a Dignity Memorial Funeral & Cremation Services (Pensacola)***

An application for a Funeral Establishment was received on May 19, 2014. The application was complete when submitted. The fingerprint cards for all principals were returned without criminal history. The Funeral Director in Charge will be Teresa Schnur (F067304).

The establishment is recommended for approval subject to the condition that the establishment passes an onsite inspection by a member of Division Staff.

**MOTION:** Mr. Knopke moved to approve the application subject to the condition that the establishment passes an onsite inspection by a member of Division Staff. Mr. Hall seconded the motion, which passed unanimously.

***(5) Toale Brothers Inc (Sarasota)***

An application for a Funeral Establishment was submitted on May 9, 2014. The application was incomplete when submitted. All deficient items were returned on June 3, 2014. The fingerprint cards for all principals were returned without criminal history. The Funeral Director in Charge will be Jeffery Toale (F045280). This funeral establishment is the qualifying entity for a preneed Licensee. The preneed Licensee name and license number are Ewing Funeral Home Inc (F019305). The enclosed letter indicates that Toale Brothers Inc will assume the responsibility for all existing preneed contracts from Ewing Funeral Home.

The Division is recommending approval subject to the condition(s) as follows:

- 1) That the closing on the transaction to acquire ownership shall occur within 60 days of the date of this Board meeting.
- 2) That the closing on the transaction shall be on terms and conditions as represented to the Board at this Board meeting.
- 3) That Applicant shall assure receipt by the Division within 75 days of the Board meeting, of a letter signed by Applicant or Applicant's attorney, addressed to the Division, certifying that closing has occurred and stating the date of closing, and stating that closing occurred on terms and conditions not inconsistent with those as represented to the Board at this Board meeting, and providing a copy of the fully Bill of Sale, Asset Purchase Agreement, or other document by which the acquisition transaction is consummated, executed by all parties, and any and all amendments, schedules, and other attachments thereto, also fully executed.
- 4) That the Director of the Division of Funeral, Cemetery, and Consumer Services may extend any deadline set out in these conditions, by up to 90 days, for good cause shown. The Director shall report any such extensions to the Board as an informational item.
- 5) That all representations by the Applicant in the application and related materials provided to the Board or FCCS Division by the Applicant, in support of the application(s), are deemed material to the Board's action herein.
- 6) That the establishment under the application herein passes an onsite inspection by a member of Division Staff.

**MOTION:** Mr. Helm moved to approve the application subject to the condition(s) recommended by the Division. Ms. Anderson seconded the motion, which passed unanimously.

**B. Recommended for Approval without Conditions**  
**(1) Annette Tasker Jackson d/b/a Jackson Funeral Home (Tampa)**

An application for a Funeral Establishment was submitted on May 12, 2014. The application was complete when submitted. The fingerprint cards for all principals were returned without criminal history. The Funeral Director in Charge will be Robert Brown (F046425). This funeral establishment is not the qualifying entity for any preneed Licensee.

The Division is recommending approval without conditions.

**MOTION:** Mr. Knopke moved to approve the application. Mr. Jones seconded the motion, which passed unanimously.

**14. Application(s) for Monument Establishment Sales Agent**  
**A. Informational Item (Licenses Issued without Conditions) – Addendum G**

The application(s) presented are clean and have been approved by the Division. This item is informational only and does not require Board action.

**15. Application(s) for Preneed License Renewals**  
**A. Recommended for Approval without Conditions – Addendum H**

The Division recommends approval as the application(s) meet the net worth requirement and there is no material adverse information.

Mr. Shropshire stated that Legacy Funeral Holdings of Florida (F079526) should be added to this list. The license was issued May 29, 2014. The Licensee had not 2013 sales as their license was issued in May 2014. The Licensee was inadvertently omitted from the list.

Mr. Hall disclosed his affiliation with Lew Hall and Associates and stated it would not affect his ability to remain fair and impartial on these application(s) or any other matters before the Board today.

**MOTION:** Mr. Hall moved to approve the application(s) including the addition. Mr. Jones seconded the motion, which passed unanimously.

**B. Recommended for Approval with Conditions**  
**(1) Boynton Memorial Chapel Ltd (F019300) (Boynton Beach)**

2011 RENEWAL (7-1-2011): Licensee reports a negative stated net worth of \$ (1,419,627), against a minimum required net worth of \$ 100,000. The Division recommended denial of renewal. The Licensee appeared at the Board meeting and after substantial discussion the Board renewed the licensed subject to the conditions that: 1) Licensee agree to 100% trusting or insurance funding of all preneed contracts sold and, 2) submission of a personal guarantee of preneed obligations by the Licensee's principals. The Division has in subsequent years recommended renewal on the same basic conditions as the Board imposed in the 2011 renewal.

2012 RENEWAL (7-1-2012): Licensee reports a negative stated net worth of \$ (1,325,425), against a required minimum net worth of \$100,000. Licensee was renewed subject to the conditions that: (1) Licensee provide a personal guarantee of preneed obligations executed by Licensee's principal, Stormet C. Norem, and a current personal financial statement.

2013 RENEWAL (7-1-2013): Licensee reports a negative stated net worth of \$(1,240,346.41) against a required minimum net worth of \$100,000. Licensee was renewed subject to the conditions that: (1) Approval of a personal guarantee of preneed obligations executed by Licensee's principal, Stormet C. Norem, and a current personal financial statement, and (2) Licensee continues to trust 100% or sell insurance-funded contracts.

CURRENT RENEWAL (7-1-2014): Licensee reports a NEGATIVE net worth of \$(1,187,806.43). Licensee reports total preneed

contracts outstanding of \$1,608,839. The required minimum net worth for renewal is \$100,000. Licensee reports a current ratio of .41 to 1. The net worth deficiency has decreased since last year.

The license shall be renewed subject to conditions:

- 1) That the Board extends the personal guarantee of the Licensee's preneed obligations executed/dated July 18, 2012.
- 2) Concerning all amounts received on or after 7-1-2014, by or on behalf of the Licensee herein, as payments on preneed contracts sold prior to 7-1-2014, the Licensee shall trust 100% of all such amounts in a trust under s. 497.458, Florida Statutes. Concerning preneed contracts sold by the Licensee on or after 7-1-2014, Licensee shall either: (1) trust 100% of all proceeds from such sales in a trust under s. 497.458, Florida Statutes; or (2) shall sell such preneed contracts funded by a life insurance policy on the preneed contract beneficiary's life with a death benefit amount at least equal to the total preneed contract price.

Mr. Knopke stated that the Mr. Norem provided a personal guarantee back in 2012 and questioned whether any additional information was provided that reflects any change in his assets from 2012 to 2014.

The Chair stated that there was a statement included in the packet dated February 17, 2014.

**MOTION:** Mr. Helm moved to approve the application subject to the condition(s) recommended by the Division. Ms. Anderson seconded the motion, which passed unanimously.

**(2) CEP Investment Inc (F019381) (Hudson)**

2011 RENEWAL (7-1-2011): Licensee had a negative stated net worth of \$ (262,961), against a minimum required net worth of \$100,000. The Division recommended denial of renewal. The Licensee appeared at the Board meeting, and after substantial discussion the Licensee was renewed subject to the conditions: (1) that Licensee provides a personal financial statement and guarantee of preneed obligations fully executed by the principal of the preneed Licensee; and (2) that Licensee trust 100% or sell insurance-funded contracts. The Division has in subsequent years recommended approval on the same conditions the Board imposed at the 2011 renewal.

2012 RENEWAL (7-1-2012): Licensee had a negative stated net worth of \$ (299,569), against a minimum required net worth of \$100,000. Licensee was renewed subject to the conditions: 1) that Licensee provide a personal financial statement and guarantee of preneed obligations, fully executed by the principal of the preneed Licensee; and 2) that Licensee trust 100% or sell insurance-funded contracts.

2013 RENEWAL (7-1-2013): Licensee had a negative stated net worth of \$(232,604) against a minimum required net worth of \$100,000. Licensee was renewed subject to the conditions: 1) that Licensee provides a personal financial statement and guarantee of preneed obligations fully executed by the principal of the preneed Licensee; and 2) that Licensee trust 100% or sell insurance-funded contracts.

CURRENT RENEWAL (7-1-2014): Licensee reports a NEGATIVE net worth of \$(161,299) Licensee reports total preneed contracts outstanding of \$422,521. The required minimum net worth for renewal is \$60,000. Licensee reports a current ratio (current assets divided by current liabilities) of .21 to 1. The net worth deficiency has decreased since last year.

The license shall be renewed subject to conditions:

- 1) That the Board extends the existing personal guarantee of the Licensee's preneed obligations executed and dated July 18, 2012 by the Licensee's principal, Clarence E. Prevatt, Jr.
- 2) That Licensee shall cause each of its principals to file with the Division, within 60 days of the date of this Board Meeting, a current statement of personal assets and liabilities, compiled and reviewed by a certified public accountant, prepared and presented in conformity with Generally Accepted Accounting Principles.
- 3) Concerning all amounts received on or after 7-1-2014, by or on behalf of the Licensee, as payments on preneed contracts sold before 7-1-2014, the Licensee shall continue to trust 100% of all such amounts in a trust under s. 497.458, Florida Statutes; concerning preneed contracts sold by Licensee on or after 7-1-2014, Licensee shall either trust 100% of all proceeds from such sales, or shall sell such contracts as funded by a life insurance policy on the preneed contract beneficiary's life with a death benefit amount at least equal to the total preneed contract price.

**MOTION:** Mr. Hall moved to approve the application subject to the condition(s) recommended by the Division. Mr. Davis seconded the motion, which passed unanimously.

**(3) *Eternal Rest Memories Park & Funeral Home Inc. (F038729) (Dunedin)***

2011 RENEWAL (7-1-2011): Licensee reported net worth of \$103,025, against a minimum required net worth of \$100,000. Licensee was renewed without conditions.

2012 RENEWAL (7-1-2012): Licensee reported net worth of \$191,378, against a minimum required net worth of \$100,000. Licensee was renewed without conditions.

2013 RENEWAL (7-1-2013): Licensee reports a stated net worth of \$192,475, against a minimum net worth of \$100,000. Licensee was renewed without conditions.

CURRENT RENEWAL (7-1-2014): Licensee reports a stated net worth of \$140,451, against a minimum net worth of \$100,000. Licensee has met the required net worth for licensure.

LATE FEES: However, Licensee was late in filing its application for renewal. The renewal application was due on April 1, 2014, but was not received until April 24, 2014, approximately 24 days late. Pursuant to applicable statutes and rules, a late fee of \$1,200 is due (\$50 per day times 24 days). However, under the Board's late fee capping practice, a late fee of \$200 is due. In addition, Licensee paid a renewal fee of \$305, whereas the correct renewal fee was \$405.

The license shall be renewed subject to payment of the additional \$100 renewal fee due and also subject to payment of a \$200 late fee.

**MOTION:** Mr. Mueller moved to approve the application subject to payment of the additional \$100 renewal fee due and also subject to payment of a \$200 late fee. Mr. Hall seconded the motion, which passed unanimously.

Mr. Helm questioned whether the capping fee should be \$500.

Ms. Wiener stated that if only a portion of the packet is late then the fee is different than if the entire packet were late. The Licensee was only missing a piece of the packet.

Mr. Shropshire stated that the Division's answer would be that as indicated on the coversheet, the Licensee was approximately twenty-four (24) days late. So if you look at the capping schedule, if you are between eight (8) and thirty (30) days late then the fine is \$200.

Mr. Helm questioned the "\$50 per day times 24 days."

Mr. Shropshire stated that this is the amount the late fee would be under the statute, which authorizes up to \$50 per day but the Board has capped the fines as indicated in the capping schedule on page 2 of the packet.

**(4) *Gainous-Wynn Funeral Home Inc (F019406) New Smyrna Beach***

2010 RENEWAL (7-1-2010): Licensee reported net worth of \$68,154, against a minimum required net worth of \$40,000. Licensee was renewed without conditions.

2011 RENEWAL (7-1-2011): Licensee reported net worth of \$76,299, against a minimum required net worth of \$40,000. Licensee was renewed without conditions.

2012 RENEWAL (7-1-2012): Licensee reported net worth of \$95,400, against a minimum required net worth of \$60,000. Licensee was renewed without conditions.

2013 RENEWAL (7-1-2013): Licensee reported net worth of \$113,957, against a minimum required net worth of \$60,000.

Licensee was renewed without conditions.

CURRENT RENEWAL (7-1-2014): Licensee reports a net worth of \$ 58,845. Licensee reports total preneed contracts outstanding of \$603,339. The required minimum net worth for renewal is \$60,000.

The license shall be renewed subject to the following condition(s):

- 1) Concerning all amounts received on or after 7-1-2014, by or on behalf of the Licensee herein, as payments on preneed contracts sold prior to 7-1-2014, the Licensee shall trust 100% of all such amounts in a trust under s. 497.458, Florida Statutes.
- 2) Concerning preneed contracts sold by the Licensee on or after 7-1-2014, Licensee shall either: (1) trust 100% of all proceeds from such sales in a trust under s. 497.458, Florida Statutes; or (2i) shall sell such preneed contracts funded by a life insurance policy on the preneed contract beneficiary's life with a death benefit amount at least equal to the total preneed contract price.

**MOTION:** Mr. Jones moved to approve the application subject to the condition(s) recommended by the Division. Ms. Oliver seconded the motion, which passed unanimously.

***(5) Guiding Light Cremations LLC (F059114) (West Park)***

Licensee was initially issued their preneed license in 2010. The above identified Licensee seeks renewal of their preneed license pursuant to s. 497.453, FS, effective 7-1-2014.

2011 RENEWAL (7-1-2011): Licensee reported net worth of \$277,383, against a minimum required net worth of \$10,000. Licensee was renewed without conditions.

2012 RENEWAL (7-1-2012): Licensee reported net worth of \$500,341, against a minimum required net worth of \$10,000. Licensee was renewed without conditions.

2013 RENEWAL (7-1-2013): Licensee reports a stated net worth of \$741,175, against a minimum net worth of \$10,000. Licensee was renewed subject to condition of payment of \$400 late filing fee.

CURRENT RENEWAL (7-1-2014): Licensee reports a stated net worth of \$862,164, against a minimum net worth of \$10,000. Licensee appears to meet all substantive requirements for renewal of licensure.

LATE FEES: However, Licensee was late in filing its financial statements (R2A and R2B). Licensee's fiscal year ended as of December 31, 2013, therefore, the financial statements were due by no later than April 1, 2014. The financial statements were not received until May 7, 2014, approximately 35 days late. Pursuant to applicable statutes and rules, a late fee of \$1,750 is due (\$50 per day times 35 days). However, under the Board's late fee capping practice, a late fee of \$500 is due.

The license shall be renewed subject to payment of a \$250 late fee.

Mr. Knopke questioned whether the Licensee was late in filing their 2013 renewal.

Mr. Shropshire concurred and stated that the Division's cover sheet was in error in that regard.

**MOTION:** Mr. Knopke moved to approve the application subject to payment of a \$500 late fee. Mr. Hall seconded the motion, which passed unanimously.

***(6) Hopewell Funeral Home, Inc (F019456) (Plant City)***

2011 RENEWAL (7-1-2011): Licensee reported net worth of \$292,532, against a minimum required net worth of \$100,000. Licensee was renewed without conditions.

2012 RENEWAL (7-1-2012): Licensee reported net worth of \$336,549 against a minimum required net worth of \$100,000.

Licensee was renewed without conditions.

2013 RENEWAL (7-1-2013): Licensee reported net worth of \$323,194, against a minimum required net worth of \$100,000. Licensee was renewed without conditions.

CURRENT RENEWAL (7-1-2014): Licensee reports a stated net worth of \$1,135. Licensee reports \$1,876,542 in preneed contracts outstanding as of CYE. The required minimum net worth for renewal is \$100,000. Licensee has advised it is willing to accept 100% trusting as a condition of renewal.

The license shall be renewed subject to the following condition(s):

- 1) Concerning all amounts received on or after 7-1-2014, by or on behalf of the Licensee herein, as payments on preneed contracts sold prior to 7-1-2014, the Licensee shall trust 100% of all such amounts in a trust under s. 497.458, Florida Statutes.
- 2) Concerning preneed contracts sold by the Licensee on or after 7-1-2014, Licensee shall either: (i) trust 100% of all proceeds from such sales in a trust under s. 497.458, Florida Statutes; or (ii) shall sell such preneed contracts funded by a life insurance policy on the preneed contract beneficiary's life with a death benefit amount at least equal to the total preneed contract price.

Mr. Knopke stated that the memo included in the packet dated June 18, 2014 indicated that "In view of the above, the recommendation is to approve renewal of the preneed license without conditions." Mr. Knopke questioned whether this contradicts the Division's recommendation of approval with the conditions listed.

Mr. Shropshire stated the Licensee is offering the net worth of the cemetery in satisfaction of their preneed license net worth which legally does not work because they are separate entities.

Ms. Lashonda Morris concurred.

Mr. Knopke questioned whether the Licensee is going to trust 100% for one (1) and for the other they are going to trust differently.

Ms. Morris stated that this is what the Licensee is currently doing.

Mr. Hall questioned whether the Board wants to request a personal guarantee to keep it consistent with the rulings for the first couple of Applicants.

**MOTION:** Mr. Knopke moved to approve the application subject to the condition(s) recommended by the Division and a personal guarantee. Mr. Hall seconded the motion, which passed unanimously.

*(7) McWhite's Funeral Home Inc (F019426) (Ft Lauderdale)*

2011 RENEWAL (7-1-2011): Licensee reported net worth of \$815,873, against a minimum required net worth of \$10,000. Licensee was renewed without conditions.

2012 RENEWAL (7-1-2012): Licensee reported net worth of \$821,899, against a minimum required net worth of \$40,000. Licensee was renewed without conditions.

2013 RENEWAL (7-1-2013): Licensee reports a stated net worth of \$781,351, against a minimum net worth of \$40,000. Licensee was renewed without conditions.

CURRENT RENEWAL (7-1-2014): Licensee reports a stated net worth of \$731,666, against a minimum net worth of \$60,000. Licensee appears to meet all substantive requirements for renewal of licensure.

LATE FEES: However, Licensee was late in filing its financial statements (R2A and R2B). The forms were due by no later than April 1, 2014. The forms were received as of April 28, 2014, thus 28 days late. Pursuant to applicable statutes and rules, a late fee of \$1,400 is due (\$50 per day times 28 days). However, under the Board's late fee capping practice, a late fee of \$200 is due. The Division is not aware of this Licensee previously filing any renewal papers late, and therefore recommends that the fine be reduced to \$100 as first time violation. The license shall be renewed subject to payment of a \$100 late fee.

Mr. Shropshire stated that McWhite's has since paid the late fee and they meet their net worth requirement so the Division recommends approval of the renewal without conditions.

**MOTION:** Mr. Jones moved to approve the application. Mr. Knopke seconded the motion, which passed unanimously.

**(8) *Southern Funeral and Cremation Services Inc (F038694) (Riverview)***

2010 RENEWAL (7-1-2010): Licensee reported net worth of \$176,365, against a minimum required net worth of \$40,000. Licensee was renewed without conditions.

2011 RENEWAL (7-1-2011): Licensee reported net worth of \$113,134, against a minimum required net worth of \$60,000. Licensee was renewed without conditions.

2012 RENEWAL (7-1-2012): Licensee reported net worth of \$96,655, against a minimum required net worth of \$80,000. Licensee was renewed without conditions.

2013 RENEWAL (7-1-2013): Licensee reported net worth of \$93,321, against a minimum required net worth of \$80,000. Licensee was renewed without conditions.

CURRENT RENEWAL: Licensee reports a stated net worth of \$97,598. Licensee reports \$ 838,038 in preneed contracts outstanding as of CYE. The required minimum net worth for renewal is \$100,000. Licensee has advised it is willing to accept 100% trusting as a condition of renewal.

The license shall be renewed subject to the following condition(s):

- 1) Concerning all amounts received on or after 7-1-2014, by or on behalf of the Licensee herein, as payments on preneed contracts sold prior to 7-1-2014, the Licensee shall trust 100% of all such amounts in a trust under s. 497.458, Florida Statutes.
- 2) Concerning preneed contracts sold by the Licensee on or after 7-1-2014, Licensee shall either: (1) trust 100% of all proceeds from such sales in a trust under s. 497.458, Florida Statutes; or (2) shall sell such preneed contracts funded by a life insurance policy on the preneed contract beneficiary's life with a death benefit amount at least equal to the total preneed contract price.

Mr. Knopke questioned whether the Licensee was advised that they could infuse some capital.

Mr. Shropshire responded, "Oh yes sir."

**MOTION:** Mr. Knopke moved to approve the application subject to the condition(s) recommended by the Division. Mr. Mueller seconded the motion, which passed unanimously.

**(9) *Waldon Professional Funeral & Cremation Services LLC (F073727) (Sanford)***

Licensee was initially issued their preneed license in 2013. Licensee reported selling eight (8) preneed contracts in 2013.

CURRENT RENEWAL (2014): Licensee reports a stated net worth of \$ (28,825). Licensee reports \$17,146 in preneed contracts outstanding as of CYE. The required minimum net worth for renewal is \$10,000.

CURRENT RATIO: Licensee reports a current ratio (current assets divided by current liabilities) of .78 TO 1.

The license shall be renewed subject to the following condition(s):

- 1) Concerning all amounts received on or after 7-1-2014, by or on behalf of the Licensee herein, as payments on preneed contracts sold prior to 7-1-2014, the Licensee shall trust 100% of all such amounts in a trust under s. 497.458, Florida Statutes.
- 2) Concerning preneed contracts sold by the Licensee on or after 7-1-2014, Licensee shall either: (1) trust 100% of all proceeds from such sales in a trust under s. 497.458, Florida Statutes; or (2) shall sell such preneed contracts funded by a life insurance policy on the preneed contract beneficiary's life with a death benefit amount at least equal to the total preneed contract price.

**MOTION:** Mr. Jones moved to approve the application subject to the condition(s) recommended by the Division. Ms. Anderson seconded the motion, which passed unanimously.

***(10) Watson Mortuary Services Inc (F019407) (Trenton)***

2011 RENEWAL (7-1-2011): Licensee reported net worth of \$46,583, against a minimum required net worth of \$60,000. Licensee was renewed subject to the conditions: (1) 100% trusting or insurance funding and (2) submission of personal guarantee by Licensee's principals.

2012 RENEWAL (7-1-2012): Licensee reported net worth of \$60,341, against a minimum required net worth of \$60,000. Licensee was renewed without conditions.

2013 RENEWAL (7-1-2013): Licensee reports a net worth of \$54,896, against a minimum required net worth of \$60,000. Licensee was renewed without conditions.

CURRENT RENEWAL (7-1-2014): Licensee reports a net worth of \$52,055. Licensee reports total preneed contracts outstanding of \$548,355. The required minimum net worth for renewal is \$60,000. Licensee reports a current ratio of .76 to 1.

The license shall be renewed subject to the following CONDITION(s):

- 1) Concerning all amounts received on or after 7-1-2014, by or on behalf of the Licensee herein, as payments on preneed contracts sold prior to 7-1-2014, the Licensee shall trust 100% of all such amounts in a trust under s. 497.458, Florida Statutes.
- 2) Concerning preneed contracts sold by the Licensee on or after 7-1-2014, Licensee shall either: (1) trust 100% of all proceeds from such sales in a trust under s. 497.458, Florida Statutes; or (2) shall sell such preneed contracts funded by a life insurance policy on the preneed contract beneficiary's life with a death benefit amount at least equal to the total preneed contract price.

**MOTION:** Mr. Helm moved to approve the application subject to the condition(s) recommended by the Division. Mr. Davis seconded the motion, which passed unanimously.

***(11) Whitfield Funeral Home Inc (F019375) (Zephyrhills)***

2011 RENEWAL (7-1-2011): Licensee reported net worth of \$ 308,190, against a minimum required net worth of \$100,000. Licensee was renewed without conditions.

2012 RENEWAL (7-1-2012): Licensee reported net worth of \$ 296,221, against a minimum required net worth of \$100,000. Licensee was renewed subject to the condition: Payment of late fee in the amount of \$1,000.

2013 RENEWAL (7-1-2013): Licensee reported net worth of \$289,788, against a minimum required net worth of \$100,000. Licensee was renewed subject to the condition: Payment of late fee in the amount of \$1,000.

CURRENT RENEWAL (7-1-2014): Licensee reports a net worth of \$257,385. Licensee reports total preneed contracts outstanding of \$ 2,235,759. The required minimum net worth for renewal is \$100,000. Licensee appears to meet the substantive requirements for renewal.

LATE FEES: However, Licensee was late in filing its financial statements (R2A and R2B). Licensee's fiscal year ended as of December 31, 2013, therefore, the financial statements were due by no later than April 1, 2014. The financial statements were not received until June 4, 2014, approximately 63 days late. Pursuant to applicable statutes and rules, a late fee of \$3,150 is due (\$50 per day times 63 days). However, under the Board's late fee capping practice, a late fee of \$500 is due. The Licensee was previously fined twice for late fees. The license shall be renewed subject to payment of a \$500 late fee.

**MOTION:** Mr. Hall moved to approve the application subject to payment of a \$500 late fee. Mr. Helm seconded the motion, which passed unanimously.

***(12) Zion Hill Mortuary Inc (F019404) (St Petersburg)***

2011 RENEWAL (7-1-2011): Licensee reports a stated net worth of \$85,186, against a minimum required net worth of \$100,000. Licensee was renewed subject to the condition that Licensee agreed to a stipulation agreement for renewal for 100% trusting or insurance funding.

2012 RENEWAL (7-1-2012): Licensee reports a stated net worth of \$72,612, against a required minimum net worth of \$100,000. Licensee was renewed subject to the condition: 1)100% trusting or insurance funding.

2013 RENEWAL (7-1-2013): Licensee reports a stated net worth of \$85,211, against a required minimum net worth of \$100,000. Licensee was renewed subject to the condition: 1) 100% trusting or insurance funding.

CURRENT RENEWAL (7-1-2014): Licensee reports a stated net worth of \$53,105, against a required minimum net worth of \$100,000. Licensee reports a current ratio of .94 to 1.

The license shall be renewed subject to the following condition(s):

- 1) Concerning all amounts received on or after 7-1-2014, by or on behalf of the Licensee herein, as payments on preneed contracts sold prior to 7-1-2014, the Licensee shall trust 100% of all such amounts in a trust under s. 497.458, Florida Statutes.
- 2) Concerning preneed contracts sold by the Licensee on or after 7-1-2014, Licensee shall either: (1) trust 100% of all proceeds from such sales in a trust under s. 497.458, Florida Statutes; or (2) shall sell such preneed contracts funded by a life insurance policy on the preneed contract beneficiary's life with a death benefit amount at least equal to the total preneed contract price.

**MOTION:** Mr. Hall moved to approve the application subject to the condition(s) recommended by the Division and a personal guarantee. Mr. Knopke seconded the motion, which passed unanimously.

***C. Recommended for Denial***

***(1) Cemetery Professionals LLC (F019496) (Atlantic Beach)***

2011 RENEWAL (7-1-2011): Licensee reported net worth of \$134,218, against a minimum required net worth of \$20,000. Licensee was renewed with conditions per Consent Order filed March 10, 2011 to trust at 100%.

2012 RENEWAL (7-1-2012): Licensee reported net worth of \$271,458, against a minimum required net worth of \$100,000. Licensee was renewed with conditions per Consent Order filed March 10, 2011 to trust at 100%.

2013 RENEWAL (7-1-2013): Licensee reported net worth of \$ 295,964, against a minimum required net worth of \$100,000. Licensee was renewed with conditions per Consent Order filed March 10, 2011 to trust at 100%.

2014 RENEWAL (7-1-2014). Licensee has not provided financial statements or other proof of net worth. On or about April 1, 2014 the Division received from Licensee an incomplete renewal application. On or about April 29, 2014, the Division sent Licensee a deficiency notice. As of the date this cover sheet was prepared (June 16, 2014), the Division has not received any response to said deficiency notice.

The Division recommends that Licensee be denied renewal of the preneed license, due to:

- 1) The Licensee has failed to submit a complete renewal application, and
- 2) Licensee has failed to demonstrate a net worth meeting the minimum statutory requirement for renewal.

The Chair questioned whether there was anyone present representing the Licensee.

Mr. Bill Williams, FSI, stated that the financial were submitted Tuesday of this week and were emailed in to the Division's office from the Applicant.

Mr. Shropshire stated that the financials were received on June 24<sup>th</sup> and the Division emailed the principals advising of the recommendation to deny and if they wanted to dispute this recommendation then they should appear in person here today with the financials and make a presentation to the Board.

**MOTION:** Mr. Mueller moved to deny the application based on the Division's recommendation. Mr. Hall seconded the motion, which passed unanimously.

***(2) Hodges Family Funeral Home Inc (F019423) (Dade City)***

2011 RENEWAL (7-1-2011): Licensee reported net worth of \$260,865 against a minimum required net worth of \$100,000. Licensee was renewed without conditions.

2012 RENEWAL (7-1-2012): Licensee reported net worth of \$152,820, against a minimum required net worth of \$100,000. Licensee was renewed without conditions.

2013 RENEWAL (7-1-2013): Licensee reported net worth of \$ 437,741 against a minimum required net worth of \$100,000. Licensee was renewed without conditions.

2014 RENEWAL (7-1-2014): 2014 RENEWAL (7-1-2014). Licensee has not provided financial statements or other proof of net worth.

On or about March 25, 2014 the FCCS Division received from Licensee an incomplete renewal application. No financial statements or other proof of net worth was provided.

On April 17, 2014, the FCCS Division advised Licensee by email to Licensee's servicing agent, of the following deficiencies:

- You did not provide a form R2A Balance Sheet financial statement. Please provide a form R2A Balance Sheet financial statement for your most recently completed fiscal year.
- You did not provide a form R2B Income Statement financial statement. Please provide a form R2B Income Statement for your most recently completed fiscal year.
- Form R4 does not include the stated net worth amount.

As of June 16, 2014, the date this cover sheet was prepared, the Division has not received any response to said deficiency notice.

The Division recommends that Licensee be denied renewal of the preneed license, due to:

- 1) The Licensee has failed to submit a complete renewal application, and
- 2) Licensee has failed to demonstrate a net worth meeting the minimum statutory requirement for renewal.

However, subsequently, the Division has received the financials and advised the Licensee if they wanted to dispute this recommendation then they should appear in person here today to make a presentation to the Board.

Ms. Wiener, representing the Applicant, stated that the financials were submitted late but the Division has the financials and their net worth is appropriate for renewal.

Mr. Shropshire requested that Ms. Morris confirm that the financials that the Licensee has provided meet the net worth requirements.

Ms. Morris stated that the Licensee does meet the net worth requirement as they have a reported net worth of \$510,381.

The Division recommends that the license be renewed subject to payment of a late fee in the amount of \$1000.

**MOTION:** Mr. Mueller moved to approve the application subject to payment of a late fee in the amount of \$1000. Mr. Knopke seconded the motion, which passed unanimously.

*D. Non-Renewing Preneed Licensees (Not Renewing as of June 30, 2014) – Addendum I*

This item is informational only and does not require Board action.

*E. Request(s) for Waiver of Late Fee*

*(1) Recommended for Approval with Conditions*

*(a) Holmes-Glover-Solomon Funeral Directors Inc (F041945) (Jacksonville)*

CURRENT RENEWAL (7-1-2014): Licensee reports a net worth of \$ 108,348, against a required minimum net worth of \$10,000. Licensee appears to meet all requirements for renewal of license, except for payment of certain late fees.

This matter is before the Board on the Licensee's request for waiver of late fees. Licensee's financial statements and renewal applications were due not later than April 1, 2014, but were in fact was received on May 21, 2014 (51 days late) Pursuant to section 497.453(5) (e) and Rule 69K-5.0026(2), late fees are assessable.

Licensee submits a written explanation of the cause of the late filing, attached. Licensee was issued its preneed license as of March 2013. In summary, Licensee sought assistance from an accountant to prepare its financial statements as this is the first annual renewal being filed on behalf of this Licensee. As a result, the financial statements were not submitted timely, and requests consideration to waive late penalties.

The total aggregate late fee imposed would usually be \$500. Because this is the first time Licensee has been late, the Division recommends cutting the fine in half to \$250.

The Chair questioned whether there was anyone present representing the Licensee. There was a negative response.

**MOTION:** Mr. Jones moved to approve the application subject to payment of a late fee of \$250. Mr. Mueller seconded the motion, which passed unanimously.

*(b) Sims Funeral Home Inc (F019376) (Bonifay)*

2011 RENEWAL (7-1-2011): Licensee reported net worth of \$ 183,920, against a minimum required net worth of \$40,000. Licensee was renewed without conditions.

2012 RENEWAL (7-1-2012): Licensee reported net worth of \$165,012, against a minimum required net worth of \$40,000. Licensee was renewed without conditions.

2013 RENEWAL (7-1-2013): Licensee reported net worth of \$192,028, against a minimum required net worth of \$40,000. Licensee was renewed without conditions.

CURRENT RENEWAL (7-1-2014): Licensee reports a net worth of \$ 161,770. Licensee reports total preneed contracts outstanding of \$390,748. The required minimum net worth for renewal is \$40,000.

Licensee appears to meet all requirements for renewal of license, except for payment of certain late fees.

Licensee was initially issued their preneed license in 1996.

This matter is before the Board on the Licensee's request for waiver of late fees. Licensee's financial statements and renewal

applications were due not later than April 1, 2014, but were in fact was received on May 15, 2014 (45 days late) Pursuant to section 497.453(5) (e) and Rule 69K-5.0026(2), late fees are assessable.

Licensee submits a written explanation of the cause of the late filing, attached. In summary, Licensee states that the preneed renewal application was not received from the Division until after April 1. However, Division records indicate that the renewal forms were mailed on 2-11-2014, to Licensee's preferred PO Box mailing address.

The total aggregate late fee imposed would usually be \$500. Because this is the first time Licensee has been late, the Division recommends cutting the fine in half to \$250.

Mr. Helm questioned whether there is any way to trace whether the Licensee did receive his packet contrary to what he stated.

Mr. Shropshire stated that the renewals are not sent out via certified mail but are mailed to the address that has been used in the past.

The Chair questioned whether there was anyone present representing the Licensee.

Ms. Michele Hood, Independent Funeral Directors of Florida, stated that the Licensee is one of their members.

Mr. Shropshire requested that Ms. Hood raise her right to be sworn in. "Do you solemnly swear that the testimony you are about to give in this proceeding will be the truth, the whole truth and nothing but the truth so help you God?"

Ms. Hood stated that Mr. Sims contacted regarding this issue several weeks ago before he submitted the letter to the Department. Mr. Sims indicated that he had requested the package once he had not received it sometime after it was expected to be received. Upon the subsequent request, it still took fourteen (14) days for that package to arrive from the date that it was mailed. Before he received the second package, Mr. Sims contacted the Department staff and requested that they email it to him, which they did and he responded with his package on the 7<sup>th</sup> of May. Even upon his second request, it still did not arrive until fourteen (14) days after it was requested and Mr. Sims had already submitted it through that third attempt of retrieving the package. Ms. Hood stated it appears they are having some difficulties in Bonifay with the mail system.

Mr. Knopke questioned whether the mailing address has changed.

Ms. Hood stated that it is a post office box and his address has not changed. Mr. Sims finally received the package on a third attempt and it never came through the mail in a timely fashion.

Mr. Knopke stated that if it is going to a post office box and the renewal fee has not been paid on the box, the mail does not get put in the box. That is why it would be good if the Licensee was present.

**MOTION:** Mr. Mueller moved to approve the application subject to payment of a late fee of \$250. Mr. Knopke seconded the motion, which passed unanimously.

Mr. Jones questioned whether the renewal packet consists of a lot of paper.

Ms. Morris stated that it includes an invoice, the financial statements and the renewal statement and it is specific for each Licensee.

Mr. Helm questioned the number of pages the packet consists of.

Ms. Morris stated that the packet contains about fifteen (15) pages.

Mr. Jones stated that he was just wondering whether this was something the Licensee could retrieve online easily.

**16. Application(s) for Preneed Main License**  
**A. Recommended for Approval without Conditions**

***(1) Crevasse's Simple Cremation, Inc. (Gainesville)***

The Department received the application on March 7, 2014 and a deficiency letter was sent to the Applicant as of March 14, 2014. Applicant responded to all deficiencies and the application was completed as of April 21, 2014. A completed background check of all officers revealed no criminal history. Applicant obtained its current qualifying direct disposal establishment license (#F076160) as of September 19, 2013 and will sell insurance –funded preneed through Homesteaders Life and utilize Homesteader’s approved pre-arranged funeral agreement.

The Applicant’s financial statements as of December 31, 2013 reflect the following:

Outstanding Preneed Contracts	= \$	0
Required Net Worth	= \$	10,000
Reported Net Worth	= \$	34,312

Mr. Hall questioned whether he was reading the Balance Sheet correctly as it appears to reflect a \$5.00 deposit into the Florida Credit Union Savings Account and the -\$14,558.73 Net Income.

Mr. Shropshire confirmed this was correct. The Balance Sheet shows a total equity of \$34,312.77.

Mr. Hall stated that the Applicant has lost \$14,558.73 in Net Income.

Mr. Shropshire stated that the only evidence of net worth would be the line titled “Total Equity” which is \$34,312.77.

Mr. Hall expressed his concern regarding the negative income.

**MOTION:** Mr. Hall moved to deny the application based on the negative Net Income. The motion failed due to a lack of a second.

Ms. Morris confirmed that the total equity on the Balance Sheet is \$34,312.77.

Mr. Knopke stated that although the Applicant has no money in the checking account and a negative net income, the fact that the equity is right, the Applicant meets the net worth requirement of the statute.

Mr. Shropshire stated that the Division understands and shares that concern but is unclear on what would be the grounds for denial.

**2<sup>nd</sup> MOTION:** Mr. Knopke moved to defer the application to the August meeting to allow the Applicant the opportunity to appear and respond to the Board’s concerns. Mr. Hall seconded the motion, which passed unanimously.

The Chair questioned the Applicant’s ability to write preneed in the meantime.

Mr. Shropshire stated that this is a new application.

***(2) E.W. Lawson & Son Funeral Home, LLC (Palatka)***

The Department received the application on April 25, 2014 and no deficiencies were noted on the application. A completed background check of all officers revealed no criminal history. Applicant obtained its current qualifying funeral establishment license (#F040462) as of September 1982, and if approved, will use the pre-approved Funeral Services, Inc. (FSI) First Florida Trust Agreement (Sabal Trust Company) and pre-arranged funeral agreement. It should be noted that the Applicant previously held a preneed license (License # F019296) from June 2004- 2006, but the license expired due to non-renewal, and no preneed contracts were sold under Preneed License# F019296 during this period.

The Applicant’s financial statements as of December 31, 2013 reflect the following:

Outstanding Preneed Contracts	= \$	0
Required Net Worth	= \$	10,000

Reported Net Worth = \$ 1,032,551

**MOTION:** Mr. Helm moved to approve the application. Mr. Mueller seconded the motion, which passed unanimously.

**(3) Reed & Hall Mortuary Corp (Quincy)**

The Department received the application on May 28, 2014 and no deficiencies were noted on the application. A background check of all officers was completed with criminal history returned for officer, Teresa W. Womble. Ms. Womble also provided a completed Criminal History Form and letter of explanation disclosing the offense which occurred back in 1994, nearly 20 years ago. It should also be duly noted that Ms. Womble does not hold any majority controlling interest in the Applicant and Ms. Addie H. Brooks-Reed is 100% owner of the Applicant. The qualifying funeral establishment license (F073091) was obtained as of February 2013. If approved, Applicant will use the pre-approved Funeral Services, Inc. (FSI) First Florida Trust Agreement (Sabal Trust Company) and pre-arranged funeral agreement.

The Applicant's financial statements as of April 30, 2014 reflect the following:

Acquired Preneed Contracts	= \$	0
Required Net Worth	= \$	10,000
Reported Net Worth	= \$	85,937

**MOTION:** Mr. Mueller moved to approve the application. Mr. Knopke seconded the motion, which passed unanimously.

**(4) Southern Keys Cemetery, Inc. (Key West)**

The Department received the application on April 2, 2014 and no deficiencies were noted on the application. A completed background check of all officers revealed no criminal history. It should be noted that disclosure was made by Stanley J. Sabuk (principal of Applicant herein), of a judgment that was filed against him individually in connection with the entity, Skyline Builders Group, Inc, a general contractor, on March 25, 2009. All conditions concerning this judgment against Mr. Sabuk were satisfied on August 8, 2011, by the Ninth Judicial Circuit Court of Orange County. Mr. Sabuk has provided a notarized statement and court documentation disclosing the judgment as further supporting documentation. An application to acquire control of the above named cemetery was previously approved by the Board on January 5, 2012, and the y license (# F071169) was issued as of August 2012. If this preneed license application is approved, this cemetery license (#F071169) will serve as the current qualifying establishment license for the preneed Licensee. Applicant will use the pre-approved Funeral Services, Inc. (FSI) First Florida Trust Agreement (Sabal Trust Company) and pre-arranged funeral agreement.

The Applicant's financial statements as of December 31, 2013 reflect the following:

Outstanding Preneed Contracts	= \$	0
Required Net Worth	= \$	10,000
Reported Net Worth	= \$	88,445

**MOTION:** Mr. Mueller moved to approve the application. Mr. Davis seconded the motion, which passed unanimously.

**B. Recommended for Approval with Conditions**  
**(1) Forbes Funeral Home, Inc. (Macclenny)**

The Department received the application on March 12, 2014 and deficiencies were noted on the application. All deficiencies were resolved as of April 25, 2014. A completed background check of all officers revealed no criminal history. It should be noted that disclosure was made by Henry M. Forbes (principal of Applicant herein), of a Chapter 7 personal bankruptcy that was filed in 2013. The bankruptcy was discharged as of June 14, 2013 by the Middle District Court of Florida, Jacksonville Division. Mr. Forbes has provided a notarized statement and court documentation disclosing the bankruptcy, as well as letters of recommendation as further supporting documentation. Applicant obtained its qualifying funeral establishment license in July 2010, and if approved, Applicant will use the pre-approved Funeral Services, Inc. (FSI) First Florida Trust Agreement (Sabal Trust Company) and pre-arranged funeral agreement.

The Applicant's financial statements as of December 31, 2013 reflect the following:

Outstanding Preneed Contracts	= \$	0
Required Net Worth	= \$	10,000
Reported Net Worth	= \$	13,485

The Division recommends approval subject to the condition that the Board approves the application based on the agreed upon Stipulation for Licensure agreement entered into by the Division and the Applicant, which calls for 2 year probation and all business to be either 100% trusted or insurance funded.

**MOTION:** Mr. Knopke moved to approve the application subject to the condition(s) of the agreed upon Stipulation for Licensure agreement entered into by the Division and the Applicant, which calls for 2 year probation and all business to be either 100% trusted or insurance funded. Ms. Anderson seconded the motion, which passed unanimously.

**17. Application(s) for Preneed Branch License**  
**A. Recommended for Approval without Conditions – Addendum J**

The Division recommends approval of the application(s).

**MOTION:** Mr. Helm moved to approve the application(s). Mr. Mueller seconded the motion, which passed unanimously.

**B. Recommended for Approval with Conditions**  
**(1) Restlawn Cemeteries and Cremation Gardens, LLC d/b/a Rolling Oaks Cemetery and Cremation Gardens, LLC (Port St Lucie)**

Mr. Shropshire stated that the Division recommends approval of the branch application for Restlawn Cemeteries and Cremation Gardens, LLC d/b/a Rolling Oaks Cemetery and Cremation Gardens, LLC subject to Mr. Riposta coming forward to explain why this application was not submitted timely.

Ms. Wiener stated that the Applicant requested to be on the Board agenda as a late addition. Mr. Riposta was determining whether it was going to continue to own and operate two (2) preneed main licenses or whether to consolidate his business into a preneed main license and a preneed branch license. Mr. Riposta has made that determination and the Applicant requests approval of the branch license.

**MOTION:** Mr. Jones moved to approve the application. Mr. Hall seconded the motion, which passed unanimously.

Mr. Knopke questioned whether the Applicant is required to file any paperwork.

Ms. Wiener stated that the Applicant filed the relinquishment of the preneed main license and also filed the preneed branch license application.

Mr. Shropshire requested that Mr. Riposta provide the Board with a 90-second update on Restlawn. Restlawn was one of the Board’s “problem children” for years and it appears to continue to be turned around by Mr. Riposta.

Mr. Mark Riposta stated that he has been in this business for 37 years and has never seen anything to the level of the challenge of Restlawn Cemetery. The rewards of fixing it are also great. We have had people come in on a daily basis, in this community in North Florida, without any reason other than to say thank you. That has blessed my heart tremendously. It is a very time consuming endeavor, very hands-on intensive endeavor and a very expensive endeavor. At the end of the day by being able to take Greenwood Cemetery, which is the oldest public African American cemetery in Florida, and restore that and create a project called the Greenwood Historic Restoration Cemetery Project and have the City of Jacksonville Councilors to come in, stamp it and offer assistance makes this a wonderful blessing. One of the Councilors advised that Mr. Riposta’s name came up in a meeting regarding how he is changing Ribault Scenic Drive and Moncrief. It has been good but will continue to be a challenge but I am hopeful that we will continue on that path and watch Restlawn South develop and be nice as well.

The Chair thanked Mr. Riposta and acknowledged Mr. Shropshire’s report on Restlawn that was presented to the Board.

## Executive Director's Report

### C. Email from Lisa Coney (Delegation; Teleconference Agendas) (Informational)

#### Shropshire, Doug

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**From:** Coney, Lisa [Lisa.Coney@Sci-us.com]  
**Sent:** Tuesday, June 10, 2014 4:23 PM  
**To:** Shropshire, Doug  
**Subject:** Board Consideration-Handling Applications

Doug, I wrote this in follow up to the Board meeting and our conversation. I intend to provide to you formally on letterhead, but wanted to run it by your first. Please let me know if this works for you or if there is any specificity you would prefer I add or remove before presentation to the Board.  
Thanks Doug. Appreciate your time.

-Lisa Coney

♦♦

In follow up to the Board meeting June 5, 2014, it is my hope to request the Board consider two measures in dealing with applications that require further consideration because of an adverse or criminal history.

First I would like to propose that the Board consider extension of the delegation agreement with the Division. It has worked very well and has been assistance to both the Division and the licensees/applicants being processed. I would like to see the Division have the opportunity to continue on this success. I respectfully propose the Board consider giving the Division delegation authority for processing applications that have criminal traffic violations and all or certain misdemeanors. Historically the Board would not deny applicants licensure under these circumstances. Of course, the misdemeanor applications would still go in front of the Board as all applicant data does. It could be presented as for temporary license/confirm approval or otherwise separated from the information only/approved so that applicant and Board are clear that additional consideration may be forthcoming. I would ask the Division to set criteria for applications acceptable to them to process in this manner. Certain misdemeanors, including but not limited to second-degree, those related to traffic infractions, non-repetitive, etc., as the Division and Board deem appropriate.

Second, in addition to delegation, the second proposal would simply be the ability to have additional applications be heard on the teleconference calls. An applicant could easily be available for the call to answer any questions. And again, these would not include felonies or any extensive history that would bring character into question or otherwise elevate it from the Division's delegation.

Please know, this does not in any way change our screening process and the background check already in place, nor is it in any way intended to diminish the quality of candidate in our profession. We have and want to continue to ensure the highest standards. We have few prospects come before the Board for consideration. However, when someone comes along that would be a good fit for us and our customers, we want to be able to make an offer for employment knowing the licensure process will not be many weeks or even months delayed. The Division has done an excellent job in speeding up the licensing process where delegation has been extended and it has only had a positive impact. This would extend that delegation minimally to address the few minor violations that the Board historically already approves and/or would allow for monthly consideration rather than reserving consideration exclusively for in-person meetings.

These requests are in keeping with the rule created last year under 69K.1-008, which outlined the type of written presentation and documentation required when making an application which includes a criminal history form. This does not change what the Division will require when preparing documentation for consideration, it just allows extension of the delegation agreement as recognition of the standard set for timely handling and acknowledgment of the cautious and vigilant handling of applications that come before the Division and through you to the Board.

I appreciate your consideration and I am happy to discuss if you have any questions or require anything further.

---

Respectfully yours,

Lisa Coney

SCI Funeral Services of Florida, Inc.  
Compliance/Quality Assurance  
994 E. Altamonte Drive  
Altamonte Springs, FL 32701  
407-740-7000 x 221  
321-246-2261 M  
855-520-9906 Efax  
407-740-6766 Fax

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*NOTE – NEW OFFICE ADDRESS AND PHONE*

Ms. Lisa Coney stated that the compelling reason for this request is so that the Board is not together at 1:30p or 2:00p. The Division has done an exceptional job with the delegation that they have been given so far and this would simply extend that delegation so that the Board has more Licensee information presented to them as approved at the Division level. It could come as informational or confirmation of the Division's decision, but we regularly see that the Division personnel are as or more conservative than the Board is in handling these Applicants so there is absolutely no risk to the Industry by allowing these professionals to continue to do the good work they do.

The Chair thanked Ms. Coney for her recommendation and stated that the Board would certainly take it into consideration. The Chair questioned the Board's next step in being able to implement the request.

Mr. Shropshire stated that if the Board wanted to delegate approval authority on other categories of licenses that certainly would require rulemaking. Mr. Shropshire questioned whether the Board is interested in delegating any other categories.

The Chair responded, "Not necessarily other licensing categories but different degrees of criminal history."

Mr. Shropshire stated that in fairness to Ms. Coney, Mr. Shropshire had not understood that that was what Ms. Coney was requesting. The Division really does not want to be delegated any approval authority regarding criminal matters as that is the Board's responsibility and we want to continue to bring those to the Board. As I understood it originally, the frustration was when there is a misdemeanor and it is relatively minor, but it has to go before the Board because it is criminal, having to wait for an in person meeting.

Ms. Coney stated that that is certainly a layer of it. When there is an old minor traffic related, non-repetitive kind of misdemeanor that historically the Board would have approved those kind of licenses or approved with a year of probation, I do not see a problem with the Division approving with considerations and having it appear to the Board in that fashion., obviously not serious offenses and felony offenses. No one wants to take away the Board's right to intervene and protect the Industry as that is what we are all here to do. Part of it is an extension of the delegation so that the Division does have more opportunity to advance those kinds of licenses in responsible and timely ways. The other part is quite simply whatever gentleman's agreement we had not to hear these kinds of things on teleconferences. The job economy may be getting a little bit better but having someone apply for a job whose licensure is almost certain at the end of this review process and not be able to work for two (2) or three (3) months because it came in on this date and they did not qualify for this meeting and the next meeting is a teleconference and we do not hear these things on a teleconference so now it's the third meeting before

someone is heard. Ms. Coney stated that she would never propose that they are trying to get anyone in the Industry that should not be here, but there was a wonderful young gentleman today who wants to be in this business and he is a licensed insurance agent and has been for a couple of years with a fifteen (15) year old unfortunate incident, but one he has certainly paid his dues for, lives in this market so certainly could have come to the Division at the time of the teleconference but we were not able to hear his application on the teleconference. The Applicant was approved today based on the Division's recommendation of approval with one (1) year probation and he did not even have to address the Board. Ms. Coney questioned what would the difference have been having heard his application earlier this month and allowing him to start the living in this Industry that he and we desire.

Mr. Jones questioned whether the offense was a misdemeanor.

Ms. Coney stated that the offense was not a misdemeanor and it should have come before the Board. If it is within the deemer there is always the opportunity for the Board to request to see the Applicant in person and defer the item to the next meeting.

Mr. Helm stated that he thought the Board addresses minor cases on teleconferences.

Ms. Coney stated that the Board has not in some time.

Mr. Shropshire stated that there may have been a few exceptions but the Division's understanding has been that the Board did not want to hear them because when are trying to understand who is talking on the phone it tends to get confusing.

Ms. Coney stated that a rule was passed just last year, 69K-1.008, F.A.C. that defined for the Division staff exactly the kind of materials they wanted and what timeframe before they would even consider these applications. This does not do anything different. They are still able to get all of the supporting materials for these kinds of Applicants. All it is doing is maybe untying your hands a little or speeding up the process. If you have discomfort on this, please do not take a vote on it today. Go home, sleep on it and think of ways to make it work because we are all trying to do the best job we can and be expedient in doing it. The delegation process so far has worked extremely well. If there is a way to build off of that I would like to see us try. If that is a rulemaking process for other types of licenses, we are overdue on rulemaking or rule striking so I would be happy to participate in that if it pleases the Board.

Mr. Hall questioned, in regards to misdemeanors, whether the Division would be comfortable issuing a temporary license subject to Board approval at the next meeting.

Mr. Shropshire stated that he would prefer and suggest that the Board reconsiders its policy, if the criminal record is just a misdemeanor and the Division is recommending approval or approval subject to conditions, and allow those applications to be heard on a teleconference.

Ms. Oliver stated that her only concern with misdemeanor is crimes of dishonesty like thefts. Ms. Oliver added that there are a slew of such crimes and requested that those not be included on the teleconference.

Mr. Shropshire stated that is fine with the Division but we would be limiting it primarily to DWIs and traffic infractions. Mr. Shropshire added that if the Division is recommending denial it would have to be addressed at an in person meeting even if it is a misdemeanor.

Mr. Knopke stated that it is already getting confusing about what will be addressed on a conference call. I understand where Ms. Coney is coming from but are we trying to push something through the Division.

The Chair stated that they are trying to get Applicants who would normally otherwise 100% of the time at an in person meeting be approved invariably and get them to work at least thirty (30) days earlier.

Ms. Coney stated that she would not want the burden to be placed on the Staff to try and determine if something represents a character issue. I would rather see it all come to the Board but just in an expedited fashion. If the Division staff gets everything that was approved by that rule and their recommendation is going to be approved with these conditions, then there is no reason why that could not come before the Board whether it is teleconference or in person because your recommendation is already crafted.

**MOTION:** Mr. Jones moved to approve the request as stated by Mr. Shropshire. Mr. Hall seconded the motion, which passed with one (1) dissenting vote.

Ms. Coney questioned whether the Board wants to consider other extensions of delegation or rulemaking to talk about other kinds of licenses that may be able to benefit from these delegation agreements.

The Chair stated that would be addressed in rulemaking.

*D. Letter to Mr. Harvey re Clifford Hill Exempt Cemetery (Informational)*

Mr. Shropshire stated that Mr. Harvey has questions but has been advised that the Board has little or no jurisdiction over exempt cemeteries to the extent that if anybody has it is the Division. The Division has tried to answer Mr. Harvey's question but since he lives here in Tallahassee, he indicated that he would attend the meeting.

The Chair requested that Mr. Harvey be sworn in.

Mr. Shropshire requested that Mr. Harvey raise his right hand to be sworn in. "Do you solemnly swear that the testimony you are about to give in this proceeding will be the truth, the whole truth and nothing but the truth so help you God?"

Mr. Lee Harvey answered, "I do."

The Chair questioned whether Mr. Harvey would like to address the Board or just answer any questions that the Board may have.

Mr. Harvey stated that he basically wanted to get clarification on the operation of exempt cemeteries under the statute we are housed in. There is so much conflicting information that our members seem to get and when we come together we cannot decide on the correct way to operate. We are a privately owned cemetery and we have about ten (10) acres which means we must have exempt status. That means a lot of things to the members of Clifford Hill Cemetery so we wanted to come to the Board for direction on how we should operate under the statute. The Department did send us a letter addressing a few questions I had, but there are probably a lot more. Due to the vast knowledge of the Board, I thought it would be great for us to communicate with the Board members but I was told that I should communicate through the Department.

The Chair stated that the Board appreciates Mr. Harvey going through the Division and asking these questions before blindly moving ahead with some things that could be in violation. The Chair thanked Mr. Harvey and advised that the Department would continue to try to be help and provide guidance. The Chair questioned whether Mr. Harvey had any specific questions that were not addressed in the Division's response letter that the Board may be able to clarify.

Mr. Harvey stated that he had nothing further at this time.



REPRESENTING  
CHIEF FINANCIAL OFFICER  
JEFF ATWATER  
STATE OF FLORIDA

June 13, 2014

Lee Harvey  
Clifford Hill Cemetery  
P.O. Box 12793  
Tallahassee FL 32317-2793

RE: **Clifford Hill Cemetery (F039661)**  
Exempt Cemetery Status

Dear Mr. Harvey:

This is in reference to your phone call on 6-13-2014, to our LaTonya Bryant, asking her to forward your email dated 6-13-14 (copy attached) to the Board of Funeral, Cemetery, and Consumer Services, to answer questions regarding the exempt cemetery that you are associated with (Clifford Hill Cemetery).

The Board does not regulate exempt cemeteries, and has no jurisdiction over them. To the extent that Chapter 497 provides any jurisdiction over exempt cemeteries, Chapter 497 vests such jurisdiction in the Department of Financial Services, Division of Funeral, Cemetery, and Consumer Services. Therefore we will answer below your questions posed in the 6-13-13 email referenced above.

**A. Can we pre-sell graves to nonmembers?**

ANSWER: No, you cannot pre-sell graves to nonmembers.

**B. What should we do if a licensed funeral director does any act of securing a grave space without our permission?**

ANSWER: You should fill out a complaint form against the funeral director, writing down in the complaint all the particulars of the incident, and send the complaint to us. We will investigate the complaint and determine if any violation of Chapter 497 occurred. We attach a blank complaint form.

**C. As we did not keep records of burials when we were initially started, how should we reply to a family member trying to locate the grave of their love one?**

ANSWER: Under the 2013 Florida Statutes, exempt cemeteries are required by s. 497.260(2) FS (2013), to comply with s. 497.276(1) FS (2013), relating to burial records.

**497.276 Records.—**

(1) A record shall be kept of every burial in the cemetery of a cemetery company, showing the date of burial and the name of the person buried, together with lot, plot, and space in which the burial was made. All financial records of the cemetery company shall be available at its principal place of business in this state and shall be readily available at all reasonable times for examination by the department.

The statutory requirement that exempt cemeteries maintain burial records first appears in the Florida Statutes in 1996. The requirement was enacted as part of Ch. 96-400, Laws of Florida.

If the failure to keep burial records occurred after 1996, the cemetery is in violation of Chapter 497, and the cemetery should do whatever is necessary to correct the violation.

If the failure to keep burial records occurred prior to 1996, then the failure did not violate Chapter 497. However, we are not in a position to tell you how you should reply to family members trying to locate the grave of their loved one. We suggest you consult a private attorney who represents the cemetery, and work with that attorney to prepare a standard response to families for the situation you inquire about. Your attorney may advise you, for example, assuming it is true (and without meaning to give offense to you or anyone), to point out that in the early years the cemetery served as a burying place for families of very modest means, who could not afford to pay the cemetery much for the burial space, so that the cemetery in turn could not afford to hire a paid staffer qualified to systematically create and maintain burial records.

**D. What act(s) can we be fined for?**

ANSWER: Section 497.260(2) provides that an exempt cemetery must comply with the following provisions of Chapter 497:

- 497.276(1) as to burial records
- 497.152(1)(d)
- 497.164
- 497.2765
- 497.278
- 497.280
- 497.284

In addition, the cemetery must comply with s. 497.260(6).

We attach hereto a copy of Chapter 497, so that you may look up each of the above listed provisions and read it and inform yourselves of its requirements. The cemetery could be fined for violating any of the cited provisions.

Finally, if the cemetery is over 5 acres in size, then pursuant to s. 497.260(3)(f), Florida Statutes, the cemetery may be fined for fraud, deceit, theft, gross negligence, incompetence, unjustified failure to honor its contracts, or failure to adequately maintain its premises.

Sincerely,



LaShonda Morris

**Attachments:**

1. Your email of 6-13-14
2. Blank complaint form
3. Copy of Chapter 497

**From:** LEE HARVEY [mailto:lhharvey2110c@embarqmail.com]  
**Sent:** Friday, June 13, 2014 11:27 AM  
**To:** Bryant, LaTonya  
**Subject:** Exempt Cemetery/ please to the entire board fr review and/or input

Dear Board:

As the chairman (Leanders Harvey) of Clifford Hill Cemetery and I have held this position for ten (10) plus years. During this time I have been trying to get a clear understanding for our group how section 497.287, applies to us. I have sent various members to get information, some members have sought understanding on their on, and I have personally visited the Department to get an understanding how this section applies to our group.

I come now to ask would you please provide to us in writing how this statute applies to us, also what enforcement authority you have over our operation.

We meet now quaterly and we will meet 06/14/2014, any information you can provide to me for this meeting will be greatly appreciated. However, some issues that are very inportant for us to get an immeadiate reply are:

- A. Can we pre-sell graves to nonmembers?
- B. What should we do if a license funeral director does any act of securing a grave space without our pemission?
- C. As we did not keep records of burials when we were initially started, how should we reply to a family member trying to locate the grave of their love one?
- D. What act(s) can we be fined for?

Your immediate we be greatly appreciated and any guidance you can provide to us to properly run our cemetery.

Clifford Hill license # F039661 and we just applied for reinstatement 06/12/2014

Thank you for your assistance.

**E. Report: Payment of Disciplinary Fines and Costs (Informational)**

Monthly Report of Fine and Costs Assessed and Paid  
 Division of Funeral, Cemetery and Consumer Services  
 June 26, 2014 Board Meeting  
 Date of Report: June 17, 2014

Licensee	Board Meeting	Case No.	Total Fine & Cost Due	Date Due	Paid in Full?	Comments
Cemetery Professionals, LLC dba Beaches Memorial Gardens and Cemetery Professionals, LLC dba Beaches Memorial Park	Jun-12	110156-10-FC & 110157-10-FC	\$5,250 \$5,000 38,859.57	9/6/2012 12/7/2012 35 mo pymts	YES YES See Note A	Licensee provided the Division copies of checks payable to Riverview for April & May restitution payments. Based on that informaton, the Division previously reported that the licensee was current on monthly payments. Riverview reported to the Division it has not received those payments as of June 11, 2014. Licensee in response asserts payments were mailed. Division will review this matter closely, and if it is determined that the Licensee has not resolved this matter, a file will be sent to DFS Legal requesting appropriate action be taken.
Affiliated Funeral Service	Feb-14	137272-13-FC	\$1,500	6/2/2014	No	See Note A; when payment in full becomes past due, Division will coordinate with the DFS Legal to enforce payment. The Division has sent a file to DFS Legal requesting appropriate action be taken for alleged failure to comply with the Board's order.
Deliria Holmes	Apr-14	133746-01-FC	\$1,666.66 \$250 \$1,666.67 \$1,666.67	4/20/2014 5/15/2014 6/20/2014 8/20/2014	Yes Yes See Note D See Note D	
Holmes Funeral Directors	Apr-14	133745-13-FC	\$1,666.66 \$250 \$1,666.67 \$1,666.67	4/20/2014 5/15/2014 6/20/2014 8/20/2014	Yes Yes See Note D See Note D	
Baldwin Brothers Memorial Care Services, Inc.	Apr-14	141482-13-FC	\$500	6/2/2014	Yes	
James Baldwin	Apr-14	141490-13-FC	\$500	6/2/2014	Yes	
Barry Meyers	Apr-14	141496-13-FC	\$1,000	6/2/2014	Yes	
Tri-City Diversified Services, Inc.	Apr-14	141495-13-FC	\$750	6/2/2014	Yes	
David Woodward	Apr-14	141498-13-FC	\$500	6/2/2014	Yes	
Ruth Yeats	Apr-14	141487-13-FC	\$1,000	6/2/2014	Yes	
A. When payment in full becomes past due, the FCCS Division works with the DFS Legal Division to enforce payment. B. Once fines and costs are paid in full, licensee kept on this report 3 months, showing Paid in Full, and then dropped off report; also licensee dropped off report after disciplinary action filed due to nonpayment of the fine and costs. C. The Order re this case is still in process, so no Due date is not yet established. D. Due date has not passed, as of the date of this report. E. As of the date of this report, monthly payments were current.						OPM June 26 2014 DAS 6-26-14

Mr. Hall questioned whether the April and May payments for Cemetery Professionals were received.

Mr. Anthony Miller stated that the Division received a copy of check #10445 dated June 20, 2014, for April, May and June, from Cemetery Professionals representing that the payment was sent via certified mail to Riverview. The Department will confirm receipt with Riverview.

Mr. Helm questioned the due dates for Holmes Funeral Directors and Deliria Holmes.

Mr. Miller stated that the Settlement Stipulations approved by the Board required the Licensees to pay the fine over time. Thus far, the Licensees have complied and made the payments timely. The final payments will be due sometime in August. The Department did confirm that the June 20<sup>th</sup> payment was received timely on June 19<sup>th</sup>.

### **ITEM NOT INCLUDED ON THE AGENDA**

Ms. Wiener stated that this is an issue that the Board needs to address before the date of its next upcoming meeting. On March 6, 2014, the Board approved the acquisition of several cemeteries and funeral homes from the SCI/Stewart merger to Northstar Memorial Group. In that package, the Board authorized the Director, Mr. Shropshire, to extend the deadline for closing up to 90 days for good cause shown. We asked Mr. Shropshire for an extension up to the 90 days. That extension runs on July 3, 2014. The closing has not yet occurred as we are still waiting for the Federal Trade Commission to finish its work and would ask that, in keeping with the other transactions related to this matter, that the Board authorize the Division Director to continue to extend those closing deadlines so long as the Board is kept apprised of those requests.

Mr. Shropshire stated that this is agreeable to the Division.

The Chair questioned whether the extension request is for 90 days.

Ms. Wiener stated that she would ask that the Board not impose a particular time table because we are at the mercy of persons other than the parties to the transaction so we would just ask that the Division Director be permitted to extend the deadline in his discretion with good cause shown by the Applicant therefore.

**MOTION:** Mr. Helm moved to approve the request to permit the Division Director to extend the deadline in his discretion with good cause shown by the Applicant therefore. Mr. Hall seconded the motion, which passed unanimously.

#### **18. Chairman's Report (Oral)**

The Chair thanked Mr. Jennings for his service.

#### **19. Office of Attorney General's Report (Oral)**

None

#### **20. Administrative Report**

The Administrative Report was provided to the Board via the Agenda.

#### **21. Disciplinary Report**

The Disciplinary Report was provided to the Board via the Agenda.

#### **22. Upcoming Meeting(s)**

*A. July 10<sup>th</sup> (Teleconference)*

*B. August 7<sup>th</sup> (Hilton Orlando/Altamonte Springs)*

#### **23. Adjournment**

The meeting was adjourned at 1:56 p.m.