

MINUTES
BOARD OF FUNERAL, CEMETERY AND CONSUMER SERVICES
June 23, 2011 - 10:00 A.M.
Department of Financial Services
2020 Capital Circle SE, Alexander Bldg #230
Tallahassee, FL 32301

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 23, 2011; 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 FAW. An agenda for this meeting has been made available to interested persons. The meeting is occurring in person at the Alexander Building, Conference Room 230A in Tallahassee, Florida. My Assistant, Ms LaTonya Bryant-Parker, will be taking minutes of the meeting and recording it in addition to that.

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.

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

PRESENT:

Joseph "Jody" Brandenburg, Chairman
Jean Anderson
Lewis "Lew" Hall
Powell Helm
Tracy Huggins
Ken Jones
Col. Don Stiegman
Gail Thomas-DeWitt, Vice-Chairman

ABSENT:

Nancy Hubbell

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 from the Department of Financial Services:

Allison Dudley, Board Counsel
Anthony Miller, Assistant Director
LaTonya Bryant-Parker, Department Staff
Mary K Surles, Department Counsel
James "Jim" Bossart, Department Counsel
Linje Rivers, Department Counsel
Jasmin Richardson, Department Staff

At this time, the Chair recognized an Industry icon and leader, Florida State Representative Ken Roberson. Additionally, The Chair recognized Ms. Gail Thomas-Dewitt as she was elected Secretary/Treasurer of the International Conference of Funeral Services Examining Boards. Ms. Thomas-Dewitt previously served on the Examination Committee and was elected to serve on the Board of Directors for District Three, which represents the regulatory Boards in Alabama, Florida, Georgia, Mississippi,

North Carolina and South Carolina. Last night, Ms. Thomas-Dewitt was named Mortician of the Year by the Florida Morticians Association.

This past week, we lost someone, a formable person in the Industry who was responsible for a lot of the regulatory process present in the Industry today and his name was Doug Stowell. The Chair recognized Mr. Bill Williams and requested that he come forward.

Mr. Williams stated that a very good friend was lost this week. Mr. Doug Stowell died last Sunday, early in the morning, after a 7 year battle with a very rare form of Dementia, similar to Alzheimer's disease. A lot of today's attendees worked with Doug during the course of his career and in one way or another have probably been touched by the work that Doug has done over the course of his career. Doug was an attorney for our Industry, a lobbyist for our Industry and a great friend to many. Doug will be sorely missed as he helped mold and shape the rules, regulations and statutes that we all work under today in the State of Florida, known as Chapter 497. Mr. Williams requested a moment of silence in honor of Doug Stowell.

Mr. Williams added, in the words of my old buddy Doug Stowell, "It is what is, so let's get back to work." "Thanks Mr. Chairman."

The Chair thanked Mr. Williams.

The Chair questioned whether all Board members received their packets. There were positive responses from the Board members.

2. Action on the Minutes
A. June 2, 2011 – Teleconference

The Chair confirmed that all Board members had read the draft of the minutes of the previous Board meeting held on June 2, 2011.

MOTION: Mr. Ken Jones moved to adopt the minutes of the meeting with the recommended correction. Mr. Powell Helm seconded the motion, which passed unanimously.

3. Disciplinary Proceedings: Material Facts Not Disputed (Section 120.57(2))
A. Motion for Determination of Waiver and for Final Order by Board by Hearing Not Involving Disputed Issues of Material Facts
(1) Ford, Sonji C: Case No. 108542-10-FC (SR1-581524816) (Probable Cause Panel A)

Mr. Linje Rivers stated that the Respondent is currently licensed as a funeral director/embalmer and is the funeral director in charge of Coney Brothers Funeral Home, a licensed funeral establishment. On April 6, 2010, the Department filed a Three-Count Administrative Complaint against the Respondent. Count One alleges that the Respondent held a body without embalming or refrigeration for more than 72 hours. Count Two alleges that the Respondent failed to properly affix identification to the body. Count Three alleges that the Respondent failed to maintain a clean and sanitary preparation room.

At the April Board meeting, the Licensee's settlement was presented before the Board and subsequently rejected. The Licensee has requested, through her counsel, John Rudolph, an informal hearing before the Board. The Department received the Licensee's request for an informal hearing. The Licensee is not disputing any of the factual allegations.

The Department believes that it is appropriate at this time for the Chair to entertain a motion adopting the allegations of fact in the Administrative Complaint.

MOTION: Ms. Gail Thomas-Dewitt moved to adopt the Findings of Fact. Ms. Tracy Huggins seconded the motion, which passed unanimously.

The Department contends that the Board's findings of fact support a finding of violations of Florida Statutes as charged in the Administrative Complaint and that the Respondent is in violation of Florida Statutes as set forth in the Administrative

Complaint. It is appropriate at this time for the Board to entertain a motion adopting the Conclusions of Law in the Administrative Complaint.

MOTION: Mr. Helm moved to adopt the Conclusions of Law. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

Ms. Allison Dudley had some questions for Mr. Rudolph before he began. Ms. Dudley quoted Mr. Rudolph's letter as you wish to proceed with an in person, informal hearing and that you wish to testify about facts surrounding the allegations in the Administrative Complaint to better understand those facts. Ms. Dudley questioned whether Mr. Rudolph admits that the facts in the Administrative Complaint are true and accurate.

Mr. Rudolph stated that his client has admitted those, yes and the purpose of it is that the Respondent came here on a Stipulation that was signed with the Department for a \$1000 fine and 1 year probation. At the last meeting, a counteroffer for a \$2500 fine and 1 year probation was made by the Board. The Respondent wanted to be at the last meeting but could not; therefore she is here today to explain the situation involving the 72 hours.

Ms. Dudley stated that she just wanted to ensure there was no dispute in the facts because that type of dispute would need to be heard by the Division of Administrative Hearings.

Mr. Rudolph stated there is no dispute in the facts. Mr. Rudolph called Ms. Sonji Ford as his first witness.

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

Ms. Sonji Coney Ford answered "yes." Ms. Ford stated that she wanted to personally appear today to explain the 72 hour issue, which was during the weekend. Ms. Ford's contract for refrigeration is with Lanier Funeral Home, Central Florida Crematory and their refrigeration was completely full during that weekend. Mr. Lanier stated that he would give Ms. Ford a call as soon as Monday arrives so that she could bring the case over. At the same time Mr. Kurt Schuller showed up after first inspecting Lanier. A call was placed to Mr. Lanier who confirmed that the refrigeration was full but stated that they were just able to release a couple of spaces and Ms. Ford could come over at that time. Mr. Schuller basically advised Ms. Ford to go ahead with the transition. Mr. Schuller understood that work had just been completed in the preparatory room, which was the cause of the untidiness. Therefore, Mr. Schuller asked that Ms. Ford please take care of the preparatory room, make the transition to Lanier Funeral Home and submit a letter stating that everything had been taken care of. This was basically a take heed warning and it was received as such but 18 months later Ms. Ford received an Administrative Complaint.

Ms. Ford advised that the Board that she was not negligent. The air conditioning in the preparatory room was set at 50° so the bodies were not smelling or decomposed. The bodies were extremely cold but they were not in refrigeration as it was full. Mr. Schuller understood that and asked that Ms. Ford make the transition at that time.

Mr. Rudolph asserted that there are mitigating factors. All errors were corrected. Yes, there was blood in the embalming room but if you notice in the report, there was also discussion about a body being in the embalming room at the time of the inspection so there had been embalming being done at that time. Mr. Rudolph stated that it is his position that when a body is in the embalming room, the Department should not be going in doing inspections. The families have a right of privacy. If there is a body in the embalming room, it was there for the purpose of embalming. There will be perhaps bodily fluids in the embalming room which a Licensee could be written up on because an embalming just occurred. In this case, that is exactly what happened. The Respondent requests the Board favor as she signed a stipulation for a \$1000 fine and 1 year probation and that is what she wants.

Ms. Thomas-Dewitt questioned whether there are any other facilities within the area that provide refrigeration.

Ms. Ford stated that there are but she is contracted under Central Florida Crematory and has been for about 15 years. Ms. Ford added that she was to write a letter to the Board and Mr. Schuller would send his assistant back to retrieve it, which was done. This was basically like a warning.

Ms. Thomas-Dewitt questioned whether Ms. Ford made any effort to contact another facility once she discovered the establishment she contracted with was full.

Ms. Ford stated that she made an effort to ensure that the body was not decomposing and that it stayed at a comfortable temperature. Although it was not at 40°, the unit still keeps them right at 48° - 50°. Ms. Ford stated it was her understanding that she could only use the facility she was contracted under.

Mr. Rudolph stated upon attaining a funeral establishment license, the Licensee has to provide a contract for someone to do outside refrigeration if they do not have refrigeration at your facility. If that should change, the Licensee has to update that with the Department. Mr. Rudolph stated that it is his opinion that if the Licensee goes to another refrigeration facility without a contract, the Licensee could be written up.

The Chair stated that is not the intent. There is no exclusivity there in any of the hundreds of contracts reviewed by this Board. The Chair questioned what the Respondent would have done if the inspector had not arrived that day.

Ms. Ford stated that the preparatory room is still held at a cool of 48° - 50°.

Mr. Rudolph stated it appears the Chair is questioned what Ms. Ford intended to do on Monday morning.

Ms. Ford stated she would have had to go ahead and embalm if Mr. Lanier could not open up a slot.

Mr. Lew Hall questioned whether these were cremation cases.

Ms. Ford answered, "Yes Sir."

Mr. Hall questioned whether the Respondent could have gone forward with the cremation instead of holding the body, since it had been 72 hours.

Ms. Ford stated that is where she goes for her cremations.

Mr. Hall questioned whether Mr. Lanier could have gone forward with the cremation since it was already over the 48 hour requirement and the cooler was full.

Mr. Rudolph questioned, "On Friday?"

Mr. Hall stated his facility cremates 7 days a week.

Mr. Rudolph questioned whether the body was ultimately cremated.

Ms. Ford answered, "Yes."

The Chair stated that he was disturbed by the fact that there was not affixed an ankle tag, wrist tag or any other form of identification.

Ms. Ford stated all the others had identification, but for whatever reasons that one did not and she accepts full responsibility it.

Mr. Rudolph stated that the tag was immediately attached thereafter.

Ms. Ford concurred.

Col. Don Stiegman questioned whether the Respondent attempted to have the body cremated or whether it was going to be left there for 3 days.

Ms. Ford stated that she made an attempt, but it was the weekend.

Mr. Rudolph stated that the crematory was closed on the weekend.

Mr. Hall questioned why the crematory would be closed on the weekend.

Ms. Ford stated that they are.

Mr. Rudolph concurred.

Ms. Thomas-Dewitt questioned whether Ms. Ford has put any procedures in place to ensure this does not happen again.

Ms. Ford stated that this would not happen again.

Ms. Thomas-Dewitt stated that Ms. Ford could not be sure of that.

Ms. Ford stated she would change facilities if she has to in order to ensure this does not happen again.

Ms. Thomas-Dewitt stated that as of now the Respondent has done absolutely nothing to correct this.

Ms. Ford stated that she has made this very clear with Mr. Lanier, Central Florida Crematory that this will not happen again.

Col. Stiegman stated that the Respondent is hung up on the contract issue even though it has been clarified that the Licensee could contract with someone else for help.

Ms. Ford was reminded that she had spoken with a facility in Winter Haven, Oak Ridge, for back up. Going forward, Ms. Ford stated she would just go ahead and embalm.

Mr. Rudolph questioned whether Ms. Ford has held any other body for more than 72 hours since this incident happened.

Ms. Ford answered, "No."

Mr. Rudolph questioned whether Ms. Ford has held a body for more than 24 hours after receiving it.

Ms. Ford answered, "No, absolutely not."

Mr. Rudolph questioned whether Ms. Ford has affixed identification to the bodies.

Ms. Ford answered, "Yes."

MOTION: Ms. Thomas-Dewitt moved for an administrative fine of \$2,500 and 1 year probation. Col. Stiegman seconded the motion, which passed unanimously.

Ms. Dudley questioned when the \$2500 fine would be due as she could not find it in the Rules.

Mr. Rudolph stated it is typically 30 – 60 days. Mr. Rudolph stated that it is 60 days.

Mr. Rudolph requested a moment to reflect on Mr. Doug Stowell. Doug Stowell represented FSI for so many years, but he also represented the entire funeral industry. He knew the funeral laws better than anyone else; he knew the preneed laws and was a good friend. We lost a very good lawyer in this Industry.

(2) Washington Funeral Chapel: Case No. 114632-11-FC (SR1-671687131) (Probable Cause Panel B)

Mr. Anthony Miller stated that Washington Funeral Chapel, through their representative counsel, requested a continuance and it was for good cause shown. As a matter of professional courtesy, the Division respects the request that this item be withdrawn from the agenda and will be continued at another in person hearing at a later date.

4. Disciplinary Proceedings: Proposed Settlements

Ms. Tracy Huggins recused herself from all applicable cases as she was on Probable Cause Panel B.

A. Settlement Stipulation for Consent Order and Proposed Consent Order

(1) Brant, Troy; Case No. 112163-10-FC (SR1-655597103) (Probable Cause Panel B)

Mr. Tad David stated that this matter stems from allegations that the Respondent appears to have violated Sections 497.152 (1)(b), 497.152(4)(e), 497.152(5)(b), 497.152(5)(d), and 497.152(5)(f), Florida Statutes, by operating Moody-Brant Funeral Chapel, located in Fort Meade, Florida, as an unlicensed funeral establishment; by aiding, employing or assisting Charles Hancock in practicing as an unlicensed funeral director and/or embalmer; and by concealing the information relative to Mr. Hancock's violations. Further, Respondent operated Brant Funeral Chapel, located in Wauchula, Florida, as an unlicensed funeral establishment, after its license was revoked by the Board of Funeral, Cemetery and Consumer Services; and Respondent committed fraud, deceit or misconduct in operating and advertising the services of Brant Funeral Chapel after its license was revoked.

Respondent has elected to enter into a Settlement Stipulation and has waived his right to a final hearing in this matter. The terms of the Settlement Stipulation for Consent Order require the Respondent to surrender his license and permanently remove himself from involvement with any business regulated under the Act.

The Settlement Stipulation provides that Respondent shall permanently surrender any and all licenses which will have the same force and effect as a revocation, and shall constitute a permanent revocation. Respondent shall not engage in or attempt or profess to engage in any transaction or business for which a license or appointment is required under the Florida Funeral, Cemetery and Consumer Services Act ("Act"), or directly or indirectly own, control, or be employed in any manner by any business regulated under the Act, or apply for any license under the Act. The terms of the Settlement Stipulation are reasonable under the facts and circumstances of this case. The Department requests that the Board approve the settlement and issue the Consent Order to conclude this matter.

Mr. Helm questioned whether the issue of restitution was ever resolved.

Mr. David stated that because of the business situation, the Department believes that it either has or will be able to address that in the future. In reality, the Department felt that removing this individual from the Industry would do more good than the possible restitution that we were made aware of. It has been a pretty decent amount of time, so the Department feels it has a hang on how much, if any, consumer harm there may be. There is no definite consumer harm. The Department feels this has been addressed or at least contingently addressed in the event that any consumer harm presents itself.

Mr. Helm questioned whether the Division would have any recourse if the Board accepts the Order since the license has been revoked.

Mr. David stated that legally the Department would have no jurisdiction over his individual license in the future other than if he tries to reapply. That does not necessarily mean that if while licensed it comes to the Division's attention that the Respondent committed another violation, that we do not have jurisdiction over that. That is a possibility. The other thing is the Department believes that other entities that are currently licensed would be responsible for any consumer financial complaints that may be received.

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

Col. Stiegman questioned whether there would be any problems in the future with any preneed that the Respondent had in place.

Mr. David stated that when he mentioned preneed it was to say that the Respondent could not work in any capacity in the Industry, including preneed.

Col. Stiegman questioned whether the Respondent had done any preneed in the past.

Mr. David stated that the Respondent did not have a preneed license before.

MOTION: Mr. Lew Hall moved to accept the Settlement Stipulation. Mr. Jones seconded the motion, which passed unanimously.

(2) *Family First Mortuary Services, Inc: Case No. 114246-11-FC (SR1-673647571) (Probable Cause Panel A)*

Ms. Mary K Surlis stated that on March 8, 2011, the Department filed an Administrative Complaint against Respondent alleging that Respondent, a licensed removal service facility, commenced operations at one or more locations that have not been inspected by the Department, and had a change in ownership without notifying the Department in writing within ten (10) days of the change of ownership and/or location. Additionally, the Respondent did not report to the Department that it had changed its ownership from Jennifer Potikul to Charles Rogers.

A Settlement Stipulation has been entered into by the Department and the Respondent in this matter on May 26, 2011, which calls for the voluntary relinquishment of the Respondent's license, Family First Mortuary Services.

By the Board accepting this Settlement Stipulation the Respondent is voluntarily surrendering its removal service facility license.

The Chair questioned whether anyone representing Family First Mortuary Services Inc was present. There was a negative response.

MOTION: Mr. Helm moved to accept the Settlement Stipulation. Mr. Hall seconded the motion, which passed unanimously.

(3) *Northeast Florida Cremation, LLC d/b/a A Direct Cremations: Case No. 114210-11-FC (SR1-650930711)*

Mr. Shropshire questioned whether this was a Waiver of Probable Cause.

Mr. Rivers answered, "Correct."

Mr. Rivers stated that the circumstances of this case is that Northeast Florida Cremation, LLC d/b/a A Direct Cremations ("Respondent") is a licensed Direct Disposal Establishment located in Gainesville, Florida. In January of 2010, Respondent contracted for cremation services with Dorothy Hamble, whose mother passed away on January 1, 2010. Respondent was to cremate the remains of Ms. Hamble's mother and return them to Ms. Hamble in a biodegradable container adorned with a decorative cross. The Certificate of Cremation provided to Ms. Hamble was completed using a file number that corresponded to a different set of remains. Therefore, Ms. Hamble is unsure whether she has her mother's remains or the remains of another person.

Respondent appears to have violated Sections 497.152(1) (a), 497.152(1) (b), and 497.152(4) (h), Florida Statutes. Respondent has elected to enter into a Settlement Stipulation and waive its right to a hearing in this matter. The terms of the Settlement Stipulation for Consent Order require Respondent to pay \$2,000 as an administrative fine. The settlement also provides for Respondent's license to be placed on probation for a period of one year and for Respondent to provide a Division-approved explanatory letter to Ms. Hamble.

The Department's recommended penalty is within the disciplinary guidelines, pursuant to Chapter 69K-30, Florida Administrative Code, and the Division is in agreement with the terms of the Settlement Stipulation for Consent Order.

MOTION: Mr. Hall moved to accept the Settlement Stipulation. Mr. Helm seconded the motion, which passed unanimously.

ITEMS (4) – (18) ARE ALL INCLUDED IN A SINGLE PROPOSED SETTLEMENT

- (4) *Work & Son - Royal Palm Acquisition, Inc. d/b/a Royal Palm Cemetery (South): Case No. 108566-10-FC (SR1-542268361) (Probable Cause Panel B)*
- (5) *Work & Son - Osiris, Inc. d/b/a Royal Palm Cemetery (North): Case No. 108567-10-FC (SR1-615324851) (Probable Cause Panel B)*
- (6) *Work & Son - Memorial Services, Inc. d/b/a Bradenton Funeral Home: Case No. 108576-10-FC (SR1-807052154) (Probable Cause Panel B)*
- (7) *Work & Son - Osiris, Inc. d/b/a Royal Palm North Cemetery: Case No. 113851-10-FC (SR1-538511823) (Probable Cause Panel A)*
- (8) *Work & Son - Osiris, Inc. d/b/a Royal Palm North Cemetery: Case No. 113853-10-FC (SR1-652419061, SR1-625419081) (Probable Cause Panel A)*
- (9) *Work & Son - Osiris, Inc. d/b/a Royal Palm North Cemetery: Case No. 113854-10-FC (SR1-615324851) (Probable Cause Panel A)*
- (10) *Work & Son - Royal Palm Acquisition, Inc. d/b/a Royal Palm South Cemetery: Case No. 113855-10-FC (SR1-618813511) (Probable Cause Panel A)*
- (11) *Work & Son - Sarasota Memorial Inc.: Case No. 113856-10-FC (SR1-625418972) (Probable Cause Panel A)*
- (12) *Work & Son - Sarasota Memorial Inc.: Case No. 113857-10-FC (SR1-650482080) (Probable Cause Panel A)*
- (13) *Work & Son - Sarasota Memorial Inc.: Case No. 113858-10-FC (SR1-654451661) (Probable Cause Panel A)*
- (14) *Work & Son - Sarasota Memorial Inc.: Case No. 113862-10-FC (SR1-644411923) (Probable Cause Panel A)*
- (15) *Work & Son - Sarasota Memorial Inc.: Case No. 113863-10-FC (SR1-628266201) (Probable Cause Panel A)*
- (16) *Work & Son - Sarasota Memorial Inc.: Case No. 113864-10-FC (SR1-590484073) (Probable Cause Panel A)*
- (17) *Work & Son - Sarasota Memorial Inc.: Case No. 113865-10-FC (SR1-614278642) (Probable Cause Panel A)*
- (18) *Work & Son - Sarasota Memorial Inc.: Case No. 113867-10-FC (SR1-621208970) (Probable Cause Panel A)*

Mr. Rivers stated that the circumstances of these cases are that the Licensee is currently licensed to operate as a funeral establishment and a cemetery. The Department conducted multiple inspections and investigations of these establishments over the course of 6 years. The Department has received numerous complaints alleging violations of the Funeral, Cemetery and Consumers Act against the Licensee. As a result of the investigation and inspections, multiple Probable Cause Panels found probable cause against all the Respondent's establishments. Based upon these findings, the Department filed 7 Administrative Complaints.

Based on the alleged violations, Work & Son has agreed to a global settlement as pertains to all of the outstanding violations that were discovered during the course of the investigations. Work & Son has agreed to correct all violations indicated in the Settlement Stipulation within 60 days after execution of the Consent Order. The Licensee has agreed to pay an administrative fine of \$35,000, to be paid within 5 years of the execution of the Consent Order with an initial first payment of \$5000 due 30 days after the execution of the Consent Order. Additionally, the Licensee agrees to a minimum payment of \$7000 to be paid to the Division annually. The Respondent shall pay a minimum of \$7000 within each year following the execution of the Consent Order until the entire fine is satisfied. The Respondent shall be placed on 5 years probation. If the Respondent pays the full amount of the administrative fine within 36 months and is in compliance with all the requirements of the Consent Order, the Licensee will be eligible for early probation termination. The Licensee further agrees to biannual inspections of the establishments. Failure to pay the administrative fine or make the necessary corrections will result in immediate suspension of the Licensee's licensure. The suspension will last until the Licensee has come into compliance as determined by the Board.

The terms of the Settlement Stipulation are reasonable under the facts of the case. The Department requests that the Board approve the Settlement and issue a Consent Order to conclude this matter.

Mr. Helm stated that was a mention of early probation termination and questioned who would lift the probation in this instance.

Mr. Rivers stated once the fine payment is satisfied the Respondent would be eligible for early termination if they are in compliance with the Consent Order.

Mr. Helm questioned how the probation would be lifted.

Mr. Rivers stated it would be presented before the Board.

Mr. Hall questioned whether the Department conducted a final audit on the maintenance back in 2002.

Ms. Wendy Wiener stated that she did not believe there was any sort of examination of the properties or of the upkeep of the properties at the time that the cemeteries changed hands. Of course the funeral homes would have been inspected prior to the relicensure. Ms. Wiener added that she could not say with 100% certainty but did not believe that there was any type of examination that would have revealed a lot of the problems that did exist. The Respondent did purchase these properties from the Loewen Bankruptcy Estate. A lot of these conditions, especially with regards to the burials and markers, had existed; many of them for many decades.

Mr. Hall questioned the age of the cemeteries.

Ms. Wiener stated that the cemeteries date back to the 20s.

Mr. Hall questioned whether Ms. Wiener knows what the balances are in the care and maintenance trust funds or why they are not being utilized for the upkeep of the cemeteries.

Ms. Wiener stated that the care and maintenance funds are adequate. Many of the problems described in the Administrative Complaint are just long, long standing problems that are the kinds of things that take a really long time to resolve. As an example, there are really 3 main cemeteries that are owned by this group. One of them is Sarasota Memorial Park. Mr. Work spent a couple of years getting the vast majority of the types of things described about the other 2 cemeteries fixed and resolved. In fact, on his last examination, the examiner commented that the cemetery was in better shape than he had ever seen it. It is the intent and the reason that the Respondent entered into and sought out the assistance of Mr. Rivers and his supervisor, Ellen Simon in doing a global settlement to really create a situation where all of the cemeteries owned by this group can come fully into compliance and be in better shape than they have ever been in. A lot of these problems are just going to take a long time to correct. The Respondent has already been working a great deal on many of these conditions. Many of the conditions are already met so it appears we will be in good shape to make sure the Respondent continues to be in compliance.

Mr. Hall expressed concern since the properties were purchased in '02 and the care and maintenance funds are adequate. That is a long time. A lot of these things could be fixed before 8 – 9 years are up. Mr. Hall questioned what the moneys from care and maintenance funds are being used for.

Ms. Wiener stated that there are no allegations or suggestions that there are improper diversion of the care and maintenance to do anything else. Not as a way of an excuse because obviously the Respondent has entered into a really significant settlement for a significant amount of money with a lot of conditions to be complied with and very severe penalties if the conditions are not complied with. Just by way of explanation a little bit, the properties were purchased by Mr. Work and his son, Cliff Work. Everything was going along other than they were trying to sort out the debacle of the preneed. Everything was going along okay with the cemeteries and then Mr. Work Sr. died very unexpectedly. Frankly, Mr. Cliff Work had a very difficult time with that. Mr. Cliff Work's responsibilities were not the same as his father's and it took quite a bit of time for him to really kind of get with the program but it appears Mr. Work is with that program now as evidenced by what has happened at Sarasota Memorial and as evidenced by his agreement to the conditions of the Stipulation, all the things that have already been done. A lot of things that were mentioned have already been replaced and things that have not been replaced are already on order waiting to come in. One of the problem with the sod, which is a continuing complaint for cemeteries in situations like this, is that in Tampa they either get a ton of rain and it is super wet or it is very dry and a lot of the cemeteries space has a ton of trees on it and it is hard to grow grass under trees.

Mr. Hall questioned whether Ms. Wiener is confident with this agreement indicating that a lot of these things can be cleaned up within 60 days as that is such a short amount of time for such a huge request.

Ms. Wiener answered yes and stated that the Respondent was very careful and appreciated Mr. Rivers and Ms. Simon working with them to ensure they were not setting the cemetery up for failure. That is the reason for the long tail on the probation and the long tail on the payment of the fine so that the Division can make sure that the Respondent is complying.

Ms. Wiener added that they had already had a conference call on a couple of issues to follow up on with Mr. Miller. Ms. Wiener feels that what has been agreed to by the Respondent is very strict in terms of a suspension if the conditions are not complied with, so there is certain a carrot and a stick associated with this Stipulation.

The Chair questioned whether failure to comply would result in a suspension of all locations, since we are calling this a global settlement.

Mr. Rivers answered that it would only affect that particular establishment. In order to become active again, they would have to come before the Board and prove that they are in compliance.

The Chair questioned whether that would apply to that particular location only.

Mr. Rivers answered, "Correct."

The Chair questioned whether everything is global except that one part of it.

Ms. Wiener stated "global" contemplates all the violations with every Licensee that the Respondent has but if he fails to repair a concrete bench at one cemetery and is shut down completely that would really immediately set him up for failure; it would set the entire set of Licensees up for failure. The goal is to get these cemeteries in the shape they need to be in so that the public that interacts with the cemeteries has a lovely cemetery in which to bury and visit their loved ones. The goal is not to trip up the Licensees so that ultimately these cemeteries end up in a receivership.

Mr. Hall questioned whether Ms. Wiener is confident with the management team the Respondent has in place as a lot of the complaints are in terms of misplacements.

Ms. Wiener stated that all of those issues have been resolved. Other than the one case that is a civil matter. Quite interestingly it turns out that the allegations were that the body was way far away from where it was supposed to be. It turns out that it had been moved like 5'. Ms. Wiener thinks that all of those things are resolved. Mr. Work is going to have to be on the ball about it especially because of the Stipulation.

Col. Stiegman questioned why Mr. Work or one of his employees was not present as the Board has a lot of questions.

The Chair stated that Mr. Work has obviously chosen to be represented by counsel.

Ms. Wiener stated that was her role and assured the Board that she could answer any questions presented and if she cannot answer them to the Board's satisfaction she could certainly get an answer to the question.

Mr. Helm questioned the improvements to Sarasota Memorial.

Ms. Wiener stated the markers were straightened, the memorials were all straightened, encroachments were corrected, families were contacted to correct encroachments as need be, they repaired potholes; they got the cemetery in good shape. On the newer material, there are very few allegations against Sarasota Memorial. It is apparent that the cemetery trended from being in the same condition as the others to being in a positive condition.

Mr. Hall questioned who is trusting the care and maintenance fund.

Ms. Wiener responded, "FSI."

Mr. Hall questioned whether Mr. Williams has any idea what has been withdrawn to help care for the cemeteries.

Mr. Williams stated that he does not have the balance on them. Mr. Williams ventured to say that there is probably less than 50% of the cemeteries in the state that have enough money in their care and maintenance account that throws off enough income on a monthly basis that pays for the entire care and maintenance of that cemetery. They are having to do that out of sales also, until the cemetery gets much more mature. There is probably just not enough money and that may be part of it.

Mr. Hall stated that some of the cemeteries date back to the '20s so they ought to be mature enough.

Mr. Williams added that it is a big property with a lot of burial spaces left in it.

Ms. Wiener stated that Mr. Work is not alleging that there wasn't enough money. He needs to get these things all taken care of and that is his intention.

MOTION: Mr. Jones moved to accept the Settlement Stipulations. Mr. Hall seconded the motion, which passed with 1 dissenting vote.

B. Settlement Stipulation for Consent Order and Proposed Consent Order (Waiver of Probable Cause)
(1) Cremation Services Of Mid-Florida, Inc: Case No. 115159-11-FC (SR1-674960319)

Ms. Surles stated that on April 15, 2011, the Department received Respondent's signed Settlement Stipulation and Waiver of Finding Probable Cause and Confidentiality. Respondent has determined that it is in his best interest to accept the settlement terms and conditions by entering into this Settlement Stipulation.

If the Board accepts this Settlement Stipulation, the Respondent will be required to pay an administrative fine in the amount of \$2,500, pay the Department's costs in the amount of \$250, and Respondent's direct disposer license shall be placed on two (2) years probation with the specific condition that should the Department have reasonable cause to believe that the Respondent has advertised, sold or attempted to sell preneed contracts without having a valid preneed license that all the licenses of Respondent will be immediately suspended for thirty (30) days.

MOTION: Ms. Thomas-Dewitt moved to accept the Settlement Stipulation. Mr. Hall seconded the motion, which passed unanimously.

(2) Locke, Larry W: Case No. 115158-11-FC (SR1-674960319)

Ms. Surles stated that on April 15, 2011, the Department received Respondent's signed Settlement Stipulation and Waiver of Finding Probable Cause and Confidentiality. Respondent has determined that it is in his best interest to accept the settlement terms and conditions by entering into this Settlement Stipulation.

If the Board accepts this Settlement Stipulation, the Respondent will be required to pay an administrative fine in the amount of \$2,500, pay the Department's costs in the amount of \$250, and Respondent's direct disposer license shall be placed on two (2) years probation with the specific condition that should the Department have reasonable cause to believe that the Respondent has advertised, sold or attempted to sell preneed contracts without having a valid preneed license that all the licenses of Respondent will be immediately suspended for thirty days.

Mr. Helm questioned whether this would be a \$5000 fine altogether.

Ms. Surles answered that it would be. There is one for the entity and one for the individual license.

The Chair questioned whether there was any present representing the Respondent. There was a negative response.

MOTION: Ms. Huggins moved to accept the Settlement Stipulation. Mr. Helm seconded the motion, which passed unanimously.

(3) State Park Cemetery Co., Inc d/b/a Washington Park Cemetery: Case No. 109803-10-FC (SR1-490815981)

Ms. Holly Werkema stated that on August 5, 2010, the Department filed a 12-Count Administrative Complaint against Respondent. The Administrative Complaint alleged that Respondent failed to maintain its premises in a reasonable condition, disinterred and reinterred remains without proper authorization, used contracts for the sale of burial rights which were not approved by the licensing authority, took unauthorized credits against the Care and Maintenance Trust Fund, failed to make timely deposits to the Care and Maintenance Trust Fund, failed to provide each purchaser of burial rights or services a written

agreement signed by a cemetery representative, failed to disclose fees charged for burial rights and services on its price lists, failed to keep accurate burial records, and sold the burial rights to a burial plot twice during one inspection period in violation of Sections of Florida Statutes and Rules of Florida Administrative Code.

Respondent subsequently filed a petition for hearing with the Department alleging many mitigating factors regarding the alleged violations. In addition, a follow up inspection of Respondent was conducted which revealed that all but one of the alleged violations had been cured. The only violation that had not been cured was the taking of unauthorized credits against the Care and Maintenance Trust Fund. However, the investigator verified that the Care and Maintenance Trust Fund remained sufficiently funded.

On March 19, 2011 the Department and the Respondent have entered into a Settlement Stipulation. The Settlement Stipulation calls for a fine of \$250 and costs of \$250 to be charged to the Respondent.

Col. Stiegman questioned what was meant by "took unauthorized credits against the Care and Maintenance Trust Fund."

Ms. Werkema stated that the Respondent had overfunded the Care and Maintenance Trust Fund, so they took credits back out of the trust fund without any type of contracts that had been canceled and refunded, so that is where the unauthorized credit came in. There is a surplus from 2007 as they had overfunded because of some computer error. The investigator did find that was the case.

Col. Stiegman questioned whether the unauthorized credits have been replaced.

Ms. Werkema stated that the credits have not been replaced, but the trust fund is so overfunded as there is still about \$1600 that is still owed to them. The Respondent will request approval from the Board before any of those funds are removed.

Col Stiegman questioned whether it is normal to be overfunded like that.

The Chair stated that it is not normal but could happen.

Mr. Helm questioned the number of times there were disinterred and reinterred remains without proper authorization.

Ms. Werkema stated it was just the one time. Immediately after it occurred, the employee responsible was terminated and the Respondent entered into a private settlement with the family.

Col. Stiegman expressed concern over the unauthorized credits. If the Respondent is only fined \$500 and if more than \$500 was withdrawn, the Respondent is only paying back the money owe without any penalty at all.

The Chair requested an example of the overfunding, how it happened, the amount and what was done about it.

Ms. Werkema stated that the Respondent had some type of computer error where they were taking too much and putting into the fund when they had certain contracts that were sold. Rather than coming to the Board and presenting that the Respondent just went ahead and took some of the money back. There is still a \$1600 surplus in the trust fund, which was verified by the investigator but the Respondent would come to the Board to request to take that money back.

The Chair stated that the Respondent did not withdraw more than the overfunding.

Ms. Werkema concurred.

MOTION: Mr. Jones moved to accept the Settlement Stipulation. Mr. Hall seconded the motion, which passed with 1 dissenting vote.

(4) *James A McKee Funeral Homes: Case Nos. 105661-10-FC, 113352-10-FC, 114669-11-FC (SR1-586411611)*

Mr. Jim Bossart stated that this case originates from a June 15, 2010 probable cause determination by the Board, which was the 2nd Probable Cause Panel this case has been put in front of and the subsequent filing of an Administrative Complaint alleging that the Respondent committed fraud, deceit and misconduct in its performance of a burial contract.

Ms. Maria Ortiz contracted for a white angel casket with a contract price of \$3307. An inferior casket with a wholesale value of \$541 was substituted at the time of the funeral without Ms. Ortiz's knowledge or consent. This was only discovered at the funeral itself. Ms. Ortiz did not receive any refund of the contract or an adjustment of the contract price and in fact was billed by the funeral establishment the full amount of \$3307 as if she had received the white angel casket. Ms. Ortiz did pay the \$3307 bill. New and additional evidence obtained from the casket company, after the 1st probable cause determination at the Board's request, indicated that the requested white angel casket was never ordered by the funeral home, which was news to Ms. Ortiz. The funeral home had ordered the inferior casket from the very first contradicting its claim that the white angel casket was not available.

Subsequently the Department received a new consumer complaint from a Florida consumer, Paul Cottone, alleging that the Respondent failed to have a customer sign a contract as required by Florida Statutes and failed to honor a contractual obligation by failing to timely inter cremated remains. Rather, the Respondent held the cremated remains until the bill was paid in full. The Respondent has elected to waive a finding of probable cause and the amending of the Administrative Complaint regarding this matter and has elected to incorporate the settlement of this matter into the above mentioned Settlement Stipulation.

Subsequently after this, the Department received another consumer complaint alleging the Respondent utilized deceptive and misleading advertising in the course of its business. The Respondent has also elected to waive the finding of probable cause and the amending of the Administrative Complaint in this matter and has elected to incorporate this into the Settlement Stipulation also, which provides that James A McKee Funeral Homes will pay an administrative fine of \$3250. The Department recommends that this Settlement Stipulation be approved by the Board.

Mr. Hall questioned the reasoning for not making the adjustment on the casket.

Ms. Wiener stated that according to the information provided by the Respondent, that change was communicated. It was not in writing, so it was not documented in the file. When the establishment contacted the casket provider, that casket was no longer available so the casket provider substituted a casket. The difference in the wholesale price was around \$119 - \$120, something of that nature. It was not the difference between a \$3000 casket and a \$5000 casket. It was the difference between a \$541 wholesale casket and a \$700 wholesale casket. Also, there is no indication in the file that the \$3307 was paid. As of September 3, 2010, when we were communicating with the Department on this topic, the family had not paid anything on the contract.

Mr. Hall stated that is a civil matter between the Respondent and the family if they made agreements to accept payments. Mr. Hall expressed concern over the fact that the casket company indicates the order was never placed. Mr. Hall stated he is not condoning nonpayment by the family, but that is more of a civil matter and is not for the Board to determine. The file indicates that the Respondent is not paying the city cemetery; a family was charged a cash advance of \$2000 and the grave was \$1200; the County has to call them 4 times to get their check, with no response; the family was charged a \$500 cash advance to have their mother's cremains at the church in the niche but they kept the money. The Respondent has a fiduciary responsibility on those cash advances. That is not their money, so it appears to be theft.

Ms. Wiener stated that those issues are not contemplated specifically in the Administrative Complaint so she is not prepared to address them. This Licensee is no longer in business. This Licensee was sold to another party. This is a Settlement Stipulation to resolve the outstanding Administrative Complaints pending against the Licensee.

Mr. Hall questioned who owns the facility now.

Ms. Wiener stated that Brian Strauch is the 100% owner of all of the stock of the corporation.

Mr. Hall questioned whether the Respondents are out.

Ms. Wiener stated that the owner of this is no longer the owner. Mr. Tartaglia is still employed at the location.

Mr. Hall questioned whether Mr. Tartaglia is still the FDIC.

Ms. Wiener did not have an answer to that question. Mr. Tartaglia has a much less significant role.

Mr. Hall questioned whether the other administrative fine referenced in the emails between Ms. Wiener and Mr. Schuller ever paid.

Ms. Wiener stated that the fine was finally paid.

Mr. Helm questioned whether Case No. 105663-10-FC was merged into 113352-10-FC.

Mr. Bossart stated that Case No. 105663-10-FC is the original case regarding Ms. Ortiz.

Mr. Helm questioned whether "incorporate the settlement of this matter" refers to Case No. 113352-10-FC.

Mr. Bossart answered, "Yes." Case No. 113352-10-FC has been incorporated into Case No. 105663-10-FC and then next one, Case No. 114669-11-FC has also been incorporated into Case No. 105663-10-FC, the primary.

Mr. Helm disagreed.

Mr. Bossart stated there appears to be some confusion. Case No. 105663-10-FC is the primary case, Ms. Ortiz, and the rest are the satellite cases.

Mr. Hall stated that counsel felt that it was acceptable, in this particular case, to hold the cremains until the payment was complete and finished; this could not be done to a human body and Florida but cremains could be held until final payment was made. Mr. Hall questioned whether the Division agrees with that position.

Mr. Bossart stated that he had a long discussion with Mr. Miller on that very point. It was understood at that the end that a human body cannot be held as there is a time limit for burial but there is no such law that includes cremated remains. There was no law violated.

Mr. Hall stated he understands that but that is not the question. Mr. Hall questioned whether a funeral establishment or direct disposal establishment hold cremains until final payment is made.

Mr. Bossart regrettably stated that the answer is yes as they have not violated a law by doing that.

Mr. Shropshire stated that the Division did not have to address that issue, as indicated by Mr. Hall, in this case. It is not apparent whether the Division would concur. Mr. Shropshire stated if it is the Board's pleasure, the Division would research the matter and advise the Board at the next meeting on that issue.

Mr. Hall stated that it would be good for clarification.

Mr. Bossart stated that he did notice at the time that the statute regarding human remains does not include cremated remains. It quite clearly does not include them.

Ms. Wiener stated that the issue of cremated remains and what they are under the law has been addressed by the Board, formally a couple of times and informally quite often. Cremated remains are treated as personal property and it has long been the position of the Board that the jurisdiction conferred by Chapter 497 and upon the conclusion of the cremation process, so that is why we do not regulate what people can do with cremated remains once the remains are cremated. So that is what allows the consumer to take the cremains home and do certain things with them unless you are dealing with a Licensee, in terms of where to put them, where to scatter them.

Mr. Hall stated he understands that part but it still appears a body is being held ransom. Mr. Hall reiterated that he would like clarification from the Division on whether this can be done.

Mr. Shropshire stated that the Division would research the issue and bring back the Division's advice and position at the next meeting. Mr. Shropshire stated that the general thrust, in the general matter, that cremation is the final disposition is correct. For many purposes the jurisdiction ends but the statement made by Ms. Wiener was too broad because, for instance, if a crematory cremates the remains, puts them in a box and then just starts tossing them in a dumpster after cremation, the Division would certainly have jurisdiction.

Ms. Wiener concurred. Ms. Wiener added that she clarified at the end to say except in certain circumstances when the remains are in the possession of Licensees and what they can do with them. Ms. Wiener stated that her point was simply to note that typically cremated remains are considered personal property. Ms. Wiener added that when this issue arose, she researched whether there was any prohibition in Chapter 497 or elsewhere to requiring payment before they are released and she finds none.

Ms. Dudley stated that this gives into a little of the problems with waivers of probable cause as a lot of this may have been hashed out had there been a Probable Cause Panel on this issue, but that is something that the prosecutor would have to decide. The Board is not obligated to accept waivers of probable cause. The Board could always decide not to rule on the issue and send it back to the Probable Cause Panel.

Mr. Bossart stated that there is no evidence that Mr. Cottone ever asked for the remains, re holding for ransom. If Mr. Cottone had asked for the urn and the ashes, they would have had to give them to him regardless of whether the bill was paid or not.

Mr. Hall stated that this is not what was stated in the documents presented. The complainant had requested that their mother to be taken to the church and placed in the niche, but the Respondent stated it would be done once final payment is made. The consumer was told they would have to pay \$500 upfront, more like a cash advance, as the church requires this before the placement of the urn and niche. That \$500 was basically a cash advance and the Respondent kept it until the whole bill was paid. The \$2000 charged for the O & C on the other family was kept and the bill was only \$1200. Those are the things that are problematic. The County even wrote back and said they charged the family upwards of \$4000 for lots and still have not paid them for the at-need space.

Mr. Jones questioned whether the families were reimbursed the difference between these already or has that been settled.

Ms. Wiener stated that it does not appear that the family has ever paid the bill, so the family received the services and the merchandise but never paid for them.

Mr. Bossart questioned whether Ms. Wiener is referring to Mr. Cottone.

Ms. Wiener stated that re Mr. Cottone, that was paid and the cremains are where they are supposed to be. On the Ortiz casket matter, the difference in the wholesale price, there is no indication that they ever paid that bill.

Mr. Jones stated that the fine is \$3250 but inquired about no probation being suggested.

Ms. Wiener stated that is because the Licensee no longer exists.

Mr. Jones stated that the establishment has been purchased by someone else, but Mr. Tartaglia still works there.

Ms. Wiener stated that Mr. Tartaglia's license is on probation.

Mr. Bossart stated that Mr. Tartaglia will be put on probation.

Ms. Wiener stated that there is no Licensee to put on probation in this case because the license was not transferred. A whole new license was issued to a whole new person and a new entity.

MOTION: Mr. Jones moved to accept the Settlement Stipulation. Mr. Hall seconded the motion, which passed with 1 dissenting vote.

(5) Tartaglia, Anthony: Case Nos. 105662-10-FC, 114114-10-FC, 114668-11-FC (SR1-600412401)

Mr. Bossart stated that Mr. Tartaglia was the FDIC of McKee Funeral Home. The facts are identical. Mr. Tartaglia has also agreed to pay a \$3250, separate from the McKee Funeral Home fine, plus undergo a 1 year period of probation of his license.

Mr. Helm questioned whether the Respondent knows when the fine is to be paid by.

Ms. Wiener stated that its 30 days.

Mr. Bossart stated 30 days is the customary period.

Ms. Dudley confirmed that it is 30 days, pursuant to the Rule.

Mr. Hall questioned whether Mr. Tartaglia is the FDIC under the new ownership.

Mr. Miller questioned the name of the new ownership.

Ms. Wiener stated that she could not think of the name of Brian Strauch's company.

Mr. Helm stated the Board ruled on it not long ago but he could not remember the name.

Mr. Bossart questioned whether the license number would be the same.

Ms. Wiener stated that the license number is totally different.

Mr. Hall questioned whether Mr. Tartaglia would agree, under his probation, to not serve as FDIC at that facility.

Ms. Wiener requested to see whether the Respondent is the FDIC of this location before answering Mr. Hall's question.

Mr. Hall questioned whether a motion could be made with the condition that the Respondent could not serve as the FDIC of any facility during this probationary period.

The Chair answered, "If you wish."

Ms. Wiener stated she would have to see whether that was acceptable.

The Chair held the item in abeyance until Ms. Wiener receives confirmation.

Ms. Wiener stated she would go make a call to the Respondent.

Mr. Bossart stated that the Ms. Wiener has not been able to reach the Respondent, so the Department requests that the matter be tabled until the next meeting.

The Chair questioned whether the Division was able to ascertain an answer regarding the FDIC.

Mr. Miller stated that Michael Palumbo is the FDIC, not Mr. Tartaglia. The issue still remains whether the Respondent would be the FDIC of any other establishment.

Ms. Wiener stated that is a significant request. Mr. Tartaglia is currently in a service; therefore Ms. Wiener is unable to have the appropriate level of conversation with him at this time.

Ms. Dudley stated that the request that he not be the FDIC of any other establishment is essentially a counteroffer as it is not contained in the Settlement Agreement. So until Ms. Wiener speaks with her client, the Board cannot force them to accept that counteroffer. The only way to go forward would be if the Board accepts the Settlement Agreement as it is.

Mr. Hall stated that the Board could go ahead and make the counteroffer and the matter could then be addressed at the next meeting.

Ms. Dudley concurred.

Ms. Wiener stated that her plan is to confer with the Respondent.

The Chair questioned when Ms. Wiener anticipates being able to speak with the Respondent.

Ms. Wiener stated she should be able to wrap this up before the next meeting as she should be able to speak with the Respondent on tomorrow or next week at the latest.

The Chair questioned whether the agreement could include the stipulation, and it would be up to the Respondent to accept it or reject it. Then the Board could always revisit it, if need be, at the next meeting. This way, it would move it along.

Ms. Dudley stated that she could write an Order of Counteroffer that would state that the Board is offering the settlement agreement with the condition that Mr. Tartaglia is not the FDIC at any other establish. The Respondent would have X amount of days to accept or reject it. Mr. Shropshire would let the Board know whether it is accepted or rejected. That way, the Respondent does not have to come back before the Board and start all over again.

Mr. Shropshire questioned the length of the term in which the Respondent would not be allowed to serve as FDIC.

The Chair stated it would be during the one year probationary period.

Ms. Dudley questioned whether 7 days for acceptance or rejection of the Counteroffer would be sufficient.

The Chair indicated that it would be.

Col. Stiegman stated that this seems awful convoluted and suggested that it be deferred to the next meeting.

Ms. Wiener stated that she has arbitration out of town the entirety of next week and requested that the Board grant her a 10-day window should the Order come to her on next Monday.

The Chair accepted Ms. Wiener's request.

Col. Stiegman questioned why the matter is not being deferred.

The Chair stated that the Board would like to have the matter settled today if at all possible.

Col. Stiegman questioned the significance of that.

Ms. Wiener stated if Mr. Tartaglia agrees not to serve as FDIC of any location during his probationary period, the Board would be done with this matter. Otherwise, the matter would be back before the Board next month to get it approved.

Mr. Hall stated that is the only thing changing in the Stipulation. Everything else is the same.

Mr. Bossart stated it is a condition of probation.

MOTION: Mr. Jones moved to accept the Order of Counteroffer that would include the settlement agreement with the condition that Mr. Tartaglia is not the FDIC at any other establish during the probationary period. Mr. Hall seconded the motion, which passed with 1 dissenting vote.

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.

6. Application(s) for Preneed License Renewals

A. Recommended for Approval without Conditions – Addendum B

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

Ms. Thomas-Dewitt disclosed her affiliation with Gail and Wynn Mortuary and stated it would not affect her ability to remain fair and impartial on these application(s) or any other matters before the Board today.

The Chair disclosed his affiliation with SCI Funeral Services of Florida Inc. 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

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.

Ms. Huggins disclosed her affiliation with The Simplicity Plan and stated it would not affect her ability to remain fair and impartial on these application(s) or any other matters before the Board today.

MOTION: Mr. Helm moved to approve the application(s). Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

B. Recommended for Approval with Conditions

(1) Carthage Chapel Funeral Home Inc (F038710) (Jacksonville)

2009 RENEWAL (7-1-2009): Licensee had a stated net worth of \$ 75,442 against a minimum required net worth of \$ 80,000. Licensee was renewed subject to a requirement that all preneed sales be either 100% trusted, or insurance funded.

2010 RENEWAL (7-1-2010): Licensee had a stated net worth of \$ 54,002 against a minimum required net worth of \$ 80,000. Licensee was renewed subject to the following conditions: 1) Licensee will write only 100% trusted or life insurance funded preneed contracts. 2) Licensee's principal would supply a subordination of debt agreement (copy attached). 3) Licensee would provide pledge of equity in certain property owned by Licensee's principal (copy attached).

2011 RENEWAL (7-1-2011): Licensee reports a stated net worth of \$ 59,078 (see item 2c on form R4), against a minimum required net worth of \$ 80,000. Licensee advises that it is in arrears in payment of taxes, and is operating under a payment arrangement. Licensee reports a current ratio of 2:1. Applicant has demonstrated a net worth of \$ 59,078. The required net worth for renewal, pursuant to s. 497.453(2) (b) and (5), Fla. Statutes, and Rule 69K-5.0016, Fla. Administrative Code, is \$80,000.

Section 497.453(2)(b)2, FS, authorizes an Applicant for renewal of a preneed license who cannot demonstrate the required minimum net worth to voluntarily submit to the licensing authority, and request acceptance of, alternative evidence of financial stability and resources or agree to additional oversight in lieu of the required net worth. Section 497.453(2) (b) 3, FS, provides that "The licensing authority may accept such alternative evidence or arrangements in lieu of the required net worth only if the licensing authority determines such alternative evidence or arrangements are an adequate substitute for required net worth and that acceptance would not substantially increase the risk to existing or future customers of nonperformance by

the Applicant or Licensee on its retail sales agreements." The Board finds that the condition(s) specified below are, under s. 497.453(2) (b) 3, FS, a proper and adequate substitute for the required net worth under the facts of this case. The license shall be renewed subject to the following conditions:

- 1) Concerning all preneed sales by Licensee under the renewed license, the Licensee shall either trust 100% of all preneed contract sales proceeds in a trust under s. 497,458, Florida Statutes; or, Licensee shall assure that the preneed contract is 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; and
- 2) The Subordination of Loan agreement, attached hereto, executed by Kenneth Peele Jr. on June 22, 2010, shall be and continue in force pursuant to its terms; and
- 3) The Pledge of Equity in Property to Secure Preneed Obligations, executed by Kenneth Peele Jr. on June 22, 2010, attached hereto, shall be and continue in force pursuant to its terms.

MOTION: Ms. Thomas-Dewitt moved to approve the application with the conditions recommended by the Division. Ms. Jean Anderson seconded the motion, which passed unanimously.

(2) Cemetery Professionals LLC (F019496) (Atlantic Beach)

2009 Renewal: The Licensee was renewed based upon a required net worth of \$100,000 and a stated net worth of \$101,453.

2010 Renewal: The application for renewal effective July 1, 2010 came before the Board at its August 2010 meeting (it was delayed in being presented due to issues related to whether Licensee received proper notice of the June 2010 meeting). The Board denied renewal due to failure to meet minimum net worth. However, the matter came back before the Board at the October 2010 Board meeting, based upon a showing that the Licensee had delivered a revised financial statement to the Division approximately 8 days before the August 2010 Board meeting, and that this statement had not been provided to the Board. The revised financial statement showed a net worth of \$108,302, versus a minimum required net worth of \$100,000. Upon consideration of the matter, the Board rescinded the prior denial and approved the renewal of the preneed license.

2011 Renewal: Licensee reports a net worth of \$134,218, against a minimum required net worth of \$100,000. At its Jan. 2011 Board meeting the Board approved a settlement of a disciplinary action against the Licensee, in case # 103192-09-FC. A Consent Order was filed on March 10, 2011 in the matter (copy attached). The Licensee is currently in compliance with the terms of the Consent Order. Among the stipulations made by the Licensee in the Consent Order, was an agreement to write only 100% trusted preneed contracts.

Accordingly, it is ordered that the application for renewal of the preneed license is approved subject to the condition that Licensee shall continue throughout the period of renewal to deposit into a preneed trust under section 497.458, Florida Statutes, 100 percent of all proceeds received from the sale of preneed contracts sold under the preneed license.

Mr. Hall questioned whether all fines are current.

Mr. Shropshire answered, "Yes."

MOTION: Ms. Huggins moved to approve the application with the condition that Licensee shall continue throughout the period of renewal to deposit into a preneed trust under section 497.458, Florida Statutes, 100 percent of all proceeds received from the sale of preneed contracts sold under the preneed license. Mr. Helm seconded the motion, which passed with 1 dissenting vote.

(3) Corey-Kerlin Funeral Home PA (F038706) (Jacksonville)

2009 RENEWAL (7-1-2009): Licensee had a stated net worth of \$ 270,175, against a minimum required net worth of \$ 100,000. Licensee was renewed without conditions.

2010 RENEWAL (7-1-2010): Licensee had a negative stated net worth of \$ (384,035), against a minimum required net worth of \$ 100,000. Licensee was renewed on conditions that 1) the principals submit personal guarantees of the Licensee's obligations, and 2) all preneed sales be 100% trusted or insurance funded.

2011 RENEWAL (7-1-2011): Licensee reports a negative stated net worth of \$(201,207), against a minimum required net worth of \$ 100,000. Licensee reports a current ratio of 5.91 to 1. The net worth deficiency has decreased significantly since last year. Licensee has demonstrated a negative net worth of \$ (201,207). Licensee reports total outstanding preneed contracts of \$4,165,476. The required net worth for renewal, pursuant to s. 497.453(2) (b) and (5), Fla. Statutes, and Rule 69K-5.0016, Fla. Administrative Code, is \$100,000.

Section 497.453(2) (b) 2, FS, authorizes an Applicant for renewal of a preneed license who cannot demonstrate the required minimum net worth to voluntarily submit to the licensing authority, and request acceptance of, alternative evidence of financial stability and resources or agree to additional oversight in lieu of the required net worth. Section 497.453(2) (b) 3, FS, provides that "The licensing authority may accept such alternative evidence or arrangements in lieu of the required net worth only if the licensing authority determines such alternative evidence or arrangements are an adequate substitute for required net worth and that acceptance would not substantially increase the risk to existing or future customers of nonperformance by the Applicant or Licensee on its retail sales agreements." The Board finds that the condition(s) specified below are, under s. 497.453(2) (b) 3, FS, a proper and adequate substitute for the required net worth under the facts of this case. The license shall be renewed subject to said condition(s):

1) Licensee shall, within 30 days of this Board meeting, cause the principals of the Licensee each to execute and deliver to the Division a personal guarantee of the Licensee's preneed obligations, in the form as attached hereto; and further, Licensee shall cause each such principal to file with the Division, within 60 days of the date of this Board meeting, a statement of personal assets and liabilities, compiled and reviewed by a certified public accountant.

2) Concerning all amounts received on or after July 1, 2010, by or on behalf of the Licensee, as proceeds from preneed contracts sold before July 1, 2010, the Licensee shall trust 100% of all such amounts in a trust under s. 497.458, Florida Statutes; concerning preneed contracts sold by Licensee on or after July 1, 2010, 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. Jones moved to approve the application with the conditions recommended by the Division. Ms. Thomas-Dewitt seconded the motion, which passed with 1 dissenting vote.

Mr. Kevin Hazlip questioned whether there is a standard form for the statement of personal assets and liabilities.

Mr. Shropshire stated that there is no standard form, but it has to be GAAP compliant.

(4) *Florida Colonial Holdings Inc (F039884) (Baldwin)*

2009 Renewal: Licensee's required net worth was \$10,000, and Licensee reported a net worth of \$13,827. Licensee was renewed without conditions.

2010 Renewal: Licensee's required net worth was \$20,000, and Licensee reported a net worth of \$27,024. The preneed license was renewed without conditions.

2011 Renewal: Licensee's required net worth is \$40,000. Licensee reported net worth is a negative \$(24,692). Licensee has operated at a significant net operating loss for 3 years in a row. Due to the format of Licensee's balance sheet, it is not possible to reliably ascertain the current ratio from the balance sheet. Licensee's December 31, 2010 balance sheet shows stated "Total Current Assets" of \$3,680; however, it appears there are some current assets in other balance sheet asset categories. Applicant has demonstrated a negative net worth of \$ (24,692). The required net worth for renewal, pursuant to s. 497.453(2)(b) and (5), Fla. Statutes, and Rule 69K-5.0016, Fla. Administrative Code, is \$ 40,000.

Section 497.453(2)(b)2, FS, authorizes an Applicant for renewal of a preneed license who cannot demonstrate the required minimum net worth to voluntarily submit to the licensing authority, and request acceptance of, alternative evidence of financial stability and resources or agree to additional oversight in lieu of the required net worth. Section 497.453(2)(b)3, FS, provides that "The licensing authority may accept such alternative evidence or arrangements in lieu of the required net worth only if the licensing authority determines such alternative evidence or arrangements are an adequate substitute for required net worth and that acceptance would not substantially increase the risk to existing or future customers of nonperformance by the Applicant or Licensee on its retail sales agreements."

The Board finds that 100 percent trusting of preneed sales proceeds, pursuant to s. 497.453(2)(b)2.k., F.S, would be an adequate substitute for required net worth, and that acceptance of such 100 percent trusting in lieu of the required net worth would not substantially increase the risk to existing or future customers of nonperformance by the Licensee on its retail sales agreements.

Accordingly, it is ordered that the application for renewal is approved subject to the condition that Licensee shall, commencing July 1, 2011, and thereafter until relieved of this requirement by Order of the Board, deposit into a preneed trust under section 497.458, Florida Statutes, 100 percent of all proceeds received from the sale of preneed contracts sold under the preneed license being renewed; this requirement extends to and includes proceeds received on preneed contracts sold on or after July 1, 2011, as well as proceeds received after July 1, 2011 on preneed contracts sold prior to July 1, 2011.

Mr. Helm stated on the 2010 Renewal, Licensee reported a net worth of \$27,024 but it was also stated that the Licensee's December 31, 2010 balance sheet shows stated "Total Current Assets" of \$3,680. Mr. Helm questioned which of the 2 is correct.

Mr. Shropshire stated that does not bear relationship, necessarily. That is "Total Current Assets" of \$3,680, which would be included in the assets that go into the total net worth. In 2010 the Licensee was required to have a net worth of \$20,000 and reported a net worth of \$27,024, so that was okay. Then in 2011, the Licensee is required to have a net worth of \$40,000 and his reported net worth is a negative \$(24,692).

Mr. Helm questioned whether the \$3,680 was included in the \$27,024.

Mr. Shropshire answered, "Yes."

Col. Stiegman questioned why it is not possible to reliably ascertain the current ratio.

Mr. Shropshire stated if you look at the December 31, 2010 balance sheet, the Licensee shows Total Current Assets consisting of cash of this \$3680. The next line reflects Accounts Receivables of \$1404. Normally, Accounts Receivable would be a current asset. There appears to be the same type of discrepancy in his prior years' financial statements, so it impossible to say what his current ratio is it does not appear the Licensee has properly calculated Total Current Assets.

MOTION: Ms. Thomas-Dewitt moved to approve the application with the conditions recommended by the Division. Mr. Jones seconded the motion, which failed with 5 dissenting votes.

The Chair questioned the Board's next step.

Ms. Dudley stated that the next step would be to discuss whether the Board would like to approve with additional conditions, if the conditions presented were not sufficient or the Board would have to reject the application and state reasons for the rejection.

Mr. Shropshire stated that the rejection would deny renewal.

The Chair questioned whether the Board could deny renewal until the net worth requirement was met.

Mr. Shropshire stated if the renewal was denied, the license would expire.

Ms. Dudley stated that the Board could approve with the condition that it would not be renewed until the Licensee provides proof of net worth, but it gets a little messy like that. The Licensee could apply at a later date if denied.

MOTION: Ms. Huggins moved to deny the application based on the net worth and the issues with the balance sheet. Col. Stiegman seconded the motion, which passed unanimously.

(5) Hudson Memorial Chapel Inc (F049500) (Delray Beach)

2009 Renewal: Licensee reported a negative net worth of (\$109,438). Required net worth was \$10,000. This was Licensee's first year of operations. Licensee was renewed by the Board subject to the condition that the owner, William Hudson III, agree to subordinate \$100,000 in loan amount due him from the Licensee, in favor of performance of preneed obligations.

2010 Renewal: Licensee reported a negative net worth of (\$104,510). Based on another subordination agreement, Licensee was approved for renewal.

Current (2011) Renewal: Required net worth is \$20,000. Licensee reports a negative net worth of (\$102,659). Licensee's December 31, 2010 balance sheet shows a positive current ratio of 4:1. However, only 1.6% of its current assets are cash. Approximately 84% of current assets are receivables. Licensee's balance sheet for the current renewal shows a loan liability of \$155,431 for Notes and Loans payable to officers and shareholders. If a portion of that debt is subordinated, Licensee will in effect have the required net worth. Applicant has demonstrated a net worth of \$(102,659). The required net worth for renewal, pursuant to s. 497.453(2)(b) and (5), Fla. Statutes, and Rule 69K-5.0016, Fla. Administrative Code, is \$20,000.

Section 497.453(2)(b)2, FS, authorizes an Applicant for renewal of a preneed license who cannot demonstrate the required minimum net worth to voluntarily submit to the licensing authority, and request acceptance of, alternative evidence of financial stability and resources or agree to additional oversight in lieu of the required net worth. Section 497.453(2)(b)3, FS, provides that "The licensing authority may accept such alternative evidence or arrangements in lieu of the required net worth only if the licensing authority determines such alternative evidence or arrangements are an adequate substitute for required net worth and that acceptance would not substantially increase the risk to existing or future customers of nonperformance by the Applicant or Licensee on its retail sales agreements."

The Board finds that execution of a Subordination of Debt agreement, in the form as attached hereto, would be an adequate substitute for required net worth, and that acceptance of said Subordination agreement would not substantially increase the risk to existing or future customers of nonperformance by the Licensee on its retail sales agreements.

Accordingly, it is ordered that the application for renewal is approved subject to the condition that Licensee executes and returns to the Division the attached Subordination of Debt Agreement; the renewal shall not be effective until the Division is in receipt of the properly executed Subordination Agreement.

Mr. Helm stated that the Licensee has improved every year, to some degree.

MOTION: Mr. Helm moved to approve the application with the condition that Licensee executes and returns to the Division the Subordination of Debt Agreement; the renewal shall not be effective until the Division is in receipt of the properly executed Subordination Agreement. Ms. Thomas-Dewitt seconded the motion, which passed with 3 dissenting votes.

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

Licensee has demonstrated a net worth of \$46,583. The required net worth for renewal, pursuant to s. 497.453(2)(b) and (5), Fla. Statutes, and Rule 69K-5.0016, Fla. Administrative Code, is \$60,000.

Section 497.453(2)(b)2, FS, authorizes an Applicant for renewal of a preneed license who cannot demonstrate the required minimum net worth to voluntarily submit to the licensing authority, and request acceptance of, alternative evidence of financial stability and resources or agree to additional oversight in lieu of the required net worth. Section 497.453(2)(b)3, FS, provides that "The licensing authority may accept such alternative evidence or arrangements in lieu of the required net worth only if the licensing authority determines such alternative evidence or arrangements are an adequate substitute for required net worth and that acceptance would not substantially increase the risk to existing or future customers of nonperformance by the Applicant or Licensee on its retail sales agreements." The Board finds that the condition(s) specified below are, under s. 497.453(2)(b)3, FS, a proper and adequate substitute for the required net worth under the facts of this case. The license shall be renewed subject to said condition(s):

a) Concerning all amounts received on or after July 1, 2011, by or on behalf of the Licensee, as proceeds from preneed contracts sold before July 1, 2011, the Licensee shall trust 100% of all such amounts in a trust under s. 497.458, Florida Statutes; concerning preneed contracts sold by Licensee on or after July 1, 2011, Licensee shall either trust 100% of all proceeds

from such sales in a trust under s. 497.458, Florida Statutes, 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.

b) Licensee shall, within 30 days of this Board meeting, cause the principals of the Licensee each to execute and deliver to the Division a personal guarantee of the Licensee's preneed obligations, in the form as attached hereto; and further, Licensee shall cause each such principal to file with the Division, within 60 days of the date of this Board meeting, a statement of personal assets and liabilities, compiled and reviewed by a certified public accountant.

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

MOTION: Col. Stiegman moved to approve the application with the conditions recommended by the Division. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

C. Recommended for Denial

(1) Allen Funeral Directors LLC (F062081) (Key Largo)

Allen Funeral Directors LLC acquired the preneed business now carried under this license by change of ownership approved by the Board at its October 2010 Board meeting. In connection with that change in ownership Allen Funeral Directors LLC represented to the Board that they were acquiring \$45,192 in preneed contracts outstanding, and they represented to the Board that they then had a net worth of \$10,000.

CURRENT RENEWAL: Licensee reports a negative net worth of \$(39,803), against a required minimum net worth of \$10,000. Licensee records as an asset on their enclosed balance sheet submitted with their renewal application, the intangible item "Goodwill," at gross value of \$71,734, less amortization of \$4,036, for a net carrying value of \$67,698. Licensee's balance sheet also lists as an asset a "Covenant Not to Compete," carried on the balance sheet at \$50,000. These assets in aggregate are carried on the balance sheet at \$117,698, and are approximately 35% of Licensee's total assets of \$333,676 on the balance sheet. The Division's experience is that the valuation of such intangible assets is typically subjective, and that in the event of liquidation of the preneed Licensee to pay its obligations, there will probably be no established or ready market for these intangible assets and for this reason their contribution to net worth is less reliable than as regards other tangible assets. Applicant has demonstrated a negative net worth of \$(39,803). The required net worth for renewal, pursuant to s. 497.453(2)(b) and (5), Fla. Statutes, and Rule 69K-5.0016, Fla. Administrative Code, is \$10,000.

Section 497.453(2)(b)2, FS, authorizes an Applicant for renewal of a preneed license who cannot demonstrate the required minimum net worth to voluntarily submit to the licensing authority, and request acceptance of, alternative evidence of financial stability and resources or agree to additional oversight in lieu of the required net worth. Section 497.453(2)(b)3, FS, provides that "The licensing authority may accept such alternative evidence or arrangements in lieu of the required net worth only if the licensing authority determines such alternative evidence or arrangements are an adequate substitute for required net worth and that acceptance would not substantially increase the risk to existing or future customers of nonperformance by the Applicant or Licensee on its retail sales agreements."

The Licensee has offered the following alternative evidence or arrangement in lieu of the required minimum net worth: An agreement to submit quarterly financial statements of the entity.

The Board finds that the alternative evidence or arrangement(s) proposed in lieu of the required net worth would not be an adequate substitute for required net worth, and that acceptance of the alternative evidence or arrangement(s) in lieu of the required net worth would substantially increase the risk to existing or future customers of nonperformance by the Licensee on its retail sales agreements, based upon the following findings:

- a. The large size of the difference between demonstrated net worth and required net worth.
- b. The inclusion among Licensee's assets of the intangible items "Goodwill" carried at a net value of \$67,698, and a "Covenant not to compete," carried on the balance sheet at a value of \$50,000. These are in aggregate approximately 35% of Licensee's total assets of \$333,676. The valuation of such intangible assets is typically subjective, and that in the event of liquidation of the preneed Licensee to pay its obligations, there will probably be no established or ready market for these intangible assets and for this reason their contribution to net worth is less reliable than as regards other tangible assets.
- c. Licensee's lack of any extensive track record of successful performance at the location now doing business.

Mr. Shropshire stated that there was some supplemental material provided to the Division and in turn provided to the Board and suggested that the Chair recognize the Applicant's attorney, Ms. Wiener, to address the supplemental material.

Ms. Wiener stated that this is the Applicant's first preneed renewal submission and his accountant submitted the financials on a tax basis as opposed to pursuant to GAAP. When they are pursuant to GAAP, the Licensee meets the required minimum net worth to maintain his licensure. The financials did not get filed through Ms. Wiener's office. Once Ms. Wiener found that the financials were prepared on a tax basis, she requested that the financials be prepared according to GAAP, which is the requirement of the Law. Now the financials are compliant and the Licensee is requesting that the preneed renewal be approved.

Mr. Shropshire stated that in view of the revised financial statements that now show a net worth of \$10,513 against a required net worth of \$10,000, the Division changes its recommendation to approval without conditions.

MOTION: Ms. Thomas-Dewitt moved to approve the application. Mr. Hall seconded the motion, which passed unanimously.

(2) *Boynton Memorial Chapel Ltd (F019300) (Boynton Beach)*

2009 RENEWAL (7-1-2009): Licensee had a negative stated net worth of \$ (1,126,690), against a minimum required net worth of \$ 100,000. Licensee was renewed subject to the condition of a personal guarantee of the Licensee's preneed obligations.

2010 RENEWAL (7-1-2010): Licensee had a negative stated net worth of \$ (1,399,456), against a minimum required net worth of \$ 100,000. Licensee was renewed subject to conditions of 100% trusting, or life insurance funding, of all preneed contracts sold; and a personal guarantee by the Licensee's Principal of the Licensee's preneed obligations.

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. Licensee reports a current ratio of .87 to 1. Licensee's principal, Stormet C. Norem, submits the following proposed alternatives in lieu of required net worth: 1) a personal guarantee of the Licensee's obligations; 2) evidence that, as of July 29, 2009, a funeral home at 800 West Boynton Beach Blvd, owned by Licensee or Stormet C. Norem, had a fair market value of \$3,325,000. Applicant has demonstrated a negative net worth of \$(1,419,627). Applicant reports total outstanding preneed contracts of \$2,037,648. The required net worth for renewal, pursuant to s. 497.453(2)(b) and (5), Fla. Statutes, and Rule 69K-5.0016, Fla. Administrative Code, is \$ 100,000 .

Section 497.453(2)(b)2, FS, authorizes an Applicant for renewal of a preneed license who cannot demonstrate the required minimum net worth to voluntarily submit to the licensing authority, and request acceptance of, alternative evidence of financial stability and resources or agree to additional oversight in lieu of the required net worth. Section 497.453(2)(b)3, FS, provides that "The licensing authority may accept such alternative evidence or arrangements in lieu of the required net worth only if the licensing authority determines such alternative evidence or arrangements are an adequate substitute for required net worth and that acceptance would not substantially increase the risk to existing or future customers of nonperformance by the Applicant or Licensee on its retail sales agreements."

The Licensee has offered the following alternative evidence or arrangement(s) in lieu of the required minimum net worth: 1) a personal guarantee of the Licensee's obligations; 2) evidence that a funeral home owned by Stormet C. Norem had a fair market value of \$3,325,000 as of July 29, 2009.

The Board finds that the alternative evidence or arrangement(s) proposed in lieu of the required net worth would not be an adequate substitute for required net worth, and that acceptance of the alternative evidence or arrangement(s) in lieu of the required net worth would substantially increase the risk to existing or future customers of nonperformance by the Licensee on its retail sales agreements, based upon the following findings:

1. The large size of the difference between demonstrated net worth and required net worth.
2. The adverse trend in Licensee's net worth. Licensee reported a net worth of \$(1,126,690) for its July 1, 2009 renewal, and \$(1,399,456) for its July 1, 2010 renewal.

3. Regarding the personal guarantee, the fact that the personal financial statement provided by Stormet C. Norem, dated February 14, 2011, shows only \$25,358 in current assets, and \$1,048,953 in current liabilities.
4. The age (7-29-2009) of the real estate appraisal offered regarding the funeral home at 800 West Boynton Beach Blvd, and the resulting lack of any reliable indication of the current fair market value of the real estate.
5. Lack of proof of ownership of the funeral home at 800 West Boynton Beach Blvd, and lack of evidence of what, if any, other security interests are outstanding against the property.
6. Licensee's reported current ratio of .87 to 1.

Mr. John Rudolph stated that this Applicant has been before this Board numerous times with a negative net worth and the result of the net worth is the type of accounting that is done for his business. The Applicant's business has been around for 32 years. Most of the real property has been depreciated. Most of the fixed assets have been depreciated resulting in a lower net worth. In addition, as it is reflected on the financial statements, there is nothing for salaries. That is paid through the PA. The income from the funeral home, at the end of the year, goes to the PA, which is the owner and Stormet Norem who is an owner. So the negative numbers that make up for the negative net worth are as a result of the accounting it goes through. Mr. Greg Brudnicki, 2 years ago, recognized it. The Applicant has been in existence and had a recent audit of the facility by the Department and no deficiencies were noted. The Licensee has been operating without any complaints and has been fulfilling the contracts. Last year, an appraisal of the property was submitted and the preneed contracts were personally guaranteed. The Applicant is prepared to do that again.

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

Mr. Stormet C Norem answered, "I do." In essence, Mr. Norem is 100% owner of Boynton Memorial Chapel. It is owned by Boynton Memorial Chapel Ltd because at the very beginning, Mr. Norem did have limited partners to help him get going. Mr. Norem ended up buying out those limited partners, but the entity remained as a limited partnership. The general partner is Stormet C Norem LFDPA which is fully owned by Mr. Norem 100% as the corporate general partner, made for liability reasons. Mr. Norem is the sole limited partnership. Over the years we ended up having it with a PA. The corporate entity owns 99% and Mr. Norem as a limited partner owns 1%. The profits are shared 50/50, losses are shared 90/10. Sharing losses has not been a problem for a long time, which was basically due at the beginning to give the tax incentives at the time to the limited partners who put up the money until Mr. Norem could buy them out. Mr. Norem stated that everything has been done correctly over the years and this is an ongoing thing. In regards to the adverse trend, this is the first time the current ratio was 87 to 1. Mr. Norem stated that last year he had several medical expenses for him and his wife, so more cash was pulled out than in other years.

The real estate is almost fully depreciated. An addition was added 4 years ago of a crematory and refrigeration facility, which is connected to the building. There have not been any problems fulfilling any preneed contracts. The only one that may have been a problem is a few years ago when the Department stated it wanted all of the financial statements in accordance with GAAP, all the personal financial statements for the funeral home were done in accordance with GAAP, so everything is listed. When filing with the Department, we have to show the trust funds including the deferred trust liability, which was brought up in an email to the Chair last year. Mr. Norem added that the only reason he was not present last year was because of the very late notice received from the Department. The notice was received a few days before the meeting. Mr. Norem stated that is an issue that the Department needs to address throughout this Industry.

There are a lot of funeral homes that are not showing the casket liability because they do not feel they have one. They feel the casket sale is a final sale unless it is cancelled within the first 30 days or whatever is in the contract or whenever there is an out of town death and it cannot be delivered, you are backed 100% or deliver the merchandise, which is deliverable most of the time. So to have that liability for all of the merchandise hanging out there on the balance sheet is unreasonable because most funeral homes do not show that on their statements. If you do not see it there you do not look at it; you do not really delve into what they ought to be doing. Mr. Norem stated that he is doing everything according to GAAP, so it is an unfair disadvantage to show everything, do it right and then be penalized for it. Mr. Norem added that every year, he has had the largest negative net worth that comes before the Board. A lot of firms do not have their real estate or their furniture and fixtures in their company. They have it in their own name and maybe rent from themselves, so they do not have that. We have that and have had it since the 80s and have not had any sales. There are several ways to clear it up; make a huge cash infusion into to wipe out the negative, which nobody really wants to do. Another way is to turn around and sell his property

to himself. That would bring everything current. The basis would change. Therefore, the negative net worth should go away with the exception of the liabilities on the trust side. At that point, Mr. Norem would have to pay capital gains tax just to make it look good for the State and it will still run the same. Mr. Norem does not feel there is any reason he should have to do that a go to that expense just to make it look good when the Department and the rules have ways to show this. Mr. Norem provided a personal financial statement which shows that he has stock in a 5-Star bank that he is a director of. This is the 2nd bank he has done. Mr. Norem stated that he is very familiar with banking and reading financial statements. The same thing is done with the trust funds as Mr. Norem has had his own trust since the 80s. Mr. Norem stated that he is trusting 90/10 and merchandise. On the 70% trusts, Mr. Norem stated that he gets maybe half of what was put in to that trust back, which includes the interest. Mr. Norem added that he performs the entire service and understands those are losses. Some of them were written off as tax write-offs but Mr. Norem still fulfills everything and has never had any complaints. The funeral home received a clean audit last month with no deficiencies. Mr. Norem added that he does not know why the Board is not accepting some of the things he has offered.

Mr. Rudolph stated that the Department expressed concern that the appraisal was 3 years old.

Mr. Norem stated that right after the '09 meeting the Board wanted an appraisal because property values had gone down, so Mr. Norem had an appraisal done. The appraisal was submitted. Last year Mr. Norem provided personal guarantees. Last year the Board requested a personal financial statement. In fact, that came out of the short meeting where Mr. Norem received very short notification and Mr. Jim Gellepis was working with the application. Mr. Norem stated that he called Mr. Gellepis the next day after the meeting to find out the status and was advised that the Board wanted a personal financial, which was sent right up. Mr. Norem stated that he did not hear anything back and the meeting that it was deferred to was coming up so Mr. Norem called Ms. Lashonda Morris because she was the one that was taking over because Mr. Gellepis was retiring that day or the next day. Ms. Morris advised that everything was fine. Ms. Morris added that she and Mr. Shropshire had signed off on the application for approval. Mr. Norem stated that Ms. Morris advised that he could attend the meeting if he wanted to but she believed that everything would be fine as Mr. Norem had provided the Department with the information needed. As a result, Mr. Norem did not attend the meeting.

Mr. Shropshire questioned whether Mr. Norem is referring to last year's renewal.

Mr. Norem answered, "Yes."

Mr. Shropshire stated that the Division does not contest that at all.

Mr. Rudolph requested that Mr. Norem address the current asset ratio issue.

Mr. Norem stated that his current asset ratio is improving. Everyone in the funeral and cemetery business has had down years the last several years. They may be handling the same number of calls that they have but revenues have been down. That is a given. Mr. Norem stated that he has had revenues that were down, but he has also decreased expenses. Mr. Norem stated that he has layoffs and has come back into work more than he did before. This year, salaries were reduced anywhere from 20 – 34%.

Mr. Hall questioned the value of the real estate.

Mr. Norem stated that he does not know. The property is located in a fairly good area, just 2 blocks off of I-95 in Boynton Beach. The personal financial statement has \$1 million listed for the bank stock. That is at cost. The bank is no over 3 years old and is not at the no vote status as far as the state is concerned. The property is worth more than it is listed for because Mr. Norem has been doing his financial statements.

Mr. Hall stated that the real estate is listed at \$1,275,000 on the personal financial and questioned whether there is \$1 million on the mortgage on it.

Mr. Norem questioned whether Mr. Hall is referring to the \$1,729,793 BMC+PA (net). That is the business less the current mortgage and any loans.

Mr. Hall stated if the Board is taken this as an assignment to guarantee this and if we take Mr. Norem's figures on the value of the real estate, after the mortgage there is not much equity left there.

Mr. Rudolph questioned whether Mr. Hall is referring to the personal financial or the financials of the entity.

Mr. Hall responded that he is referring to the personal financial. Mr. Hall questioned the \$774k, Notes Due to Banks.

Mr. Norem stated that \$750k is a loan on bank stock and the other \$24k is a personal line of credit that Mr. Norem has a safety net for his checking account because being in the banking business, you cannot have any overdrafts or anything.

Mr. Hall questioned the protection for the State with the equity here with those mortgages and the value of that property.

Mr. Norem stated that real estate owned is 3 separate properties; one is Mr. Norem's personal residence. Mr. Norem has 2 townhomes that are on the ocean in Ocean Ridge; one he lives in and one is rented. It is not currently rented as the renters moved out in May. The property is for sale or rent. Mr. Norem also has a vacant lot in Indian Lake Estates that he received from his parents. Mr. Norem stated that a couple of years ago he mentioned to the Board that there was Wilma damage on that building and the roofers left hot mops on the roof. That evening the roof caught fire and it was unable inhabitable so we had to take it down and we were out 2 years. The condo association was not insured enough so we all had to dig in our pockets for that and those are some of the reasons for pulling excess cash out. Mr. Norem added that he got back into the building about this time in '08. Mr. Norem stated that his lowest credit score is 722 and the highest is 766 of the 3. In the whole history of the report, there is no 30 days past due, no derogatory information whatsoever.

Mr. Rudolph stated that the longer you own it, it will continue to depreciate and you are not going to have the value to go against your net worth. This is what happens when you have a company that has been in business for 32 years.

Mr. Helm stated that there are lots of companies in this state that have been in business that long and they do not have any problem with this.

Mr. Hall questioned when Mr. Norem purchased the business.

Mr. Norem stated that he built the business in '78 and opened in April '79.

MOTION: Ms. Thomas-Dewitt moved to approve the application with the conditions imposed in the past to include a personal guarantee. Col. Stiegman seconded the motion, which passed with 2 dissenting votes.

*****BREAK*****

The Chair stated it was brought to his attention that the renewal last year was contingent upon 100% trusting but the Applicant has represented that he has been trusting at 90/10. Therefore, the Board needs to address the motion that was made to clarify and understand what has been happening the past year.

Mr. Norem stated when he first started preneed back in the 80s we did the 70/30 service trust.

Mr. Rudolph requested that Mr. Norem just address what happened at the last meeting.

Mr. Norem stated at he received the notice late for the June meeting last year and was unable to attend the meeting. After the meeting, Mr. Norem was advised to submit a personal financial statement to the Department. Ms. Morris advised that the application would be submitted to the Board for approval and that Mr. Norem could attend if he wanted to. After the meeting, Mr. Norem received the license but no communication regarding the 100% trusting so the Licensee has been carrying on this past year with a 90/10 service trust and merchandise.

Ms. Thomas-Dewitt stated that she was under the impression that the Licensee was trusting 100% and that is what her motion was based upon.

Col. Stiegman concurred regarding the second to the motion.

Mr. Norem stated when he received the notice for this meeting recommending the denial he noticed that the one for last year indicated 100%. Mr. Norem then contacted Mr. Rudolph as he thought this was incorrect.

Mr. Rudolph stated that Mr. Norem did not know that 100% trusting was one of the conditions.

Col. Stiegman questioned whether it is unusual for Mr. Norem not to receive notification.

Mr. Shropshire stated that he would have suspected that Mr. Gellepis would have advised Mr. Norem.

Col. Stiegman questioned whether there is something in the procedures that gives them notice in writing.

Mr. Shropshire stated that there is unless we understand that they are consenting to it.

Mr. Rudolph stated that Mr. Norem did not consent to it as he was not present at the meeting.

Mr. Norem stated he was not present as heard that it was being sent and the only thing needed from him was a personal financial statement. Mr. Norem stated if the Board would like for him to trust 100% he would be glad to do so.

Mr. Shropshire stated that he would have anticipated that Mr. Gellepis would have told the Licensee what the Board decided and if the Licensee was upset then the Department would have issued an Order which would have been their entry point to administrative process to contest it; but if Mr. Gellepis conveyed to them what the conditions were and the Licensee agreed, the Division would not go through those hoops. Maybe there was some confusion as it was close to Mr. Gellepis' retirement but obviously it was a mistake.

The Chair stated that the recent audit did not turn up any findings.

Mr. Norem concurred. The audit went through the end of February and we were still doing the 90/10 plus the merchandise.

The Chair stated it appears there was a lack of communication but now is the time to reinforce it.

Ms. Dudley stated that procedurally there would have to be a motion to reconsider if the Board would like to reconsider the previous motion.

MOTION: Ms. Thomas-Dewitt moved to reconsider the previous motion. Col. Stiegman seconded the motion, which passed unanimously.

Mr. Shropshire stated that Staff provided a copy of the letter that did go out by Mr. Gellepis last year and it did not refer to the 100% trusting so apparently the Licensee was not advised of that decision of the Board.

Mr. Hall questioned whether Mr. Rudolph represented Mr. Norem at the meeting.

Mr. Rudolph stated that this is the first time he has represented the Licensee.

The Chair stated that the letter from staff adds clarity to what was or was not communicated.

MOTION: Ms. Thomas-Dewitt moved to approve the application subject to the conditions of 100% trusting and a personal guarantee. Ms. Huggins seconded the motion, which passed with 3 dissenting votes.

(3) CEP Investment Inc (F019381) (Hudson)

2009 Renewal (7-1-2009): Required net worth, \$100,000; Stated net worth (\$70,594). Based on tax value of land and building (as compared to balance sheet value) the license was renewed subject to 100% trusting.

2010 Renewal (7-1-2010): Required net worth \$100,000; Stated net worth (\$246,192). Based on a commercial appraisal of the land and building (as compared to balance sheet value) the license was renewed subject to 100% trusting.

2011 Renewal (7-1-2011): Required net worth is \$100,000. Stated net worth is (\$262,961). Current ratio is approximately 1:1. Licensee offers a commercial appraisal of the funeral home, dated March 15, 2011, which values the FH at \$530,000 as is. However, the Division believes that even giving credit for the asserted unrealized real estate value, the Licensee's net worth is in the range of \$10,000. Applicant has demonstrated a net worth of \$ (262,961). The required net worth for renewal, pursuant to s. 497.453(2)(b) and (5), Fla. Statutes, and Rule 69K-5.0016, Fla. Administrative Code, is \$ 100,000.

Section 497.453(2)(b)2, FS, authorizes an Applicant for renewal of a preneed license who cannot demonstrate the required minimum net worth to voluntarily submit to the licensing authority, and request acceptance of, alternative evidence of financial stability and resources or agree to additional oversight in lieu of the required net worth. Section 497.453(2)(b)3, FS, provides that "The licensing authority may accept such alternative evidence or arrangements in lieu of the required net worth only if the licensing authority determines such alternative evidence or arrangements are an adequate substitute for required net worth and that acceptance would not substantially increase the risk to existing or future customers of nonperformance by the Applicant or Licensee on its retail sales agreements." The Board finds that no alternative evidence or arrangements in lieu of the required net worth would be an adequate substitute for required net worth, and that acceptance of any alternative or arrangement would substantially increase the risk to existing or future customers of nonperformance by the Licensee on its retail sales agreements, based upon the following findings:

- a. The size of the difference between demonstrated net worth and required net worth.
- b. The trend in net worth is adverse. The difference between required net worth, and Licensee's demonstrated net worth, has been increasing in the most recently reported three years.
- c. Consideration of unrealized real estate appreciation still leaves Licensee significantly below required net worth.

Accordingly, it is ordered that the application for renewal of the preneed license is denied.

The Chair requested that the Licensee raise his right hand to be sworn in.

Mr. Shropshire proceeded, "Do you solemnly swear that the testimony you are about to give in this matter will be the truth, the whole truth and nothing but the truth so help you God?"

Mr. Clarence E Prevatt Jr answered "yes." Mr. Prevatt stated that he has been trusting 100% since opening his business in '93. I look at the number here and I see something that I am happy to see. When I first looked at this, I saw a (\$262,961) and realized that it's going the wrong way but then I realize that the Division believes that giving credit for the unrealized real estate value, the net worth is in the range of \$10,000, which is on the plus side. Mr. Prevatt stated that he has not been on the plus side for a number of years. The Licensee just had an appraisal done on March 15, 2011. The real estate value has gone down \$70,000 from the original \$600,000 used in 2010 so that is an unrealized paper loss that had no effect on the business other than when the real estate market starts going up again, that value will come back in time. Mr. Prevatt stated if he took that \$70,000 as compared to what was done last year and add it to the \$10,000 that he has, Mr. Prevatt stated he would be in the \$80,000 range basically and in the same shape as in 2010.

Mr. Prevatt stated that he has been trying to get this going in the right path and it appears to be doing so. The business does make a profit. In today's market, we realize that cremations are more popular than ever in the cash flow. The numbers are up this year than they have been from last year so Mr. Prevatt realizes a pretty decent year this year. The Licensee added that he has made a big effort and a stride to get this deficit down to where it's realistic to avoid coming before the Board every year. If something drastic were to happen to the business the Licensee has 100% of the monies in the trust. Mr. Prevatt stated that he does not like taking out any money so that when he does fulfill those contracts, he gives more return than others that are -30% out of their trust. This regenerates a little more profitability for the Licensee in the long run. Life insurance is the same way. In all the scenarios that you would look at this, there is really no strain on the Licensee servicing these contracts or any funeral home coming in taking those preneed contracts because all the money is there, either in the insurance or the trust. Mr. Prevatt stated that he capable of taking care of those contracts. The Licensee gets audited and has never had a deficit problem. All the money collected is deposited appropriately. Mr. Prevatt added that preneed is very important to small businesses like him as he has been doing this for about 40 years since he was out of high school, with his father. Probably today, since we have been doing for about 14 or 15 years, that about 60 to 70, sometimes 80% of the contracts that come through those funeral homes are

preneed contracts and it would be a burden on the consumer, if the Licensee is trusting 100% and in an insurance program, if the Board does not allow the Licensee to sell preneed. Mr. Prevatt stated that the Board would be taking 60-70% of his business that he could have or 80% in the future is being taken away as he would have to turn down those people that come in and someone else is going to sell those contracts to somebody else at some point in time if they want to prepay. So it is a burden and it is important and that is why Mr. Prevatt addresses the Board every year.

Mr. Hall questioned whether the Casket Showroom listed.

Mr. Prevatt stated that they are quarter panels.

Mr. Hall questioned whether Mr. Prevatt owns them or the company does.

Mr. Prevatt answered, "Yes Sir."

Mr. Hall questioned whether it's listed at \$35k or \$36k.

Mr. Prevatt stated that it is about \$18k now. As caskets are sold, the price comes down after a 5 year period of time.

Mr. Hall stated that it is listed at \$35k or \$36k as Fixed Asset on Balance Sheet.

The Chair stated that part of the concern is that the negative net worth continues to increase on the negative side for the last 3 years.

Mr. Prevatt stated when he used the \$600k in 2010 in front of the Board the license was approved for that and the stated net worth (\$246,192). That number has continued to go up. However, if you take the value, I've lost \$70k in that mix that has been taken away from that asset, so that number would be down from that if that real estate was another \$70k worth of value that could be thrown in as a bottom line on it. Mr. Prevatt added that he is not having any trouble fulfilling those contracts as the money is there when the consumer comes in. Mr. Prevatt stated that he would try his best to continue to get this negativity increased by at least \$20k every year going forward as that was his goal and he is getting close, even more so if the real estate would go up. Mr. Prevatt assured the Board that the money is safe and there is no pressure being put on the consumer as far as them realizing a benefit for that. The money is 100% refundable, 100% trusted.

Mr. Hall stated from his perspective it appears the Licensee probably runs a clean operation.

Mr. Prevatt stated that he tries to as he thanked Mr. Hall.

Mr. Hall stated that even though the Licensee is trusting 100% and doing insurance, the problem being brought back to the Board is that the net worth continues to go the wrong way. Mr. Hall questioned how in fairness the Board could allow Mr. Prevatt to continue but possibly turn down the next person that has even lesser net worth. Mr. Hall is requesting a solution to get this matter resolved. The net income looks good but the rules are laid out in the Statutes as to what needs to happen. The Board has approved the license for a couple of years and instead of it improving it is getting worse.

Mr. Prevatt stated that he understands. Mr. Prevatt added that the Board has been good with helping with the matter and he will get this thing turned around even if he has to input more money into. Mr. Prevatt stated that he has 6 more months in this year to try and make some more corrections on it but assured the Board that the next time he comes back, if he has not done a better job of getting this thing turned around in the right direction that he would understand a denial. Mr. Prevatt requested that the Board give him that time to turn it around as it is so important to him to be able to fulfill the preneed contracts and compete in the market place today.

Mr. Helm questioned how much time Mr. Prevatt is requesting to turn it around.

Mr. Prevatt stated he would like a full 12 months to be working at this. If the real estate had not gone done Mr. Prevatt feels he would have been pushing the button to getting close to as using that piece of real estate to be net worth of \$100k. Mr. Prevatt stated that he does not know what the numbers will look like for this year, but his numbers and revenue are up.

Ms. Huggins stated that Mr. Prevatt mentioned putting his own money in at some point and questioned whether that would be a possibility for this year instead of waiting for another year.

Mr. Prevatt stated that he would like not to do that this time but he could put some money in it. Mr. Prevatt stated he would probably have to sell some stock or something like that in order to do that. Mr. Prevatt stated he would prefer to submit a financial statement and personally guarantee the trust and the insurance as he has a lot of personal assets. Mr. Prevatt stated this year he paid cash for a new car for the business as he does not finance those things. Cash flow is not a problem.

Mr. Hall questioned whether Mr. Prevatt would sign a personal guarantee if the Board extends the renewal another year.

Mr. Prevatt answered, "Yes Sir."

The Chair questioned whether Mr. Prevatt feels his personal guarantee would cover the deficiency in the net worth.

Mr. Prevatt stated it would not cover the \$263k, but you have to realize that the Division believes there is a \$10k positive using that piece of real estate that he has.

Mr. Hall questioned whether Mr. Prevatt has any idea of what his personal net worth would be.

Mr. Prevatt stated that he could not say without putting it on paper. Mr. Prevatt stated he has 2 homes, stocks and cash in the bank.

The Chair questioned whether the 2 homes are encumbered.

Mr. Prevatt stated that they are.

Mr. Helm concurred with Mr. Hall in believing that Mr. Prevatt does run a clean business but added that as it sits before him, he would have to vote no. Mr. Helm stated that he is looking for Mr. Prevatt to say something that would help the Board give him that window.

The Chair questioned whether the Licensee could reapply in 6 months, in the middle of the licensing year if the license is denied today.

Mr. Shropshire stated it could occur but the Licensee would have to show net worth.

The Chair stated that he understands but questioned whether there could be another application at any time.

Mr. Shropshire stated that there could be. Another option would be if the Board wants to explore tabling this until the next meeting to allow Mr. Prevatt to do a personal financial statement to see if that could help.

Mr. Prevatt questioned what if he submitted a personal financial statement and be willing to submit quarterly financials on the business to help the Board feel secure about giving the Licensee this time frame. Mr. Prevatt stated that he is willing to provide whatever the Board needs to be satisfied.

Col. Stiegman stated that everyone in the Industry is in the same boat as this Licensee, but Mr. Prevatt's boat been sinking steadily for 3 years and now Mr. Prevatt is requesting another year.

MOTION: Col. Stiegman moved to deny the application based on the difference between the demonstrated net worth and required net worth and the adverse trend of net worth. The motion failed due to the lack of a second.

Ms. Michele Hood questioned if this is tabled whether the license will expire on June 30th and the Licensee would not be able to continue to write preneed during the interim until a decision is made or whether there could be a provisional approval based upon the submission.

Mr. Shropshire stated that it would actually go the other way. If the Board denies this and the Licensee promptly files a request for hearing, Mr. Prevatt could continue to sell but the Board's rules are very clear on that. The Division has done it in the past but there is no statutory mechanism.

Ms. Dudley stated that since he got the application in and the Board has not acted on it, the Licensee could continue.

Mr. Helm stated there needs to be a definitive answer on this.

Ms. Dudley stated that would take to some research.

Mr. Helm stated that everyone wants to help this Applicant to a certain degree.

Mr. Shropshire stated that he is more comfortable just with the motion and the Division will just "let things go" until the August meeting when we come back with the personal financials.

Mr. Helm questioned whether the Licensee could continue to sell.

Mr. Shropshire answered, "Yes."

MOTION: Mr. Hall moved to defer the application to the next meeting to allow the Applicant time to submit a personal financial statement. Ms. Anderson seconded the motion, which passed with 2 dissenting votes.

(4) Comforter W P (F019302) (Port St Joe)

2009 RENEWAL (7-1-2009): Licensee had a stated net worth of \$ 370,703, against a minimum required net worth of \$20,000. Licensee was renewed without conditions.

2010 RENEWAL (7-1-2010): Licensee had a stated net worth of \$ 74,479, against a minimum required net worth of \$20,000. Licensee was renewed without conditions.

2011 RENEWAL (7-1-2011): Licensee reports a stated net worth of \$ 10,144, against a minimum required net worth of \$20,000. Applicant has demonstrated a net worth of \$10,144. The required net worth for renewal, pursuant to s. 497.453(2)(b) and (5), Fla. Statutes, and Rule 69K-5.0016, Fla. Administrative Code, is \$ 20,000.

Section 497.453(2)(b)2, FS, authorizes an Applicant for renewal of a preneed license who cannot demonstrate the required minimum net worth to voluntarily submit to the licensing authority, and request acceptance of, alternative evidence of financial stability and resources or agree to additional oversight in lieu of the required net worth. Section 497.453(2)(b)3, FS, provides that "The licensing authority may accept such alternative evidence or arrangements in lieu of the required net worth only if the licensing authority determines such alternative evidence or arrangements are an adequate substitute for required net worth and that acceptance would not substantially increase the risk to existing or future customers of nonperformance by the Applicant or Licensee on its retail sales agreements." Applicant has not offered any alternative evidence or arrangements in lieu of the required net worth, pursuant to s. 497.453(2)(b)2, FS.

Mr. Williams pointed out that on the stated financials that the firm completely owns all of its property, automobiles, and furniture fixtures. They have been completely depreciated out. The firm also has positive and good to the tune of \$146k net income. The problem is that the Licensee is in the process of a new bookkeeper at the firm and they left off about \$66k worth of cash assets. If you add this to the net worth it would be almost \$76k. Mr. Williams provided a copy of the statement for the cash assets.

MOTION: Ms. Huggins moved to defer the application to allow the Division time to review the additional paperwork submitted. Mr. Hall seconded the motion, which passed unanimously.

Mr. Williams stated that the bottom line is that there is \$76k of assets in the net worth and if the Board would like them to restate it that would not be a problem.

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

Mr. William Peter Comforter answered, "I do." Mr. Comforter stated that he owns the funeral home free and clear, no mortgages no debt and a branch chapel sitting on 1.4 acres free and clear, no mortgage no debt. Mr. Comforter stated that he finds it necessary to get a new bookkeeper. In addition, this came due around the same time as income tax, so we spent more time on that than we did on the renewal and as a result this suffered. Mr. Comforter stated that everything he owns is free and clear. The Applicant has been selling preneed since 1988. Every dollar is in there, including 30% of the Type 6s that could have been taking out but was not. If somebody wrote a prearrangement in 1988 for \$4500 and they died in 2010, Mr. Comforter got \$4500, as all earnings are retained. The only hand in FSI's pocket has been the escrow maintenance fees and trust costs. Mr. Comforter added that he has taken not a dime of any 100% or any retained earnings out either. Mr. Comforter feels that money alone qualifies him for renewal; the money at FSI alone qualifies for financial responsibility, ignoring all the other stuff.

Mr. Williams stated even without the additional \$66k in assets added to the financial statements, the Applicant has almost a 4:1 current asset ratio. Mr. Comforter can pay his bills and does not owe any money to anyone.

Mr. Comforter added that everything is depreciated out. Mr. Comforter's dad opened up in 1946 and Mr. Comforter has owned it since 1977.

Mr. Shropshire stated that between now and the August 4th Board meeting, Mr. Comforter will provide a revised financial statement and based on what is indicated, \$65k will be added back in and the Applicant will have plenty of net worth and it will go very smoothly. The Division must have the revised financial statement.

Mr. Williams requested that the Board revisit the motion and approve it based on the Division receiving the revised financials so that Mr. Comforter would not have to reappear at the next meeting.

The Chair stated that the previous motion has been withdrawn. The Chair questioned when the revised financials would be received.

Mr. Williams stated that the financials would be submitted within 30 days or less.

MOTION: Ms. Huggins moved to approve the application subject to the Division's satisfactory review of the revised December 31, 2010 financials. Ms. Anderson seconded the motion, which passed unanimously.

(5) *Hickson Eugene Sr (F019243) (Arcadia)*

2009 RENEWAL (7-1-2009): Licensee had a stated net worth of \$218,000, against a minimum required net worth of \$10,000. Licensee was renewed without conditions.

2010 RENEWAL (7-1-2010): Licensee had a stated net worth of \$221,237, against a minimum required net worth of \$10,000. Licensee was renewed without conditions.

2011 RENEWAL (7-1-2011): The Division received an application for renewal from Licensee on about April 1, 2011. Licensee did not include any financial statements with the application. In addition, Licensee failed to state its net worth at the space provided on Form R4. On April 28, 2011 the FCCS Division mailed a Deficiency Notice to Licensee, advising Licensee of the lack of a balance sheet and asking Licensee to submit one. As of June 10, 2011, the date this cover sheet is prepared, the FCCS Division has not received any response to said Deficiency Notice. Licensee has not demonstrated that it has the net worth required for renewal.

Pursuant to s. 497.453(2)(b), FS, an Applicant for renewal is required to demonstrate that it meets net worth requirements specified by rule of the Board of Funeral, Cemetery, and Consumer Services. Rule 69K-5.0016, Fla. Administrative Code, sets forth the required net worth for issuance and renewal of a preneed license.

Pursuant to s. 497.453(5)(a), FS, an application for renewal of a preneed license shall be on forms prescribed by rule. Pursuant to Rule 69K-5.0026(1), Florida Administrative Code, preneed licenses must be renewed effective every July 1st, and an application for renewal shall include a financial statement as of the entity's most recent fiscal year end. Pursuant to Rule 69K-5.0026(2), the annual application for renewal of license must be filed by April 1st of each year.

Pursuant to s. 497.453(2)(b)2, FS, Licensee "An Applicant to obtain or renew a preneed license who cannot demonstrate the required initial minimum net worth may voluntarily submit to the licensing authority, and request acceptance of, alternative evidence of financial stability and resources or agree to additional oversight in lieu of the required net worth."

Licensee has failed to provide the Division or the Board, in connection with Licensee's application for renewal a financial statement as of the entity's most recent fiscal year end. Licensee has failed to provide to the Division or the Board any material demonstrating the Licensee's net worth. Licensee has failed to demonstrate that it meets the net worth requirements under 497.453(2)(b)2, FS, and Rule 69K-5.0016. Licensee has not submitted to the licensing authority, or requested acceptance of, any alternative evidence or arrangements in lieu of the required net worth, pursuant to s. 497.453(2)(b)2, FS .

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

Mr. Williams stated that the Hicksons are in the process of restating their financials and are requesting that the Board defer this to the next meeting when they have the new financials restated and sent through the Division.

MOTION: Ms. Huggins moved to defer the application. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

(6) *McRae Funeral Home (F019363) (St Pete)*

Licensee's renewal application package was received by the FCCS Division on or about April 1, 2011. However, the renewal submission did not include the R2 financial statements (balance sheet and income statement). On April 28, 2011 the FCCS Division mailed a Deficiency Notice to Licensee, advising Licensee of the aforesaid deficiency. As of June 10, 2011, the date this cover sheet is prepared, the FCCS Division has not received any response to said Deficiency Notice, nor has the FCCS Division received any material relating to Licensee's net worth.

Pursuant to s. 497.453(2)(b), FS, an Applicant for renewal is required to demonstrate that it meets net worth requirements specified by rule of the Board of Funeral, Cemetery, and Consumer Services. Rule 69K-5.0016, Fla. Administrative Code, sets forth the required net worth for issuance and renewal of a preneed license.

Pursuant to s. 497.453(5)(a), FS, an application for renewal of a preneed license shall be on forms prescribed by rule. Pursuant to rule 69K-5.0026(1), Florida Administrative Code, preneed licenses must be renewed effective every July 1st, and an application for renewal shall include a financial statement as of the entity's most recent fiscal year end. Pursuant to Rule 69K-5.0026(2), the annual application for renewal of license must be filed by April 1st of each year.

Pursuant to s. 497.453(2)(b)2, FS, Licensee "An Applicant to obtain or renew a preneed license who cannot demonstrate the required initial minimum net worth may voluntarily submit to the licensing authority, and request acceptance of, alternative evidence of financial stability and resources or agree to additional oversight in lieu of the required net worth."

Pursuant to s. 497.167(9), FS, "Any application under this Chapter which must be reviewed and acted upon by the Board under this chapter shall be acted upon by the Board at a regularly scheduled Board meeting, and such application must be complete at least 25 days in advance of a regularly scheduled Board meeting to be considered by the Board at such Board meeting." The 25th day before the Board's June 23, 2011 Board meeting would be May 31, 2011.

Licensee has failed to timely provide the Division or the Board, in connection with Licensee's application for renewal, a financial statement as of the entity's most recent fiscal year end. Licensee has failed to timely provide to the Division or the Board any material demonstrating the Licensee's net worth in support of renewal. Licensee has failed to timely demonstrate that it meets the net worth requirements under 497.453(2)(b)2, FS, and Rule 69K-5.0016. Licensee failed to timely submit to the

Division or Board, or request acceptance of, any alternative evidence or arrangements in lieu of the required net worth, pursuant to s. 497.453(2)(b)2, FS .

Mr. Shropshire stated that the Division received some supplemental material just yesterday from FSI and the Division has not had a chance to study them in depth so far.

Ms. Lashonda Morris distributed the supplemental material.

Mr. Williams questioned whether the Division received a new set of financials for this firm.

Mr. Shropshire stated that is what Ms. Morris is distributing. Mr. Shropshire stated the financials show a total net worth of \$359,483. We cannot tell what the required net worth is as the Applicant did not submit the required R-2 Financial Statement.

MOTION: Ms. Huggins moved to defer the application to allow the Division time to review the financials. If the financials are adequate then the application would be approved; if not, the Applicant would have to appear before the Board. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

(7) Oosco Funeral Homes Inc (F019333)(Orlando)

After brief discussion, the Applicant stated that the best course of action would be to withdraw the application at this time.

(8) Stephen R Baldauff Funeral Home Inc (F019297)(Orange City)

2009 Renewal (7-1-2009): Licensee had a stated net worth of (\$323,694) against a minimum required net worth of \$100,000. Licensee was renewed on the basis of 1) a pledge of equity of in a separate funeral home; and 2) a personal guarantee of Licensee's preneed contract liabilities by Licensee's principal, Dennis P. Johnson. Copies attached.

2010 Renewal (7-1-2010): Licensee was recommended for denial at the June 2010 meeting, based on not having the required net worth. The Board deferred the matter to the August meeting, at the request of the Licensee's accountant. The matter was re-presented at the August 2010 Board meeting. Licensee's financial statements showed a net worth of (\$277,578), against a required net worth of \$100,000. However, Respondent provided a real estate appraisal showing that funeral home that was the subject of the 2009 pledge of equity had a market value of \$1.6 million, against a then-current loan balance of \$1.235 million. Licensee was renewed subject to the condition that he write only 100% trusted or insurance funded preneed contracts, and that the Licensee's principal, Mr. Johnson, personally guarantee the Licensee's preneed obligations (see personal guarantee from 2009, which was irrevocable by Mr. Johnson).

2011 Renewal (7-1-2011): Licensee reports on its balance sheet a net worth of (\$266,342), against a required minimum net worth of \$100,000. Licensee's renewal application package contains no statements from Licensee or Licensee's representative, addressing this net worth deficiency, or offering any alternative to the required net worth. Licensee has not provided any material updating or confirming the continuing effect and adequacy of prior arrangements provided as substitutes for the required net worth. Applicant has demonstrated a negative net worth of \$ (266,342) . The required net worth for renewal, pursuant to s. 497.453(2)(b) and (5), Fla. Statutes, and rule 69K-5.0016, Fla. Administrative Code, is \$ 100,000 .

Section 497.453(2)(b)2, FS, authorizes an Applicant for renewal of a preneed license who cannot demonstrate the required minimum net worth to voluntarily submit to the licensing authority, and request acceptance of, alternative evidence of financial stability and resources or agree to additional oversight in lieu of the required net worth. Section 497.453(2)(b)3, FS, provides that "The licensing authority may accept such alternative evidence or arrangements in lieu of the required net worth only if the licensing authority determines such alternative evidence or arrangements are an adequate substitute for required net worth and that acceptance would not substantially increase the risk to existing or future customers of nonperformance by the Applicant or Licensee on its retail sales agreements." The Board finds that no alternative evidence or arrangements in lieu of the required net worth have been offered, and that prior arrangements for net worth substitutes are no longer an adequate substitute for required net worth, and would substantially increase the risk to existing or future customers of nonperformance by the Licensee on its retail sales agreements, based upon the following findings:

- a. The large size of the difference between demonstrated net worth and required net worth.

- b. Lack of current confirmation by the grantor of the 2009 pledge of equity in real estate, that grantor still owns the real estate pledged, that its interest therein has not been diminished, that no superior security interests therein have been granted or obtained since the pledge that all the terms and conditions of the pledge have been fully honored by grantor, and that grantor continues to regard the pledge as effective and binding.
- c. Lack of any reliable indication of the current fair market value of the real estate that was the subject of the 2009 pledge of equity, so that the significance of that pledge of equity, as a substitute for net worth, cannot be determined.
- d. Lack of any reliable indication that Mr. Dennis P. Johnson has adequate assets and financial wherewithal so as to make his personal guarantee of the preneed Licensee's obligations a meaningful substitute for Licensee's required net worth.

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

Mr. Kevin Hazlip answered, "I do." There was an issue with the address where the mail was going for the preneed license stuff. The Applicant did not find out what the status was until he received the agenda. Mr. Hazlip contacted Ms. Morris on Friday. Ms. Morris was very courteous in sending Mr. Hazlip the informational letter. So instead trying to send information at the last minute, the Applicant opted not to do so. Instead, the Applicant is requesting that the item be deferred to allow time to provide the necessary information.

The Licensee has been renewed continuously; he has a treasury stock issue. The balance sheet and financials are fairly strong otherwise, so the Applicant is willing to provide all of the necessary information, personal financial statements and such. Mr. Hazlip added that the address has been corrected for future mailings as well so that should not be a problem going forward as the Applicant thought it was taken care of last year.

The Chair stated that he recalled the same issue last year.

Mr. Shropshire requested that Mr. Hazlip read into record the correct address.

Mr. Hazlip stated that he believes it is 1133 Saxon Blvd, but he is not 100% sure. It is Saxon Blvd in Orange City but Mr. Hazlip is unsure of the number.

Ms. Huggins questioned whether the PO Box is wrong.

Mr. Hazlip stated that the PO Box is incorrect. Mr. Johnson no longer has the PO Box any more. It is actually the physical address for the establishment now.

Mr. Helm questioned whether Mr. Hazlip could find the address prior to the end of the meeting.

Mr. Hazlip stated that he has already provided the address to Ms. Morris and she has corrected it. Mr. Hazlip just could not recall the address off the top of his head.

Mr. Shropshire questioned whether Ms. Morris has the address.

Ms. Morris stated that the address has been updated.

MOTION: Ms. Thomas-Dewitt moved to defer the application. Mr. Helm seconded the motion, which passed unanimously.

(9) *Zion Hill Mortuary (F019404) (St Pete)*

2009 RENEWAL (7-1-2009): Licensee had a stated net worth of \$104,592 against a minimum required net worth of \$80,000. Licensee was renewed without conditions.

2010 RENEWAL (7-1-2010): Licensee had a stated net worth of \$101,027 against a minimum required net worth of \$100,000. Licensee was renewed without conditions.

2011 RENEWAL (7-1-2011): Licensee reports a stated net worth of \$85,186 against a minimum required net worth of \$100,000. Applicant has not voluntarily offered any alternative evidence or arrangements in lieu of the required net worth, pursuant to s. 497.453(2)(b)2, FS.

Licensee's balance sheet provided for the current renewal does not include an entry for preneed liabilities. Under GAAP, the preneed liability should be reflected on the balance sheet. This issue was pointed out to Licensee by Deficiency Notice dated May 17, 2011, but as of the date of this cover sheet, has not been corrected.

Applicant has demonstrated a net worth of \$85,186. Applicant reports total outstanding preneed contracts of \$890,849. The required net worth for renewal, pursuant to s. 497.453(2)(b) and (5), Fla. Statutes, and Rule 69K-5.0016, Fla. Administrative Code, is \$ 100,000 . Applicant has not offered any alternative evidence or arrangements in lieu of the required net worth, pursuant to s. 497.453(2)(b)2, FS.

Mr. Shropshire stated that the Department received some very late supplemental material yesterday afternoon from FSI and the Division has not had a chance to review it. The Division is currently recommending denial without having looked at the supplemental material.

MOTION: Ms. Huggins moved to defer the application to allow the Division time to review the financials; if adequate, the application will be approved without further consideration by the Board. Mr. Jones seconded the motion, which passed unanimously.

D. Expirations (No Application for Renewal Received) – Addendum C

The license(s) presented are due to expire on June 30, 2011 for lack of an application for renewal. This item is informational only and does not require Board action.

E. Request(s) for Waiver of Late Fee

(1) Recommended for Approval without Conditions

(a) Cremations America LLC (F058516) (Coral Gables)

The Division recommends that the Board waive the late fee in view of the unusual circumstances combined with the fact that the Licensee has not previously been late in applying for renewal. The Division recommends that the license be renewed without conditions.

MOTION: Mr. Jones moved to waive the late fee and approve the license renewal without conditions. Mr. Hall seconded the motion, which passed unanimously.

(b) Eastside Funeral Home Inc (F019321) (Leesburg)

The Division recommends that the Board waive the late fee and that the license be renewed without conditions.

MOTION: Ms. Thomas-Dewitt moved to waive the late fee and approve the license renewal without conditions. Ms. Anderson seconded the motion, which passed unanimously.

7. Application(s) for Preneed Main License

A. Recommended for Approval without Conditions

(1) Brandon Cremation and Funeral Services, Inc. (Zephyrhills)

The Department received the application on May 13, 2011 and deficiencies were noted on the application. A deficiency notice was sent to the Applicant on May 23, 2011 and all deficiencies were resolved as of May 30, 2011. A completed background check of all officers revealed no criminal history. Applicant obtained a qualifying funeral establishment license (F061189) as of August 5, 2010 and 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, 2010 reflect the following:

Acquired Preneed Contracts = \$	0
Required Net Worth = \$	10,000
Reported Net Worth = \$	14,125

MOTION: Ms. Thomas-Dewitt moved to approve the application. Mr. Helm seconded the motion, which passed with 1 dissenting vote.

(2) Hall, Ferguson and Hewitt Mortuary, P.A. (Miami)

The Department received the application on March 24, 2011 and deficiencies were noted on the application. A deficiency notice was sent to the Applicant on April 11, 2011 and all deficiencies were resolved as of May 5, 2011. A completed background check of all officers revealed no criminal history. Applicant obtained a qualifying funeral establishment license (F040399) as of December 1, 2000 and 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 June 30, 2010 reflect the following:

Acquired Preneed Contracts = \$	0
Required Net Worth = \$	10,000
Reported Net Worth = \$	152,232

MOTION: Ms. Thomas-Dewitt moved to approve the application. Mr. Helm seconded the motion, which passed unanimously.

(3) Trinity Cremation Services, Inc. (New Port Richey)

The Department received the application on May 17, 2011 and no deficiencies were noted on the application. A completed background check of all officers revealed no criminal history. Applicant obtained a qualifying direct disposal establishment license (F063614) as of March 10, 2011 and 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 March 31, 2011 reflect the following:

Acquired Preneed Contracts = \$	0
Required Net Worth = \$	10,000
Reported Net Worth = \$	315,000

MOTION: Ms. Huggins moved to approve the application. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

(4) Waters & Hibbert Funeral Home (Pensacola)

The Department received the application on April 12, 2011 and deficiencies were noted on the application. A deficiency notice was sent to the Applicant on April 25, 2011 and all deficiencies were resolved as of May 17, 2011. This application for a preneed license is being filed due to an internal change of control of the Applicant principals (please see attached statement). Carmen C. Moore and her brother, Clarence C. Cooper assumed ownership from the former partners: C.H. Cooper, father, and J.R. Eddins, partner, and are the current managing partners and operators of the establishment, with Ms. Moore maintaining 100% managing and signing authority. A completed background check of all officers revealed no criminal history. Applicant obtained a qualifying funeral establishment license (F041180) as of June 10, 1997 and will sell insurance-funded preneed through Homesteaders Life and use its pre-approved Preneed Funeral Agreement and Assignment form.

The Applicant's financial statements as of December 31, 2010 reflect the following:

Acquired Preneed Contracts = \$	899,844
Required Net Worth = \$	100,000
Reported Net Worth = \$	347,092

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

B. Recommended for Approval *with* Conditions
(1) *Circles of Life Society, Inc (Plantation)*

The Department received the application on April 28, 2011 and deficiencies were noted on the application. A deficiency notice was sent to the Applicant on May 6, 2011 and all deficiencies were resolved as of May 24, 2011. A completed background check of all officers revealed no criminal history. Applicant obtained a qualifying direct disposal establishment license (F063980) as of April 8, 2011 and 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 27, 2011 reflect the following:

Acquired Preneed Contracts	= \$	0
Required Net Worth	= \$	10,000
Reported Net Worth	= \$	11,521

Documentation establishes that Robyn Goldberg (a principal of Applicant herein) was discharged from Ch. 7 bankruptcy on May 26, 1994, by the Federal District Court, Southern District of Florida. It was a personal bankruptcy action and discharge. Applicant provided a notarized statement disclosing the bankruptcy as supporting documentation. In view of the bankruptcy, the FCCS Division requested additional materials from Applicant:

- 1) Court documentation evidencing that the bankruptcy was discharged.
- 2) A personal financial statement for officer and owner, Robyn Goldberg.
- 3) A letter of reference from a trade supplier or vendor and a current bank statement for Circles of Life Society, Inc. as of April 30, 2011.

Applicant has provided all requested information and material. The letter of reference is favorable. The Division is recommending approval subject to the condition that the Board approve the application based upon the attached Stipulation for Licensure agreement entered into by the Division and the Applicant.

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

(2) *JGR Funeral Services, Inc (Tampa)*

Upon receipt of the application a Deficiency Notice was sent to Applicant. All deficiencies have been resolved.

Applicant previously held a preneed license in the period July 13, 2006 through June 30, 2009. This Board denied renewal effective July 1, 2009. At the time of the 2009 renewal, Licensee lacked adequate net worth for renewal.

Applicant now reports a net worth of \$671,404. Applicant will be responsible for approximately \$255,297 in existing preneed contracts written under their prior license. Accordingly, their required net worth is \$40,000.

Applicant will sell insurance funded preneed contracts through Homesteaders Life Co.

The sole officer and owner of Applicant is Lucia Gonzalez-Roel. Applicant, through its president, Lucia S. Gonzalez –Roel, has submitted a Stipulation for Licensure, attached.

The Division is recommending approval subject to conditions as set out in attached stipulation for licensure.

Mr. Shropshire requested that the individual requesting to address the Board raise his right hand to be sworn in. "Do you solemnly swear that the testimony you are about to give in this matter shall be the truth, the whole truth and nothing but the truth so help you God?"

Mr. Keenan Knopke answered, "Yes." Mr. Knopke stated that several months ago the Board revoked Julio and Adolfo Roel's funeral directors licenses. This is the same firm they have just taken their names of the page. If you look through the financial

statements under "Other Assets" there is a "Due from Julio Gonzalez-Roel" of \$161k and a "Due From Julio Personal LOC" \$301k. If you go down a little further, you will see where they are still evidently employed by the firm.

Mr. Hall stated that Ms. Gonzalez-Roel owns 70% but it does not spell out who owns the other 30% of the company.

Mr. Knopke stated that the application lists Ms. Gonzalez-Roel as president, there is no secretary, there are no other officers of the corporation and it looks like a "shell game" and the Board is being played for fools.

The Chair questioned what grounds for denial do Mr. Knopke see if that is his recommendation to the Board.

Mr. Knopke stated that he is not recommending denial, he is pointing out a problem as much as anything. Mr. Knopke added that it is unclear whether the Department or the Board has any authority in this case. It just looks bad as these are people that for a variety of reasons the Board has chosen to revoke their licenses. It is very frustrating.

Ms. Dudley stated that what their intention is or not, if the wife is clean and the Department does not have anything on her, there is nothing from a legal perspective that the Division can do to deny this at this point because the person listed as the president does not have any disciplinary history and there is no legal connection between the bad deeds of a husband to a wife. Logically it seems that they should be connected but there is no way for the Board to impute his actions to her. At this point, the Board does not have grounds for a denial. There is a statement from Ms. Gonzalez-Roel advising that the Gonzalez-Roel brothers will not be involved so the Division could conduct an inspection to ensure that they are not involved in any way.

The Chair stated that Ms. Gonzalez-Roel is not the Applicant, JGR is.

Mr. Hall questioned whether the application could be deferred to allow time for the Division to determine who owns the other 30% of the company.

Mr. Knopke stated that the Department could go in and ask what the Gonzalez-Roel brothers' involvement is and not just take Ms. Gonzalez-Roel's word for it. The Department could also question who the other officers are, are there any other officers, who is conducting funerals, who is the FDIC.

Mr. Shropshire requested that the individual requesting to address the Board raise her right hand to be sworn in. "Do you solemnly swear that the testimony you are about to give in this matter shall be the truth, the whole truth and nothing but the truth so help you God?"

Ms. Lisa Coney answered, "Yes." Ms. Coney stated that both with SCI and with her previous position with Stewart Enterprises she had reported to the Division unlicensed activity and the principals of this funeral home meeting with families while their licenses were under revocation. Ms. Coney understands that the Division cannot speak about open investigations but stated that she would be shocked if there were not a handful. S. 497.380 allows the licensing authority to determine that an Applicant is of good character and has had no demonstrated history of a lack of trustworthiness or integrity in business or professional matters and that the Applicant otherwise is in compliance with all applicable requirements of this Chapter. On the last 3 or 4 years that JGR has been coming before the Board for a variety of integrity issues, it does not appear they meet the requirements of this statute and if the Board was to consider licensure it should include probation, regular inspection, and review of their contracts to see who the brothers are meeting with. Ms. Coney encouraged that the Division investigate if they are not already doing so. Ms. Coney added that this "shell game" of putting someone else's name on the top of the application addresses the continued deficiencies and the lack of trustworthiness that this firm has demonstrated historically, not just today, not just for a year, for several years. There were criminal charges. There were open investigations. The Board has revoked their licenses for a reason. Nothing about this application changes those reasons.

Mr. Hall questioned why they would be receiving checks if their licenses are revoked and they are not part of the company.

Ms. Coney concurred and stated that the stipulation prohibits them from doing preneed and questioned whether they are getting paid all of that for opening the doors.

Mr. Hall stated if they cannot receive it for funeral directing or for preneed why else unless they own part of the company.

The Chair stated that if the Board denies this application the Applicant has the ability to appeal the decision.

Ms. Dudley stated that JGR was not disciplined. It was Julio and Adolfo Gonzalez-Roel. If the decision is appealed it would have to go to the Division of Administrative Hearing. The Judge would request evidence that JGR did anything wrong. JGR was not disciplined. Two brothers that they will claim are not involved in the business anymore were disciplined. Ms. Dudley added if there is not absolute proof that the brothers are somehow involved she would not be able to do anything. These are all complaints that have been made that have not been vetted out.

Ms. Coney respectfully requested that they be vetted out because there have been numerous complaints against this firm and there have been complaints of unlicensed activity. The idea that the Board would license a firm that has this number of complaints over several years knowing that there is a character issue when the statute provides for you not to have to do that; they are going to be coming in front of this Board for one reason or another for the rest of time. Ms. Coney requested that the Board defer the application if it does not feel there is ground for denial, to complete the investigation.

Mr. Hall questioned whether Ms. Dudley would be comfortable with a deferral to allow time to obtain additional information on the company.

Ms. Dudley stated she would be comfortable with a deferral as long as there is no deemer issue. Ms. Dudley added that she just does not want the application denied based on speculation.

Mr. Shropshire stated there is a deemer issue because the deemer runs July 12th at the latest. Mr. Shropshire stated that he is unaware of any consumer complaints against JGR.

Mr. Miller concurred regarding the complaints.

Ms. Wiener stated it appears the Department does not know who owns the Licensee. 70% is owned by the wife and the bad actions of the husband cannot be imputed to the wife; however, if the Division is unaware of the remaining ownership and because the financials and other documents in the Board packet indicate an involvement and ownership of the offending parties the deemer is tolled while the Department investigates. Ms. Wiener questioned whether the application is complete.

Mr. Shropshire stated that the application is complete.

Ms. Coney questioned whether the application is complete without knowing who the owners are.

Mr. Shropshire stated that it appears the application is complete as there is not any rule requirement that every account or loan or note payable be disclosed in the application so failure to disclose would not be an incompleteness. It is moot issue anyways because if it was not raised within the first 30 days of the Division receiving the application it cannot be asserted now.

The Chair stated that application reads "joint tenant of 70%."

Ms. Wiener stated that joint tenancy implies ownership by a husband and wife so the other 30% is probably owned by the husband.

Ms. Huggins questioned what happened the last time with the application.

Ms. Dudley stated that the application was withdrawn last time as the net worth requirement was not met.

Mr. Knopke stated that these guys are working funeral, going out in cemeteries, not acting as funeral directors but they are clearly in charge. They are the faces of the business.

Ms. Michele Hood stated that the FDIC is terminally ill but is sitting there in a chair waiving at folks while the brothers run the show.

Mr. Shropshire stated as a practical matter to try and prove that case the Division would have to go to the family and the Division does not like going to the family. Usually if the family is satisfied with the service, they are not going to be very helpful.

Ms. Hood asked about the clergyperson whose check bounced for the 3rd time in a row.

Mr. Shropshire questioned whether that is an allegation of fact and whether that is something Ms. Hood knows that happened.

Ms. Hood stated that is what she was told by a local clergyperson.

Mr. Shropshire stated there is a deemer issue.

Ms. Wiener questioned the deemer provision is overridden in any way by the specific language in ch. 497 that provides the Board with the ability to decline to rule on an application while there is a pending investigation, if in fact allegations have been made and investigations have been filed.

Ms. Dudley stated that the deemer date can be overruled by that if there is an open investigation, for instance, if there is something at the Division that they are investigating. Allegations arising at a meeting will not stop it.

Col. Stiegman questioned whether the Applicant could waive the deemer date.

Ms. Dudley stated that they could but they are not present.

Col. Stiegman questioned whether the Board could defer the item to see whether the Applicant would waive the deemer date.

Ms. Wiener stated that the problem is the deferral would be past the deemer date. Ms. Wiener stated that she is under the impression that there is an open investigation against the 2 brothers and the location.

Ms. Dudley questioned whether it is against the location as Mr. Miller indicated that he was not aware of anything.

Mr. Miller stated that Mr. Shropshire asked about consumer complaints against JGR and added that he is unaware of any consumer complaints against JGR. The issue regarding the Gonzalez-Roel brothers has already been resolved through final appeal to the DCA and their licenses are revoked.

Mr. Shropshire questioned whether Mr. Miller could get online to see whether there is anything pending.

Ms. Wiener stated that the goal of the Industry is just not to have the Regulators be made pawns in a scheme to put 2 people with revoked licenses into the capacity of been Licensees, which were revoked for really outrageous behavior.

Mr. Jones questioned the outcome, regardless of the deemer, if he were to make a motion to defer because he has too many questions on this. Mr. Jones stated that he is concerned about the joint tenure 70% with only one officer listed as well as a couple of other things.

Ms. Dudley stated that once the 90-days runs, the application is automatically granted.

Ms. Wiener stated that the Department could immediately move to revoke that license.

Ms. Dudley stated that they would have to go through the disciplinary process once the license is issued.

Ms. Wiener stated that the Division has heard enough today to open an investigation that could be expedited and action taken.

Ms. Dudley stated they could do that but the revocation is not automatic.

The Chair requested that Ms. Coney read 497.380 for the Board again.

Ms. Coney quoted s. 497.380(4) – “The licensing authority to determine that an Applicant is of good character and has had no demonstrated history of a lack of trustworthiness or integrity in business or professional matters and the Applicant otherwise is in compliance with all applicable requirements of this Chapter.” Ms. Coney stated that she never received a closure letter but did make a complaint about this firm misrepresenting themselves as being a firm that they own and operate. The information on the family that was served by this firm was provided. Ms. Coney stated that she was under the impression that the complaint she made against JGR remained open as JGR filed a counter-complaint against Ms. Coney for daring to make a complaint against their firm even though she had an at-need widow that provided information. There were statements of cash referrals coming from cemeteries to this firm. Ms. Coney stated that was in a complaint that she has not seen a closure letter on. Ms. Coney added that both at SCI and Stewart Enterprises she had submitted information about the revoked licensees continuing to operate as funeral directors in charge of services, coming into cemeteries. This information clearly speaks to their integrity and their character.

Mr. Hall stated there are “checks payable” on the balance sheet of \$62k to Adolfo and \$173k to the Applicant and her husband. The amount due from those individuals is \$460k.

Mr. Knopke stated that 2 of the 4 checking accounts listed are overdrawn.

Mr. Helm questioned whether s. 497.380(4) provides enough ground for denial.

Ms. Dudley answered, “No.” There has to be proof that they are not trustworthy. If there is no evidence at the time of the hearing, the Board could end up paying attorney fees.

Mr. Knopke questioned whether Ms. Gonzalez-Roel’s preneed license was disciplined.

Ms. Dudley stated that the Board may want to consider beefing up the terms of licensure to include a probationary period with multiple inspections.

Ms. Coney stated that the purpose, the whole existence is based on consumer protection. If people are allowed to operate in this way, the goal to protect consumers is not being achieved.

Mr. Jones stated he would like to see the application deferred as he would like more information on the officers. The 70% joint tenure statement is contradictory.

Mr. Shropshire stated that the Division carefully researched the officers on the Sunbiz website and Julio or Adolfo is not mentioned.

Ms. Coney questioned whether joint tenancy is between husband and wife.

Mr. Jones stated that joint means dual. Ms. Gonzalez-Roel listed herself as president and there are no other officers. Mr. Jones questioned whether this was listed in error.

The Chair stated that the issue the Board is facing with the deferral is the deemer date.

Mr. Knopke questioned whether the Board could deny the application because of the questions raised.

Ms. Dudley stated that application cannot be denied because there are questions. There has to be a reason to place in the Order to give them notice on what the Board is going to DOAH with.

Ms. Hood stated that an examination report from the Division stated that 88% of the trust deposits made by this Licensee were not done in a timely fashion. It was specifically stated that this Licensee was a danger to the public in a Department exam. Ms. Hood questioned whether this could be used as basis for the denial of this license. In fact, the stipulation mentions that they cannot sell preneed but there was nothing in the stipulation that indicated that the brothers could not practice funeral directing or be meeting with families. Ms. Hood added that she would like this to be included if the Division is going to put forth a stipulation.

Mr. Helm stated that the brothers' licenses were revoked so they could not do so.

Ms. Hood stated that the Licensee must comply with all provisions of Chapter 497, not just that they cannot sell preneed.

Ms. Dudley stated that if they are allowed to practice that would be an investigation in itself without putting it in the stipulation.

Mr. Shropshire stated that there is a pending examination. The Licensee did respond with a letter and the response appears to be satisfactorily. The Division has had discussions with their attorney in an attempt to get that wound up before today because if they had done what they said they would do in their response letter, they were going to take care of it adequately but the Division was unable to confirm that. The attorney went on vacation for a week. Mr. Shropshire questioned whether Mr. Miller recalls conversation with JGR's counsel when the subject of the outstanding exam was brought up. Counsel was advised that this really needs to be cleared up before the Board meeting. Counsel was also advised of the letter from the client but Counsel was unable to confirm that the things had been done. Mr. Shropshire advised Counsel that Mr. Miller would call him Monday of last week as a follow up and Counsel advised that he would be on vacation for a week. Mr. Shropshire questioned whether Mr. Miller has heard back from Counsel in any way since then where he has been able to confirm to Mr. Miller that those exam resolution steps were in fact taken.

Mr. Miller answered "No."

Mr. Shropshire stated that is truthfully an outstanding issue.

Mr. Miller concurred.

Mr. Shropshire stated that it would be more of a basis for a deferral as the Department has to get that wound up.

Mr. Helm questioned whether the deemer would be affected by this.

Mr. Shropshire stated if there is an investigation pending that would toll the deemer. The Division does not have an open investigation but questioned whether the open examination would fall into the category of something that would toll the deemer. Mr. Shropshire stated that it is arguable and has never been tested legally but it is truthfully an open issue, an open exam that has not been resolved yet.

Ms. Dudley stated that the Board can take the chance and make the argument that it qualifies as an investigation essentially.

Ms. Wiener stated that an additional ground that could probably be included in such an order of deferral in s. 497.141(12)(d) which is the licensing general applications procedures. It states affirmatively that no license shall be issued to any Applicant that is a corporation unless that Applicant identifies all stockholders controlling more than 10% of the voting stock. Ms. Wiener stated that the Division typically takes the position that persons are obligated to make that disclosure on that application and if they disclose 70%, the Division is not able to or obligated to come back and say do you have any or certify that you have none that are 10% or more. Ms. Wiener stated that under the DFS licensing schemes, they make you affirmatively state that there are no shareholders of 10% or more to ensure compliance.

Mr. Shropshire questioned whether Mr. Jones' motion to defer would include all the grounds that counsel referred to.

Mr. Jones answered, "Yes." There are too many questions.

Mr. Shropshire advised that there is some chance of a deemer issue here but knowing that the Board will do what it thinks best for the public's interest.

Ms. Dudley stated that they would have to make the argument and we will raise those defenses if they raise the deemer issue. The Board is taking the position that the deemer is tolled and the Applicant has to come back. The Board will not automatically issue anything. If it get denied, they will make an argument with the DOAH judge that it was deemed approved.

MOTION: Mr. Jones moved to defer the application on the grounds proposed. Col. Stiegman seconded the motion, which passed unanimously.

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

The Division recommends approval of the application(s).

MOTION: Ms. Thomas-Dewitt moved to approve the application(s). Col. Stiegman seconded the motion, which passed unanimously.

9. **Application(s) for Continuing Education Course Approval**
A. *Recommended for Approval without Conditions – Addendum E*
(1) *APEX Continuing Education Solutions #4201*
(2) *Batesville Casket Company #13409*
(3) *Cape School #4401*
(4) *FuneralCE #43*
(5) *International Cemetery and Funeral Association #74*
(6) *National Funeral Directors Association #136*
(7) *Practicum Strategies #65*
(8) *Selected Independent Funeral Home #137*
(9) *TRS Enterprises #71*

The Continuing Education Committee and the Division recommends approval of the application(s).

MOTION: Mr. Hall moved to approve the application(s). Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

10. **Application(s) for Approval as a Continuing Education Provider**
A. *Recommended for Approval without Conditions – Addendum F*
(1) *Cohen Battisti Attorneys #12609 (Winter Park)*

The Continuing Education Committee and the Division recommends approval of the application(s).

MOTION: Mr. Hall moved to approve the application(s). Ms. Huggins seconded the motion, which passed unanimously.

11. **Application(s) for Florida Law and Rules Examination**
A. *Recommended for Approval without Conditions – Addendum G*
(1) *Direct Disposer*
(a) *Huffman, Robin J*
(b) *Trzyna, James E*
(2) *Funeral Director and Embalmer – by Endorsement*
(a) *Brown, Jr., John C*
(b) *Collins, Joel B*
(c) *Maxwell, Matthew*

The Division recommends approval of the application(s).

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

- B. Recommended for Approval with Conditions (Adverse Licensing History)**
 - (1) Funeral Director and Embalmer-by Endorsement**
 - (a) Kelly, Deana T**

The Applicant submitted an application to become a Funeral Director and Embalmer by Endorsement on March 24, 2011. The application was incomplete when submitted. All deficient items were returned on April 28, 2011. The Applicant submitted a fingerprint card and was returned with no criminal history,

The Applicant did submit adverse licensing history from the state of Virginia (final order enclosed). In April 2001 Applicant, in Virginia, signed a statement of funeral services prior to being issued a license as a funeral director. The Applicant was reprimanded and ordered to pay a fine of \$250 by Virginia licensing authorities. Applicant subsequently received her funeral director license and is currently in good standing as a funeral director in Arkansas, Georgia and Louisiana.

The Division is recommending approval with condition(s) that the Applicant be placed on probation for one year, to commence at time of licensure.

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

Ms. Deanna Kelly stated that a couple of years ago, she was licensed in Georgia and was moving to Virginia. Ms. Kelly applied for licensure in Virginia, took the Law exam but before it was approved by the Board, Ms. Kelly did serve in a couple of instances as a funeral director. The Applicant was reprimanded and paid a fine.

Mr. Helm questioned whether Ms. Kelly is currently working now.

Ms. Kelly stated that she is not working as she just moved to Florida a couple of weeks ago.

The Chair questioned where in Florida Ms. Kelly moved to.

Ms. Kelly stated that she lives in Titusville.

MOTION: Col. Stiegman moved to approve the application subject to the condition that the Applicant is placed on probation for one year, to commence at time of licensure. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

- 12. Application(s) for Internship**
 - A. Recommended for Approval without Conditions – Addendum H**
 - (1) Funeral Director and Embalmer**
 - (a) Evans, Gary D**
 - (b) Gill, Christa A**
 - (c) Hinds, Michelle A**

The Division recommends approval of the application(s).

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

- B. Recommended for Approval with Conditions (Criminal History)**
 - (1) Funeral Director and Embalmer**
 - (a) Keating, Daniel R**

The Applicant submitted an application to become a Concurrent Intern on May 2, 2011. The application was complete when submitted. The Applicant submitted a fingerprint card, the processing of which returned a criminal history, to wit:

- In 2001 Applicant pled guilty to felony Breaking & Entry; Larceny in Building; and Malicious destruction of property, in Massachusetts state court. He was fined \$500, and placed on probation. He completed the probation in 2003. Applicant advises that this criminal matter relates to when he was executive secretary to the mayor of the city of Quincy, MA, and was instructed by the mayor, towards the end of the mayor's term, to enter the city's personnel offices and records and remove certain items.
- In 2010, Applicant pled no contest to Reckless Driving, in Lee County, Florida. Applicant was sentenced to pay \$250 fine and \$353 in court costs.

The Applicant did fully disclose the above criminal record. Mr. Keating is currently serving an Embalmer Apprenticeship and has received excellent marks on all Supervisor Quarterly Reports submitted.

The Division is recommending approval with the condition(s) that the Applicant be placed on probation for one year, to commence at time of licensure.

MOTION: Col. Stiegman moved to approve the application with the conditions that the Applicant is placed on probation for one year, to commence at time of licensure. Mr. Helm seconded the motion, which passed unanimously.

C. Recommended for Denial (Criminal History)
(1) Funeral Director and Embalmer
(a) Cunningham, Courtney

The Applicant submitted an application to become a Concurrent Intern on March 28, 2011. The application was incomplete when submitted. All deficient items were returned on May 17, 2011. The Applicant submitted a fingerprint card, the processing of which returned a criminal history, to wit:

- In 2009 Applicant pled no contest to misdemeanor possession of marijuana in Gwinnett County,

The Applicant was sentenced to 12 months probation, fined \$395 and was required to complete a substance abuse program, or an equivalent program. The Applicant completed the probationary period.

- In 2011 Applicant pled no contest to misdemeanor possession of paraphernalia, in Florida Circuit Court.

The Applicant was sentenced to six months probation, fined \$276 and was sentenced to perform three days on a work crew with the Alachua County Court Services. The Applicant has successfully completed the work crew requirement, but remains on probation until the payment has been completed. The Division is recommending denial of the application based on criminal record as reflecting lack of good character.

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

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

Mr. Courtney Gerard Cunningham answered, "I do." Mr. Cunningham requested the Board grant him the opportunity to become a licensed funeral director here in the State of Florida. Mr. Cunningham stated he understands he has a prior criminal history but he has learned from his mistakes.

The Chair questioned whether Mr. Cunningham has ever served in the Military.

Mr. Cunningham answered, "No sir." Mr. Cunningham requested to present the Board with a letter of recommendation from the District State Attorney, Mr. Cervone.

The Chair accepted the request.

Mr. Cunningham stated that he is currently employed at Chestnut Funeral Home in Gainesville, under the direction of Mr. Charles S Chestnut III and State Representative Charles "Chuck" Chestnut IV, who was not able to attend today's meeting.

The Chair questioned Mr. Cervone's statement, "it may be that he has learned a lesson..."

Mr. Cunningham stated he was unsure why Mr. Cervone added "maybe", as he has definitely learned his lesson. It may be that Mr. Cervone is giving him the benefit of the doubt.

Ms. Anderson questioned the number of times Mr. Cunningham has been arrested for possession.

Mr. Cunningham stated that he was arrested twice but one of the cases was dropped because it was left his possession by someone else.

Ms. Anderson questioned whether Mr. Cunningham was in possession of the drugs the other time.

Mr. Cunningham answered, "Yes."

The Chair questioned the last time Mr. Cunningham smoked marijuana.

Mr. Cunningham stated that he has smoked since his arrest.

The Chair questioned whether Mr. Cunningham is tested for drugs by his current employer.

Mr. Cunningham answered, "No" but added that he has worked for previous firms that did conduct random drug testing.

Col. Stiegman questioned whether Mr. Cunningham's current employer is aware of the situation.

Mr. Cunningham answered, "Yes sir."

Col. Stiegman questioned what is meant by "possession of paraphernalia."

Ms. Dudley answered, "It's a pipe or something like that."

Mr. Cunningham answered, "It's a pipe or a cigar."

Ms. Thomas-Dewitt questioned Mr. Cunningham's position at Chestnut.

Mr. Cunningham stated that he is basically a funeral attendant.

Mr. Hall questioned whether Mr. Cunningham's last case was in 2011.

Mr. Cunningham answered, "Yes sir."

Mr. Cunningham's mother came forward and requested to address the Board.

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

Ms. Sheila Dent Cunningham answered, "I do." Ms. Cunningham stated that in regards to the paraphernalia, the State Attorney advised that it was a "blunt" and not all of them are called pipes, just for description.

Ms. Dudley apologized as she jumped in too soon. Paraphernalia can be many things. It just means that they did not find any type of drug, but it is something that is typically used for drugs.

Ms. Anderson questioned whether the last time Mr. Cunningham smoked marijuana was this year.

Mr. Cunningham stated that it was earlier this year.

Ms. Anderson stated that Mr. Cunningham plead guilty in March and questioned whether Mr. Cunningham has smoked since then.

Mr. Cunningham stated that he has not smoked since then.

Col. Stiegman questioned what type of person Mr. Cunningham is.

Ms. Cunningham stated that she has 2 children and Mr. Cunningham is the baby. Ms. Cunningham stated that her daughter works at the courthouse in Marion County, Ocala. Ms. Cunningham added that she has never had any problems out of Mr. Cunningham prior to this incident. Ms. Cunningham stated that her son's problem may be that he does not hang with anyone and is something like a loner. Ms. Cunningham stated that she did not raise Mr. Cunningham to try or experience drugs because that is bad to do. Mr. Cunningham was raised up in a Christian environment, but he made foolish, immature decisions. Ms. Cunningham requested that the Board grant the approval for the apprenticeship. Ms. Cunningham added that she spoke with Mr. Cervone yesterday and discussed having Mr. Cunningham volunteer to speak to the youth in the community re the effects that drugs can have on your future.

The Chair questioned how Mr. Cunningham would feel if he was required to be drug tested at his own expense and requested to send the results in every three months.

Mr. Cunningham stated that he had no objection to that.

The Chair stated that the Board is really concerned about this and it appears the Board was ready to deny the application and may still. Mr. Cunningham has invested a lot, is 27 years old and is trying to get a license in Florida. The Chair added there is a lot of responsibility on Mr. Cunningham now.

Mr. Cunningham agreed.

Mr. Jones questioned Mr. Cunningham's reasons for wanting to be a funeral director.

Mr. Cunningham stated that this is all he has been doing for as long as he can remember. Mr. Cunningham added that he comes from a family owned firm and he enjoys helping people and satisfying them through the whole process.

Ms. Thomas-Dewitt questioned whether Mr. Cunningham is related to the Cunninghams from Ocala.

Mr. Cunningham answered, "Yes, I am."

Ms. Huggins questioned whether Mr. Cunningham has finished funeral school.

Mr. Cunningham stated that he attended Gupton Jones in Atlanta, with a graduation date of February 2007.

Mr. Helm stated that his only problem is that the offense is so recent. Mr. Helm added that he would hope that Mr. Cunningham continues in the funeral industry.

The Chair stated that at this point in time Mr. Cunningham is being offered an opportunity to withdraw his application and then come back to the Board after a period of time with a new application, but it is entirely Mr. Cunningham's choice. The Chair added that Mr. Cunningham is not obligated to do so.

Mr. Helm requested that Mr. Cunningham be giving an explanation of the advantage of him withdrawing his application.

Mr. Shropshire stated that Mr. Cunningham would not have a record of having a license denied for cause. Mr. Shropshire added that if Mr. Cunningham reapplies in 9 or 12 months he may get a better result, if the Applicant has been clean in the interim.

Mr. Cunningham stated that he does not want another setback in obtaining his license. Mr. Cunningham stated that he is here today requesting forgiveness and an opportunity.

MOTION: Mr. Helm moved to deny the application based on criminal record as reflecting lack of good character. Mr. Hall seconded the motion, which failed with 5 dissenting votes.

Mr. Shropshire stated that the Division has a very standardized stipulation for random drug testing.

Ms. Richardson stated that the Licensee must complete the test within 24 hours of receiving a call from her. The Division receives the results from the lab.

MOTION: Col. Stiegman moved to approve the application subject to the terms of the Stipulation agreement which includes quarterly drug tests for the period of 1 year. Ms. Huggins seconded the motion, which passed with 2 dissenting votes.

The Chair questioned whether Mr. Cunningham understands his obligation.

Mr. Cunningham answered, "Yes sir."

The Chair stated if Mr. Cunningham does not take a drug test when called or if he fails the test, the license to practice is not there anymore.

Ms. Thomas-Dewitt added that when Mr. Cunningham reappears before the Board to take the exam, he will probably be faced with the same conditions.

Ms. Cunningham questioned whether it would be best for Mr. Cunningham to just withdraw his application.

The Chair stated that option was offered several minutes ago.

Ms. Cunningham questioned whether Mr. Cunningham has a year to get it together.

Col. Stiegman responded that Mr. Cunningham has a year to keep it together.

The Chair stated that everyone is pulling for Mr. Cunningham but now the responsibility rests on Mr. Cunningham's shoulders alone.

Mr. Cunningham thanked the Board.

13. Registration(s) as a Training Agency

A. Recommended for Approval without conditions – Addendum I

(1) Funeral Directing & Embalming

(a) Hadley Davis Funeral Home LLC (F056037) (Miami Gardens)

(b) Premier Funeral Services and Cremations Inc (F041253) (Oakland Park)

The Division recommends approval of the application(s).

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

14. Change in Location of Establishment

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

(1) Eternal Cremation Services LLC (F061573) (Clearwater)

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. Consumer Protection Trust Fund Claims
A. Recommended for Approval without Conditions – Addendum K

The Division recommends approval of the claim(s).

MOTION: Ms. Thomas-Dewitt moved to approve the claim(s). Ms. Anderson seconded the motion, which passed unanimously.

16. Application(s) for Monument Establishment Sales Agent
A. Informational Item (Licenses Issued without Conditions) - Addendum L

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

Mr. Helm questioned whether the name of the establishment listed is Michael Frampton.

Ms. Morris answered, "Yes, it is a sole proprietorship."

Mr. Helm stated he did remember this name coming through as a monument establishment. Mr. Helm questioned whether the established is licensed under the name "Michael."

Ms. Morris answered, "Yes."

17. Application(s) for Centralized Embalming Facility
A. Recommended for Approval with Conditions
(1) Wright and Young Funeral Home Inc (Opa-Locka)

This application has been on hold for a considerable period of time due to investigation of an alleged disciplinary violation by Applicant. The Applicant waived application of the deemer pending completion of the investigation and related action.

The investigation was completed and the Applicant appeared before the Board on April 7, 2011. The Board found the Licensee was performing embalmings at this location without being properly licensed. The Board accepted a settlement stipulation under which the funeral establishment license was placed on probation for six years (ending April 21, 2017), and fined \$10,000 (the Licensee is current in payment of the fine). The consent order also included a stipulation that the location listed above not be operated without being properly licensed.

The Division is recommending approval with the following condition(s):

- 1) That the facility passes an on-site inspection by a member of the Division staff.
- 2) That the facility license be placed on probation to run concurrently with the funeral establishment license (F039941).

Mr. Hall questioned whether the fines paid are current.

Mr. Shropshire responded yes.

Col. Stiegman questioned the condition of "probation to run concurrently with the funeral establishment license."

Mr. Shropshire stated that the disciplinary settlement in the funeral establishment license will run concurrently will this probation for 6 years.

MOTION: Mr. Jones moved to approve the application with the conditions that the facility passes an on-site inspection by a member of the Division staff and that the facility license is placed on probation to run concurrently with the funeral establishment license (F039941). Ms. Huggins seconded the motion, which passed unanimously.

18. Application(s) for Funeral Establishment

- A. Recommended for approval without Conditions**
(1) Eric L Wilson Mortuary LLC (Hollywood)

An application for a Funeral Establishment was received on May 3, 2011. The application was incomplete when submitted. All deficient items were returned on May 18, 2011. The fingerprint cards for all principals were returned with no criminal history. The Funeral Director in Charge will be Shayla Bullard (F044091). The establishment passed its inspection on June 1, 2011. The Division is recommending approval without conditions.

MOTION: Ms. Thomas-Dewitt moved to approve the application(s). Mr. Hall seconded the motion, which passed unanimously.

- B. Recommended for approval with Conditions**
(1) ICS Cremation & Funeral Home Inc (Lake City)

The application was received by the Division on May 27, 2011.

This application is being filed in relation to a stock purchase by which Craig and Sherry Williams is acquiring control of ICS Cremation & Funeral Home Inc; the overall transaction is represented by the Applicants to be as set out in the attached letter of Applicants' outside counsel Wendy Weiner, dated May 27, 2011.

The application was complete when submitted. The fingerprint cards for all principals were returned with no criminal history. The FDIC for the facility will be Michael Frontczak (F048337). The Division is recommending approval with conditions as follows:

- (1) That the closing occur within 60 days of the date of this Board meeting.
- (2) Receipt by the Division within 75 days of this Board meeting, of a letter signed by Applicant or Applicant's attorney, addressed to the Division, certifying that closing has occurred.
- (3) Receipt by the Division within 75 days of this Board meeting, of a copy of the Bill of Sale, executed by all parties, and any and all amendments thereto, also fully executed.
- (4) That the establishment passes an on-site inspection by a member of the Division staff.

MOTION: Ms. Thomas-Dewitt moved to approve the application with the conditions recommended by the Division. Col. Stiegman seconded the motion, which passed unanimously.

- (2) Q L Douglas Funeral Home LLC (Jacksonville)**

An application for a Funeral Establishment was received on May 26, 2011. The application was complete when submitted. The fingerprint cards for all principals were returned with no criminal history. The Funeral Director in Charge will be Quinton Douglas (F045497). The Division is recommending approval with the condition that the establishment passes an on-site inspection by a member of the Division staff.

MOTION: Mr. Helm moved to approve the application condition that the establishment passes an on-site inspection by a member of the Division staff. Ms. Anderson seconded the motion, which passed unanimously.

- (3) Wade Funeral Home LLC (Hallandale Beach)**

An application for a Funeral Establishment was received on May 26, 2011. The application was complete when submitted. The fingerprint cards for all principals were returned with no criminal history. The Funeral Director in Charge will be Tracy Wade (F043181). The Division is recommending approval with the condition that the establishment passes an on-site inspection by a member of the Division staff.

MOTION: Ms. Thomas-Dewitt moved to approve the application with the condition that the establishment passes an on-site inspection by a member of the Division staff. Ms. Anderson seconded the motion, which passed unanimously.

(4) Waters & Hibbert Funeral Home (Pensacola)

The application was received by the Division on April 12, 2011. The application was incomplete when submitted. All deficient items were received on May 17, 2011. The fingerprint cards for all principals were returned with no criminal history. The FDIC for the establishment will be Richard Bailey (F046659). The Division is recommending approval with the following conditions:

- (1) Receipt by the Division within 75 days of this Board meeting, of a copy of the Bill of Sale, executed by all parties, and any and all amendments thereto, also fully executed.
- (2) That the establishment passes an on-site inspection by a member of the Division staff.

MOTION: Col. Stiegman moved to approve the application with the conditions recommended by the Division. Mr. Helm seconded the motion, which passed unanimously.

19. Application(s) for Removal Facility

A. Recommended for Approval without Conditions

(1) Florida VIP Removal Services LLC (Miami Gardens)

An application for a Removal Service was received on May 5, 2011. The application was incomplete when submitted. All deficient items were returned on May 31, 2011. The fingerprint cards for all principals were returned with no criminal history. The establishment passed its inspection on June 3, 2011. The Division is recommending approval without conditions.

MOTION: Ms. Thomas-Dewitt moved to approve the application. Ms. Huggins seconded the motion, which passed unanimously.

(2) Jeff Parker (Pensacola)

An application for a Removal Service was received on April 7, 2011. The application was incomplete when submitted. All deficient items were returned on May 4, 2011. The fingerprint cards for all principals were returned with no criminal history. The establishment passed its inspection on May 16, 2011. The Division is recommending approval without conditions.

MOTION: Ms. Huggins moved to approve the application. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

B. Recommended for Approval with Conditions

(1) All City Removal Service LLC d/b/a All City Removal Service (Jacksonville)

An application for a Removal Service was received on April 1, 2011. The application was incomplete when submitted. All deficient items were returned on May 31, 2011. The fingerprint cards for all principals were returned with no criminal history. The Division is recommending approval with the condition that the establishment passes an on-site inspection by a member of the Division staff.

MOTION: Mr. Jones moved to approve the application with the condition that the establishment passes an on-site inspection by a member of the Division staff. Mr. Helm seconded the motion, which passed unanimously.

20. Application(s) for Monument Establishment Retailer License

A. Recommended for Approval without Conditions

(1) LJ Bronze Monument (Hialeah)

The application was received on May 3, 2011 and deficiencies were noted. A deficiency letter was sent on May 11, 2011 and the Applicant resolved all deficiencies by May 19, 2011. The Department completed a background check of all officers which revealed no criminal history. The Division is recommending approval.

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

- 21. Contract(s) or Other Related Form(s)**
A. Recommended for Approval *with* Conditions
(1) Monument Establishment Retail Sales Agreement
(a) LJ Bronze Monument (Hialeah)

The Division is recommending approval with the condition that the application for monument establishment retailer license presented at this meeting for LJ Bronze Monument, LLC is approved.

MOTION: Mr. Jones moved to approve the agreement. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

- (2) Preneed Sales Contract**
(a) Lohman Family Properties (Ormond Beach)

The Applicant, Lohman Family Properties, submitted a Prearranged Trust Funded Funeral Agreement and Cemetery Interment Rights and Merchandise Agreement to be used exclusively for preneed sales for all licensed cemetery and preneed establishments owned solely by Lohman Family Properties.

The Division is recommending approval with the condition that the Department receives within 60 days two full-sized print-ready copies.

MOTION: Mr. Hall moved to approve the agreement with the condition that the Department receives two full-sized print-ready copies within 60 days of this meeting. Ms. Huggins seconded the motion, which passed unanimously.

- (b) National Guardian Life Insurance Company (Madison, WI)**

The Applicant, National Guardian Life Insurance Company (NGLIC), submitted a guaranteed Prefunded Funeral Agreement (PN-REI-SGS-FL06/11), a guaranteed services and non-guaranteed merchandise Funeral Agreement (PN-SGS-SER-FL06/11), and a non-guaranteed Prefunded Funeral Agreement (PN-REI-NGSGS-FL06/11) to be used for preneed sales exclusively for licensed preneed establishments. NGLIC is an approved life insurance company that holds a current certificate of authority with the Florida Office of Insurance Regulation (OIR). NGLIC received approval by OIR as of October 2, 1967.

The Division is recommending approval with the condition that the Department receives within 60 days two full-sized print-ready copies.

MOTION: Ms. Thomas-Dewitt moved to approve the agreement with the condition that the Department receives two full-sized print-ready copies within 60 days of this meeting. Ms. Huggins seconded the motion, which passed unanimously.

22. Chairman's Report (Oral)

The Chair questioned the date of the next Teleconference meeting as there was a change on that at one point in time.

Ms. LaTonya Bryant-Parker stated that the meeting would be held on Wednesday, July 13th. The meeting was previously scheduled for Thursday, July 14th.

Ms. Huggins questioned whether it was a conference call.

The Chair answered, "Yes."

23. Office of Attorney General's Report (Oral)

None

24. Administrative Report

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

25. Disciplinary Report

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

26. Adjournment

The meeting was adjourned at 2:22 p.m.