

MINUTES
BOARD OF FUNERAL, CEMETERY AND CONSUMER SERVICES
August 4, 2011 - 10:00 A.M.
Department of Financial Services
2020 Capital Circle SE, Alexander Bldg, Rm. 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 August 4, 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 in Tallahassee, FL. 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 roll and the following members were present:

PRESENT:

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

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
Jasmin Richardson, Department Staff
Lashonda Morris, Department Staff

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 23, 2011

The Chair confirmed that all Board members had read the draft of the minutes of the previous Board meeting held on June 23, 2011.

MOTION: Ms. Tracy Huggins moved to adopt the minutes of the meeting. Col. Don Stiegman seconded the motion, which passed unanimously.

B. July 13, 2011 – Teleconference

The Chair confirmed that all Board members had read the draft of the minutes of the previous Board meeting held on July 13, 2011.

MOTION: Mr. Ken Jones moved to adopt the minutes of the meeting. Ms. Gail Thomas-Dewitt seconded the motion, which passed unanimously.

3. Old Business

A. Application(s) for Funeral Establishment

(1) Recommended for Denial

(a) Funerarias De Las Americas Internacional Inc (Miami)

This matter originally appeared on the June 2, 2011 Board agenda. During that meeting, concerns were raised by a member of the public regarding this application. The Board decided not to rule on the application and directed the Division to conduct further investigation regarding the application. The Division conducted further investigation pursuant to Sections 497.149 and 497.141(3), F.S. The property at 151 NW 37 Ave Miami, FL 33125 is owned by Carlos Gil, Jr. and W. Maria El, as evidenced by the attached information from the Miami-Dade property division, the deed, and the lease agreement. After the completion of the investigation, the matter then appeared on the July 13, 2011 Board agenda. However, during that meeting, the Applicant, through representative counsel, waived deemer and requested the matter appear on the August Board agenda. The application file and information from the investigation demonstrate the following:

Management Involvement of Niurka Flietes

- (1. The Application identifies Maria G. Fernandez as the sole officer, manager, director, and stockholder of the Applicant.
- (2. Maria G. Fernandez testified under oath to the Division of Funeral, Cemetery, and Consumer Services (the "Division") on June 10, 2011 that one Niurka Flietes will work as a manager for the Applicant upon licensure. See attached June 10, 2011 sworn interview of Maria Fernandez and exhibits.
- (3. On or about December 1, 2008, the same Niurka Flietes filed an application for a funeral establishment license on behalf of Nacional Memorial Funeral Chapel, LLC ("Nacional"). The Nacional application was signed on behalf of Nacional by the said Niurka Flietes. In said application Niurka Flietes was identified as Nacional's President, sole principal, sole managing member, sole managing partner, sole director, sole stockholder, and sole person who could exercise control over the Nacional.
- (4. In signing the Nacional application, Niurka Flietes represented that, "Under penalties of perjury, I, the Applicant or Applicant's authorized signatory, do hereby declare that I have read the foregoing application and all attachments, and the facts stated in it are true and correct."
- (5. Nacional's application came before the Board on April 8, 2009 and was denied on grounds summarized as follows: Nacional failed to identify in its application that Hilbert Mohabir was a principal of Nacional and a person who could exercise control over Nacional; Nacional's application failed to disclose the criminal history of Mr. Mohabir; Nacional operated the funeral establishment prior to the issuance of a license; and Nacional misled the public by advertising that its business was opened prior to the issuance of a license, in violation of Sections 497.380(4) and (13), Florida Statutes. A notice of intent to deny Nacional's said application for licensure was issued April 30, 2009 in Case No. 103834-09-FC, and the denial of Nacional's application subsequently became final. On July 31, 2009, a Final Order was issued in Case No. 103834-09-FC, upholding the Notice of Intent to Deny Licensure issued against Nacional Funeral Chapel, LLC. See attached Notice of Intent to Deny and Final Order.
- (6. Hilbert Mohabir is also known by several aliases, including but not necessarily limited to, Sheikh Rafayi Alkhalifa, Rafayi Alkhalifa and Sheik Rafayi Khalifa.
- (7. Section 497.380(4), Florida Statutes, provides in pertinent part as follows:
A duly completed application accompanied by the required fees shall be approved and the license issued if the proposed funeral establishment has passed an inspection pursuant to rule of the licensing authority, the licensing

authority determines the Applicant is of good character and has no demonstrated history of lack of trustworthiness or integrity in business or professional matters, and the Applicant otherwise is in compliance with all applicable requirements of this chapter.

- (8. Because the operations of Applicant will be managed by the said Niurka Flietes, the Board determines that Applicant is not of good character, and that the application should be denied for that reason.
- (9. Because the operations of Applicant will be managed by the said Niurka Flietes, the Board determines that Applicant has a demonstrated history of lack of trustworthiness or integrity in business or professional matters, and that the application should be denied for that reason.

Involvement of Applicant’s Sole Principal with Hilbert Mohabir

- (10. The Application identifies Maria G. Fernandez as the sole officer, manager, director, and stockholder of the Applicant.
- (11. Maria G. Fernandez has also used the name Maria Alvarez.
- (12. Maria (Alvarez) Fernandez has had extensive and recent involvement as a principal in multiple business entities in which Hilbert Mohabir was also a principal. Below is a list of some of the business entities in which Maria (Alvarez) Fernandez and Hilbert Mohabir (a/k/a Rafaiy Alkhalifa) are or recently have both been principals in:

Corporation	Rafaiy Alkhalifa’s role	Hilbert Mohabir’s role	Maria (Alvarez) Fernandez’s role
Funeral Depot & Casket Sales, Inc.		Reg. Agent; President	VP
First Arabian Financial Corporation	President.		Reg. Agent, VP
Discount Flowers Miami, LLC		Reg. Agent, President	VP
Armadale Investments Group, Inc.	DP		VPST
Hilbert Mohabir Shores Enterprises, LLC		Reg.Agent, MGRM	MGRM

- (13) On June 10, 2011, Maria G. Fernandez testified that Sheikh Rafayi Alkhalifa (a/k/a Hilbert Mohabir) has been her employer for the past ten (10) years.
- (14) In or about 2003, Sheikh Rafayi Alkhalifa (a/k/a Hilbert Mohabir) was charged with one count of felony Grand Theft and one count of felony Organized Fraud, relating to his Florida funeral establishment, in Florida Circuit Court, case number F0373A. In 2005 Sheikh Rafayi Alkhalifa pled no contest to the aforesaid felony Grand Theft charge. In 2006 Sheikh Rafayi Alkhalifa acknowledged the aforesaid criminal record before the Board, in Agreed Order 83344-06-FC. Copy Attached.
- (15) Section 497.380(4), Florida Statutes, provides in pertinent part as follows:

A duly completed application accompanied by the required fees shall be approved and the license issued if the proposed funeral establishment has passed an inspection pursuant to rule of the licensing authority, the licensing authority determines the Applicant is of good character and has no demonstrated history of lack of trustworthiness or integrity in business or professional matters, and the Applicant otherwise is in compliance with all applicable requirements of this chapter.

- (16) Because of the business association of Applicant’s sole principal, Maria (Alvarez) Fernandez, with Sheikh Rafayi Alkhalifa (a/k/a Hilbert Mohabir), the Board finds that Applicant is not of good character and that the application should be denied for that reason.
- (17) Because of the business association of Applicant’s sole principal, Maria (Alvarez) Fernandez, with Sheikh Rafayi Alkhalifa (a/k/a Hilbert Mohabir), the Board finds that Applicant has a demonstrated history of lack of trustworthiness or integrity in business or professional matters, and that the application should be denied for that reason.

Applicant Will Sublease Its Business Premises from a Company Controlled By a Felon

- (18) The physical premises whereas Applicant proposes to operate the funeral establishment if the Application is approved, are to be subleased by Applicant from an entity identified as “First Arabian Financial, Inc. d/b/a La Nacional Funeral Home” (hereinafter “First Arabian”), pursuant to a sublease agreement signed on behalf of First Arabian by Rafaiy Alkhalifa (a/k/a

Hilbert Mohabir), identified on said agreement as President of First Arabian. The said Rafaiy Alkhalifa is the same Sheikh Rafayi Alkhalifa (a/k/a Hilbert Mohabir) with a felony criminal record, as aforesaid herein.

(19) Because the Applicant would conduct its business upon premises subleased from an entity controlled by Sheikh Rafayi Alkhalifa (a/k/a Hilbert Mohabir), and because of the resulting ability of the aforesaid Sheikh Rafayi Alkhalifa (a/k/a Hilbert Mohabir) to declare a breach in the terms and conditions of the said sublease, the said Sheikh Rafayi Alkhalifa (a/k/a Hilbert Mohabir) will have an element of influence and control over Applicant.

(20) Section 497.380(4), Florida Statutes, provides in pertinent part as follows:

A duly completed application accompanied by the required fees shall be approved and the license issued if the proposed funeral establishment has passed an inspection pursuant to rule of the licensing authority, the licensing authority determines the Applicant is of good character and has no demonstrated history of lack of trustworthiness or integrity in business or professional matters, and the Applicant otherwise is in compliance with all applicable requirements of this chapter.

(21) Because of the influence and control of Sheikh Rafayi Alkhalifa (a/k/a Hilbert Mohabir) will have in the operation of the Applicant's business if licensed, and because Applicant voluntarily entered into the sublease agreement by which the said Sheikh Rafayi Alkhalifa (a/k/a Hilbert Mohabir) obtained such control, Board finds that Applicant is not of good character and that Applicant has a demonstrated history of lack of trustworthiness or integrity in business or professional matters.

Applicant's Employment of Niurka Flietes To Translate On Behalf of Mostly Elderly Consumers Poses a Threat of Harm to the Public Health and Safety

(22) Bernard Roberson (F044089) is identified as the Funeral Director in Charge for the Applicant.

(23) Maria G. Fernandez testified under oath on June 10, 2011, that approximately ninety-five percent (95%) of the client base for the Applicant will be individuals who speak Spanish, and do not speak any English, and that most of these individuals will be elderly.

(24) Maria G. Fernandez further testified that Mr. Roberson speaks no Spanish, and therefore, she, Niurka Flietes, and Verena Alvarez, will provide translation when those persons come into the funeral establishment to purchase deathcare services and merchandise.

(25) Neither Maria Fernandez, Niurka Flietes, nor Verena Alvarez has any licenses under Chapter 497, Florida Statutes, including a funeral director's license.

(26) This is the same aforementioned Niurka Flietes, whose previously filed application for a funeral establishment was denied April 8, 2009, as more fully detailed in paragraphs (2) through (9) above.

(27) One of the basis for denial of the application filed by Niurka Flietes was that the Applicant misled the public by advertising that its business was opened prior to licensure.

(28) Thus, Applicant's use of Niurka Flietes to provide translation on behalf of the elderly, a vulnerable population, poses a threat of harm to the public health and safety.

(29) Section 497.380(4), Florida Statutes, provides in pertinent part as follows:

A duly completed application accompanied by the required fees shall be approved and the license issued if the proposed funeral establishment has passed an inspection pursuant to rule of the licensing authority, the licensing authority determines the Applicant is of good character and has no demonstrated history of lack of trustworthiness or integrity in business or professional matters, and the Applicant otherwise is in compliance with all applicable requirements of this chapter.

(30) Because Applicant will authorize Niurka Flietes to provide translation on behalf of mostly elderly consumers, the Board determines that Applicant is not of good character, and that the application should be denied for that reason.

(31) Because Applicant will authorize Niurka Flietes to provide translation on behalf of the mostly elderly consumers, the Board determines that Applicant has a demonstrated history of lack of trustworthiness or integrity in business or professional matters, and that the application should be denied for that reason.

Applicant Failed To Disclose the Alias of Its Sole Principal, Maria G. Fernandez

(32) Pursuant to Section 497.453(1)(g), Florida Statutes, the Applicant was required to submit fingerprint cards to the Department for all its principals, to allow the Department to obtain a criminal history report from the Florida Department of Law Enforcement.

(33) Applicant's sole principal, Maria G. Fernandez, submitted fingerprint cards to the Department.

(34) As she testified under oath on June 10, 2011, Maria G. Fernandez is also known by the alias, Maria Alvarez.

(35) When submitting her fingerprint cards, Maria G. Fernandez was asked to disclose all known aliases. Maria G. Fernandez failed to disclose that she has used the alias, Maria Alvarez. See attached printout from Florida Department of Law Enforcement.

(36) Section 497.380(4), Florida Statutes, provides in pertinent part as follows:

A duly completed application accompanied by the required fees shall be approved and the license issued if the proposed funeral establishment has passed an inspection pursuant to rule of the licensing authority, the licensing authority determines the Applicant is of good character and has no demonstrated history of lack of trustworthiness or integrity in business or professional matters, and the Applicant otherwise is in compliance with all applicable requirements of this chapter.

(37) Because Applicant failed to disclose the alias of its sole principal, the Board determines that Applicant is not of good character, and that the application should be denied for that reason.

(38) Because Applicant failed to disclose the alias of its sole principal, the Board determines that Applicant has a demonstrated history of lack of trustworthiness or integrity in business or professional matters, and that the application should be denied for that reason.

The Division finds that any one of the several reasons listed above would by itself justify denial of the application. Therefore, based on the foregoing, the application of Funerarias De Las Americas Internacional, Inc. is recommended for denial.

Mr. Foster requested that the Applicant be sworn in.

Mr. Shropshire requested that Ms. Fernandez 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. Maria Fernandez answered, "Yes."

Mr. Foster stated that the Division's recommendation is not the appropriate decision that this Board should make today. In effect what it does is it asks you to label Ms. Fernandez as being a person who is unworthy of having a licensing; of being a disreputable individual. The basis of that, we start with, and I would like to call your attention to the record, which is an interview conducted by Mr. Anthony Miller. On page 8 of the transcript, Ms. Fernandez talks about who is going to be the manager or a manager of her proposed funeral home. Specifically, Ms. Fernandez is going to be talking about Niurka Flietes. Mr. Foster requested that Ms. Fernandez tell the Board who Niurka Flietes is.

Ms. Fernandez: She is somebody that is working with me. She is handling paperwork at the funeral home, assisting there at that building.

Mr. Foster: And that funeral home that you work at right now, where is that funeral home?

Ms. Fernandez: It's located at 151 NW 37 Ave.

Mr. Foster: And who is the owner of that funeral home?

Ms. Fernandez: Rafaiy Alkhalifa

Mr. Foster: How long have you worked for Mr. Alkhalifa?

Ms. Fernandez: For the past 10 years.

Mr. Foster: And what is your intent, if this Board were to grant you a license, what is your intent about the management of the funeral home at that location?

Ms. Fernandez: Well, I will be the Manager of the funeral home and I will be taking care of all the decisions.

Mr. Foster: Now when you say you are the Manager of the funeral home, what funeral home will be there if this Board granted you a license?

Ms. Fernandez: My funeral home, Funerarias De Las Americas.

Mr. Foster: Is that different than the funeral home that Mr. Alkhalifa owns right now?

Ms. Fernandez: Oh yes, completely.

Mr. Foster: What role or function would he have in that funeral home if this Board granted you your license?

Ms. Fernandez: None.

Mr. Foster: Who owns the property, the real property at that funeral home?

Ms. Fernandez: Carlos Gil.

Mr. Foster: And who is he?

Ms. Fernandez: He is the owner of the building.

Mr. Foster: Is he a lawyer and an investor? Is that what he is?

Ms. Fernandez: He's an investor.

Mr. Foster: Does he have anything to do with the operation of your funeral home, other than owning the real property?

Ms. Fernandez: No.

Mr. Foster: And who has leased that property from him at the present time?

Ms. Fernandez: Rafaiy Alkhalifa

Mr. Foster: And what is your arrangement with Mr. Alkhalifa in the event that this Board were to allow you to have a license?

Ms. Fernandez: Well, I'm going to have a sublease agreement because the lease is not over yet. And I am going to sublease the property from him until I get my brand new lease.

Mr. Foster: And when you sublease the property from him, what happens to the funeral home that is presently at that location that is owned by Mr. Alkhalifa?

Ms. Fernandez: It's going to cease operation.

Mr. Foster: And when it ceases operation, what happens to some of the property that is located at that funeral home, according to your agreement with Mr. Alkhalifa?

Ms. Fernandez: Well, there is some old furniture and (?) in there that I am going to buy upon the approval of my license.

Mr. Foster: Is Mr. Alkhalifa going to have any responsibility or authority with respect to your new funeral home, if this Board were willing to grant you the license.

Ms. Fernandez: No, nothing at all.

Mr. Foster: Would he have any consulting authority or do you intend to consult with him or ask him questions about how to operate your funeral home.

Ms. Fernandez: No, I'm not planning to do that.

Mr. Foster: On page 8 of the interview that you had with Mr. Miller, you talk about Niurka Fleites being a manager or the manager. Where were you born?

Ms. Fernandez: Venezuela

Mr. Foster: And what is the language that you first grew up learning?

Ms. Fernandez: Spanish

Mr. Foster: And, you do speak English obviously, but how did you come to learn English and when did you learn English?

Ms. Fernandez: I learned part of my English in my country and the rest here in America.

Mr. Foster: Now, when you used the word manager on page 8 on two times, what did you mean in your mind what manager meant?

Ms. Fernandez: That you will handle things.

Mr. Foster: And when you say handle things, could you be more explicit for the Board.

Ms. Fernandez: Sure. That you will handle paper work.

Mr. Foster: What would she do as far as managing people is concerned.

Ms. Fernandez: No. It wouldn't do any management of people. All the managing of the staff over there would be done by me.

Mr. Foster: And who else would be a manager in your funeral home?

Ms. Fernandez: Nobody else.

Mr. Foster: Well what about the funeral director in charge? Would he be a manager?

Ms. Fernandez: Oh, he will be working with me.

Mr. Foster: Explain to the Board what you mean that he would be working with you as opposed to being...what do you see his responsibilities and goals to be?

Ms. Fernandez: He will be directing all the funeral services.

Mr. Foster: Now does he speak English?

Ms. Fernandez: Yes, he does.

Mr. Foster: Does he speak Spanish?

Ms. Fernandez: No, he doesn't.

Mr. Foster: How long have you known him?

Ms. Fernandez: Four years.

Mr. Foster: And how have you known him?

Ms. Fernandez: Very well.

Mr. Foster: No, no. I mean do you work together with him?

Ms. Fernandez: Yes, we work together.

Mr. Foster: In what capacity? How do you work with him? Is he employed by...

Ms. Fernandez: He's employed by the funeral home, the present funeral home over there.

Mr. Foster: The present funeral home?

Ms. Fernandez: Yes.

Mr. Foster: How frequently do you see him or have you seen him over the past few years?

Ms. Fernandez: Yes, I see him almost every day.

Mr. Foster: And what is your estimate of him in terms of his integrity and his competence?

Ms. Fernandez: He's a respectable funeral director.

Mr. Foster: Do you have any hesitancy about having him be the funeral director in charge even though he does not speak Spanish?

Ms. Fernandez: No, not at all.

Mr. Foster: Why is it that you did not say to him, well I'm not going to use you as a FDIC, I'm going to hire an FDIC who speaks Spanish? Why did you not do that as suggested by the Department?

Ms. Fernandez: Well, I think I shouldn't discriminate anybody to have a job at the funeral home so I figured that I feel comfortable with him and I would like to have him there even though he does not speak Spanish.

Mr. Foster: Do you have anything else that you would like to talk with the Board members about to explain to them why you want to have this funeral home and what you want to do with it?

Ms. Fernandez: Yeah, my plans are to have this funeral home to take care of the community and serve them better and I would like to have this funeral home because I think there is a need there for the community and I am there to serve them.

Mr. Foster: If this Board grants the license, what is it that you are going to do as far as getting property to put in to where the funeral home is?

Ms. Fernandez: Well, as I go I'm going to be furnishing the funeral home with new furniture and new equipment and I'm going to be doing everything as I go.

Mr. Foster questioned whether the Board had any questions for Ms. Fernandez. Mr. Foster stated he had one more question for Ms. Fernandez.

Mr. Foster: Have you ever been convicted of a crime.

Ms. Fernandez: No, never.

Mr. Foster: The Board staff has made much of the fact that when you filled out your application, you did not list an alias. Your application was filed under your name Fernandez. Is that right?

Ms. Fernandez: Yes, that is correct.

Mr. Foster: And how did you come about to have the name Fernandez?

Ms. Fernandez: Because I am a married woman.

Mr. Foster: And when did you marry?

Ms. Fernandez: I married in 2009.

Mr. Powell Helm requested that Ms. Fernandez repeat her answer.

Ms. Fernandez: I married in 2009.

Mr. Foster: And what was your maiden name, what we call in America your maiden name, your name before you were married?

Ms. Fernandez: Maria Alvarez.

Mr. Foster: And did it occur to you when you filled out your application that you should also have listed that as that would be considered in America as an alias? Did that occur to you when you filled out your application?

Ms. Fernandez: I didn't know that. That is why I didn't put it there.

Mr. Foster stated that the Board was free to inquire of Ms. Fernandez with any questions they may have.

Mr. Lew Hall questioned where the capital would come from for handling this establishment.

Ms. Fernandez stated that she has capital from her family and her own savings.

Mr. Hall questioned whether Mr. Roberson would be the FDIC.

Mr. Foster confirmed that Mr. Roberson would be the FDIC.

Mr. Hall stated that 95% of the clientele is Spanish-speaking. As the FDIC, Mr. Roberson not only has to take care of the families, but he has to run the staff and is responsible for that operation. Mr. Hall questioned whether Mr. Roberson inability to speak Spanish and communicate effectively would be a hindrance.

Ms. Fernandez stated that all the staff speaks Spanish and English. The only people that do not speak Spanish much are the clientele. Ms. Fernandez added that she would be there as well as staff to help the FDIC translate anything that happens in the funeral home with the clientele.

Col. Stiegman questioned all the negative issues that were brought up at the last meeting regarding this Applicant.

Ms. Allison Dudley stated since the Department conducted an investigation she would prefer not to hear any of that as most of it is hearsay and rumors at this point. Therefore we should keep it within the 4 corners of the investigation.

Mr. Foster stated that there was a specific assertion that Mr. Alkhalifa owned the real property. That was one of the allegations specifically made. The Department's investigation absolutely showed that it was a false statement and was not accurate. There is no question about that. The real property is owned by a lawyer/investor who leased it to Mr. Alkhalifa. Should the Board grant this license, Mr. Alkhalifa is going to vacate that property and Ms. Fernandez is going to sublease the lease. Mr. Alkhalifa will be gone with the exception of being a sub-leaser in between but Mr. Alkhalifa will have no control over the business, according to Ms. Fernandez's testimony, and he is not going to be a part of it.

Ms. Huggins questioned whether Ms. Fernandez is currently working for Mr. Alkhalifa.

Ms. Fernandez answered, "Yes, I am."

Ms. Huggins questioned the fate of the relationship between Ms. Fernandez and Mr. Alkhalifa should the Board grant this license.

Ms. Fernandez stated that Mr. Alkhalifa is planning to leave the business so she would not be in touch with him related to the business. Ms. Fernandez stated that she would be there managing the business alone.

Ms. Huggins questioned whether Ms. Fernandez would no longer work for Mr. Alkhalifa.

Ms. Fernandez stated that she would not.

Ms. Nancy Hubbell questioned whether Ms. Fernandez would still have roles in the different corporations or business ventures with Mr. Alkhalifa.

Ms. Fernandez stated that she resigned from all the companies to avoid a conflict of interest.

Mr. Foster stated this was filed with Mr. Miller and there should no longer be an issue any more about whether or not Ms. Fernandez is an officer or a registered agent with respect to any corporations owned by Mr. Alkhalifa.

Mr. Anthony Miller stated Mr. Foster did not file that information with him. Mr. Foster submitted a letter indicating that Ms. Fernandez had filed the documentation.

Mr. Foster concurred and stated that he submitted to the Department a copy of Ms. Fernandez's resignation that was given to Mr. Alkhalifa in that regard.

Mr. Miller stated that Mr. Foster or the Applicant would have to file the information with the Division of Corporations.

Mr. Foster stated that Mr. Alkhalifa would have to file as he does not have the authority to do so. That would be Mr. Alkhalifa's responsibility. In conclusion, Mr. Foster urged that the Board grant this license as Ms. Fernandez has been under oath, she has made her representations to the Board and if Ms. Fernandez ever went back on that or acted inappropriately the record would be clear that she could be appropriately branded as a liar and a deceptive person. But right now, based on the record that you have in front of you, the Board does not have a legitimate basis to deny her this license.

Mr. Hall stated that the data provide to the Board indicates that Ms. Fernandez was Vice President of Funeral Depot.

Ms. Fernandez concurred.

Mr. Hall stated that Funeral Depot is a company that will be presented later on this Agenda and has been presented in the past to have claims paid from the CPTF because the company failed. Mr. Hall questioned what business knowledge of running a funeral home Ms. Fernandez has to keep this from being another company on the list that the Board is approving claims for.

Ms. Fernandez stated that she has been working at funeral home for the last 10 years, so she has enough experience to know everything that happens in a funeral home. Ms. Fernandez added that she has very good funeral directors showing her how to run a business and this is where she gets the experience from.

Mr. Hall stated that it is evident that it was not good experience or the Board would not be dealing with the Funeral Depot issue later today.

Mr. Foster stated in all fairness, this is brand new information to him.

Mr. Hall stated that the information is in the Board packet. Mr. Hall questioned whether Mr. Foster is not privy to the information received in the packet.

Mr. Foster questioned whether the claim would have been in his packet.

Mr. Hall stated that information was not in Mr. Foster's packet but the point is if Ms. Fernandez was Vice President of that operation then she knows that it failed. Mr. Hall questioned how Mr. Foster could convince him that Ms. Fernandez has enough experience to go forward with this establishment and not fail again.

Mr. Foster stated that first of all that was not one of the reasons that staff recommended denial of the license to begin with. Secondly, I do not know what Ms. Fernandez's experience was with that particular claim or what her responsibilities were or even what that claim is so we are caught off guard from the point of view of saying this is an issue, a basis for denial of this application. Mr. Foster added that Mr. Hall raises a legitimate question and would like the Board to inquire further if it so chooses to; and that is since Ms. Fernandez was listed as the Vice President of a company that is coming up on the Agenda with a claim, Mr. Foster asked that the Board inquire of Ms. Fernandez more fully about what her responsibilities were with respect to that claim and with the running of that particular company.

The Chair stated that the Board members should be able to ask questions and receive and answer.

Mr. Hall questioned what knowledge Ms. Fernandez has of the business that would enable her to continue and make this company a success.

Ms. Fernandez stated that she is going to have a good group working with her to run the funeral home. The staff that will be working there have been in the business for a long time and we will be capable to serve the community and work there altogether to make everything happen the best way.

Mr. Shropshire stated the company Mr. Hall referred to is Funeral Depot and Casket Sales Inc. The Department's information is that Ms. Fernandez was Vice President of that firm. Mr. Shropshire questioned whether that information was correct.

Ms. Fernandez answered, "Yes."

Mr. Shropshire requested that Ms. Fernandez describe her involvement in the operation of that company, the length, when it began and when it terminated. Mr. Shropshire questioned whether Ms. Fernandez is aware that Funeral Depot and Casket Sales Inc. failed and went out of business.

Ms. Fernandez stated that she did not know the company failed.

Mr. Shropshire questioned when Ms. Fernandez left the company.

Ms. Fernandez stated that she was registered as the Vice President but she never really had any duties in that company. The company was being run by Rafaiy Alkhalifa and he was the one doing all the transactions with that company.

Mr. Shropshire questioned whether Ms. Fernandez felt, as an officer of the company, that she had some duty to make herself aware of what the operating practices of the company were.

Ms. Fernandez answered, "No, I didn't have any duties there."

Mr. Shropshire questioned whether it is a correct assumption that Ms. Fernandez did not feel she had a duty to make herself aware.

Ms. Fernandez stated that she was aware that she was the Vice President there but she was not handling the company.

Mr. Shropshire questioned the number of Vice Presidents the company had.

Ms. Fernandez stated that she was the only Vice President there.

Mr. Shropshire questioned who was higher than Ms. Fernandez in the organizational structure in the company.

Ms. Fernandez stated that she could not remember as that was a while ago but she believes it was Rafaiy Alkhalifa. He had other members working for him but Ms. Fernandez stated she could not recall the names.

Mr. Shropshire questioned whether Mr. Alkhalifa was the President during that time.

Ms. Fernandez answered, "Yes."

Mr. Shropshire questioned whether Ms. Fernandez was the only Vice President.

Ms. Fernandez answered, "I think so, yes."

Mr. Shropshire questioned whether Ms. Fernandez remembers when she left that company.

Ms. Fernandez responded that she did not remember.

Ms. Thomas-Dewitt questioned whether Ms. Fernandez ever had any responsibilities within Funeral Depot.

Ms. Fernandez answered, "No."

Ms. Thomas-Dewitt questioned why Ms. Fernandez was appointed Vice President.

Ms. Fernandez stated that she was listed there to be part of the company, but then Ms. Alkhalifa just ran it himself and Ms. Fernandez had nothing to do with the company.

Ms. Thomas-Dewitt questioned whether Ms. Fernandez just put her name on whatever business venture Mr. Alkhalifa would venture out into without having knowledge of it.

Ms. Fernandez answered, "Yes."

Col. Stiegman questioned whether Ms. Fernandez was paid from that position.

Ms. Fernandez answered, "No."

Ms. Jean Anderson questioned Ms. Fernandez's relationship to Mr. Alkhalifa.

Ms. Fernandez stated that she currently works for Mr. Alkhalifa.

Ms. Anderson questioned Ms. Fernandez's current duties.

Ms. Fernandez stated that she is a part of the funeral home. Ms. Fernandez added that right now she is managing some paperwork and works with the funeral director translating for the elderly consumers. Ms. Fernandez also takes care of the administrative work.

Ms. Dudley stated that Ms. Fernandez mentioned she felt she would have a good team working for her and questioned whether that team would include Ms. Niurka Fleites.

Ms. Fernandez answered, "Yes, it will."

Mr. Shropshire stated that the Division would suggest and amend its recommendation to include as grounds for the denial the Applicant's involvement as a Vice President of Funeral Depot and Casket Sales Inc. and her admission that although she was Vice President she had no substantive knowledge or involvement in the operation of the firm.

MOTION: Mr. Hall moved to deny the application based on the recommendation by the Division. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

B. Application(s) for Preneed License Renewal
(1) Recommended for Approval with Conditions
(a) CEP Investment Inc (F019381) (Hudson)

Applicant's preneed license renewal application was recommended for denial at the June 23, 2011 Board meeting due to Applicant demonstrating a net worth of \$(262,961), thereby failing to meet the minimum required net worth for renewal of \$100,000, pursuant to s. 497.453(2)(b) and (5), F.S. and 69K-5.0016, F.A.C.

The Board moved to defer the application to the August meeting contingent upon the following:

- 1) That licensee's principal, Clarence E. Prevatt, provide a personal financial statement of assets and liabilities.
- 2) That licensee's principal, Clarence E. Prevatt, execute and deliver a personal guarantee of preneed obligations within 30 days of Board meeting.

Licensee has provided all of the requested materials.

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 above 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.

Licensee has satisfied all of the required conditions as stated; therefore, the Division is recommending approval of the license.

The Chair requested that Mr. Shropshire swear in the Applicant.

Mr. Shropshire requested that Mr. Prevatt raise his 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?"

Mr. Clarence E Prevatt Jr answered, "I do." Mr. Prevatt stated that he has pretty much completed all of the information. Again, just to go over some facts, I am trusting 100% and have trusted since I started the trusting procedures and selling preneed insurance. Mr. Prevatt stated that he trusts or uses insurance policies for the preneed. The Applicant is audited every year without any deficits as far as monies going where they are supposed to go and how it is operated. Mr. Prevatt stated that he runs a very clean business when it comes to those kind of things as they are very important. Mr. Prevatt appreciates the Board's concern about this but feels he has enough financial backing and he has signed some personal waivers to cover any of these funerals.

The Chair stated when Mr. Prevatt came before the Board last he was asked whether his personal net worth would cover the deficiency of the net worth of the company and Mr. Prevatt stated that he did not think it would. The Chair questioned whether something has changed.

Mr. Prevatt responded, "No. Since I've been in business I've never done a financial statement on myself, so I really was surprised when I pulled all the information and gave it to the CPA. I was pleasantly surprised at the results that I had for the assets that I have. That's just not something that I dwell over on a day to day basis or a yearly basis. It's just something that I have accumulated through time in working."

The Chair questioned whether the Division is satisfied that the assignment of the personal net worth will cover any deficiencies that may occur.

Mr. Shropshire stated that according to the spreadsheet, there is adequate personal assets to cover it. The Board may want to renew subject to a condition, which apparently Mr. Prevatt already satisfies, of 100% trusting or insurance funding.

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

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

Applicant's preneed license renewal application was recommended for denial at the June 23, 2011 Board meeting due to Applicant demonstrating a net worth of only \$85,186, thereby failing to meet the minimum required net worth for renewal of \$100,000, pursuant to s. 497.453(2)(b) and (5), F.S. and 69K-5.0016, F.A.C.

The Board moved to defer the application to the August meeting contingent upon the following:

1) That licensee provides new financial statements to the Division within 30 days for review that demonstrate that it meets the required minimum net worth.

In lieu of this, the Division has entered into a Stipulation for Renewal of License with the Applicant in which the Applicant agrees to the following special condition: That Licensee shall trust 100% or sell only insurance-funded preneed contracts.

Licensee has agreed to the terms of the Stipulation for Renewal and has returned the executed agreement to the Division.

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 above 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.

Licensee has satisfied the required conditions as stated; therefore, the Division recommends that the Board approve the application based upon the attached Stipulation for Renewal entered into by the Division and the Licensee.

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

MOTION: Ms. Thomas-Dewitt moved to approve the application based upon the Stipulation for Renewal entered into by the Division and the Licensee. Col. Stiegman seconded the motion, which passed unanimously.

(2) *Recommended for Denial*

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

Applicant's preneed license renewal application was recommended for denial at the June 23, 2011 Board meeting due to Applicant not providing the required financial statements, thereby failing to demonstrate that it meets the minimum required net worth of renewal of \$10,000, pursuant to s. 497.453(2)(b) and (5), F.S. and 69K-5.0016, F.A.C.

The Board moved to defer the application to the August meeting contingent upon licensee providing the following to the Division:

1) That licensee provides financial statements to the Division within 30 days for review that demonstrate that it meets the required minimum net worth.

A notice was sent to the Licensee on June 30, 2011 requesting the above materials, and as of to date, no response has been received from the Licensee by the Division.

Due to licensee's failure to demonstrate that it meets the net worth requirements as above set forth, the Division is recommending that the application for renewal be denied.

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

MOTION: Mr. Helm moved to deny the application due to licensee's failure to demonstrate that it meets the net worth requirements. Mr. Hall seconded the motion, which passed unanimously.

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

Mr. Shropshire requested that this item be tabled until the September meeting to allow the Division to work with this Licensee further. There was an error in communicating back and forth and the Licensee did not receive all the information that the Division desired they have in time for this meeting.

The Chair questioned whether this has been resolved now as there appears to have been several instances where there was a mix up with the delivery address.

Mr. Shropshire stated that this last effort was frankly the Division's error.

The Chair questioned whether the Division feels there is a need to send out the correspondence via Registered Mail.

Mr. Shropshire stated that the error was the city. The Division listed Deltona, but the actual address is another city. The envelope just came back 2 days ago, undeliverable.

4. Disciplinary and Other Proceeding(s): 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 (Probable Cause Panel A)

(1) Mitchell, Bernard: Case No. 110594-10-FC (SR1-624105065)

Ms. Hubbell recused herself as she participated on Probable Cause Panel A.

Ms. Mary K Surles stated that the Department filed an Administrative Complaint on February 23, 2011 which alleges violation of sections of Chapter 497, F.S. and Chapter 69K, F.A.C. Respondent, Bernard Mitchell, as the responsible funeral director in charge, failed to ensure that Wilson-Eichelberger Funeral Home and its employees accurately kept records and reports; failed to ensure that contracts were being prepared in accordance with the Act; permitted Wilson-Eichelberger Funeral Home to operate with an inactive and invalid funeral establishment license during the examination period, failed to ensure that Wilson-Eichelberger Funeral Home properly handled trust funds; and failed to ensure that all contracts and payments were remitted to the trustee for the appropriate trust accounts for the Wilson-Eichelberger Funeral Home.

Service of the Administrative Complaint was obtained by certified mail on March 26, 2011. The Department received Respondent's response to the Administrative Complaint which petitioned the Department to continue the administrative proceeding its criminal case in Seminole County was resolved. On May 13, 2011 the Department issued an Order dismissing Respondent's petition without prejudice and requested that the Respondent file an amended petition curing the cited defects since the Respondent's petition did not comply with all the requirements of Rule 28-106.2015(5), F.A.C. The Respondent was given another 21 days to file his amended petition. However, the Department has not received an amended petition from the Respondent in this administrative proceeding.

On July 11, 2011, the Department filed Motion for Determination of Waiver and for Final Order which is before the Board today. The Department believes that it is appropriate at this time for The Chair to entertain a motion that the Respondent has waived his right to elect a hearing in this administrative procedure.

MOTION: Mr. Jones moved that the Respondent has waived his right to elect a hearing in this administrative procedure. Mr. Hall seconded the motion, which passed unanimously.

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

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

Ms. Surles stated that the Department contends that the Board's Findings of Fact support a finding of a violation of Chapter 497 Florida Statutes and Chapter 69K Florida Administrative Code as charged in the Administrative Complaint. The Department believes that it is appropriate at this time for The Chair to entertain a motion adopting the Conclusions of Law as set forth in the Administrative Complaint.

MOTION: Ms. Huggins moved to adopt the Conclusions of Law. Col. Stiegman seconded the motion, which passed unanimously.

Mr. Francis Wesley "Buck" Blankner stated that he represented Mr. Mitchell in the criminal case in Seminole County, FL.

Mr. Shropshire questioned whether Mr. Mitchell would be making any presentation or remarks to the Board.

Mr. Blankner stated that Mr. Mitchell would speak briefly about the situation.

Mr. Shropshire requested that Mr. Mitchell raise his 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?"

Mr. Bernard D Mitchell answered, "So help me God."

Mr. Blankner stated that Mr. Mitchell, as a part of his plea agreement with the State of Florida in Seminole County, agreed to give his licenses as a part of the probation that he was going to get in this case as long as a \$60,000 agreement in restitution was paid at the time of enter of the plea on his case. This was done. That money has been paid in full to the representatives of the funeral home that was harmed in this matter so that the public would not be harmed as well. Mr. Mitchell is on 12.5 years of supervised probation which began approximately 2 weeks ago. Probation can be terminated early under certain circumstances, but it is up to a Court later on, a long ways down the road. The Respondent was hoping that the Board would allow him to relinquish his licenses at this point without further action in this matter. Certainly Mr. Mitchell was not going to present a hearing where he was not guilty of the offenses to the administrative Board in this matter as there was not any basis to do so. The mitigation is Mr. Mitchell has lived in the community all of his life, still lives in the Sanford community and had many, many witnesses testify on his behalf at the sentencing hearing. It was quite impressive to Judge Recksiedler who heard it.

The Chair requested that the Mr. Blankner describe his understanding of "relinquishing his license" means.

Mr. Blankner stated it means Mr. Mitchell cannot be a funeral home director, embalmer or any of those things that are permitted. The Order of the Court and the agreement between the parties was Mr. Mitchell would not engage in the actual negotiations of preneed contracts or taking money in any way, shape or form. Mr. Mitchell is the owner of Mitchell and Mitchell Funeral Home, but is not permitted to act as a funeral director or embalmer as he cannot do those activities.

Mr. Mitchell concurred.

The Chair questioned whether there are any consumer members present wishing to speak.

Mr. Blankner stated that he believed there were some folks from Wilson-Eichelberger present.

Mr. Shropshire stated that he was advised that there was a representative of the complainant, Mr. William Altman.

There was a negative response.

Ms. Surles stated that Mr. Rudolph represents the consumer victim, Ms. Eunice Wilson, and her establishment.

Mr. John Rudolph made a statement that was unclear as he did not approach to the podium.

Mr. Hall questioned whether Mr. Mitchell would still possess an establishment license once he relinquishes his individual license(s).

Mr. Blankner concurred. The Court permitted it. There was a discussion and the Court had the authority based on the plea agreement to deny this but based on the numerous members of the community that came forward and spoke well on behalf of Mr. Mitchell and did so, the Court allowed it. The Board can do what it feels is appropriate and the Respondent understands that. Mr. Mitchell has been working the funeral business since he was a kid, basically, since he was 13 years according to Eunice Wilson's deposition. Mr. Mitchell actually worked for her from that point on until he established his own.

Ms. Huggins questioned Mr. Mitchell's duties at Mitchell and Mitchell.

Mr. Mitchell stated his duties include answering the phone, running errands and greeting. Other than that I am not involved in the day to day operation, as far as dealing with families or money as it has been stated.

Mr. Blankner added those things would violate Mr. Mitchell's probation and he would face a prison term. Mr. Mitchell does not wish to do that at age 60.

Ms. Thomas-Dewitt questioned how recent Mr. Mitchell has worked on a funeral service.

Mr. Mitchell answered, "Saturday."

Ms. Thomas-Dewitt questioned Mr. Mitchell's role at the funeral service.

Mr. Mitchell stated that he just stood on the side.

Ms. Thomas-Dewitt questioned whether Mr. Mitchell stood on the side of the casket or on the side of the wall.

Mr. Mitchell stated that there were people behind him so he could not stand on the side of the wall.

Ms. Thomas-Dewitt questioned Mr. Mitchell's position on the service.

Mr. Mitchell stated that he only stood and observed.

Ms. Thomas-Dewitt stated that she was not present so she could not confirm this but expressed concern over an owner having an active role in the day to day operations of a funeral home as it could be misconstrued to the consumers who know Mr. Mitchell as a funeral director. There is a very thin line there as to whether Mr. Mitchell is functioning as a funeral director or as an owner.

Mr. Blankner stated that Mr. Mitchell has funeral directors.

Ms. Thomas-Dewitt stated that they are not there on a day to day operation.

Mr. Blankner stated that they are. Mr. Blankner questioned why Mr. Thomas-Dewitt would see that as well as how she would know this.

Ms. Thomas-Dewitt responded that she lives in the area.

Mr. Blankner stated that Ms. Thomas-Dewitt has also asked people not to call Mr. Mitchell saying that they may be tape recorded.

Ms. Thomas-Dewitt denied Mr. Blankner's accusation.

Mr. Mitchell stated that he did not want to go negative but he is troubled right now because last year in July he lost an aunt. Ms. Thomas-Dewitt and her partner, Alexander Wynn called the funeral home that was taking care of Mr. Mitchell's aunt and advised them, representing this Board, that if Bernard Mitchell uses his staff or his cars it will be implying that he is in business.

Ms. Thomas-Dewitt denied Mr. Mitchell's accusation.

Mr. Mitchell stated that the only thing he wanted to do was bury his aunt. Ms. Thomas-Dewitt has violated rules and has let an unlicensed person to embalm for her over a period of 10 years.

The Chair stated that the issue is not Ms. Thomas-Dewitt and her misdeeds, rather Mr. Mitchell and his misdeeds.

Ms. Surles requested that the Chair entertain a motion finding that the Respondent is in violation of the Florida Statutes identified in the Administrative Complaint.

MOTION: Mr. Helm moved that the Respondent is in violation of the Florida Statutes identified in the Administrative Complaint. Ms. Hubbell seconded the motion, which passed unanimously.

Ms. Surles stated that the Department recommends a permanent revocation of the dual funeral director and embalmer license of Bernard Mitchell, pursuant to s. 497.153(5)(a)(8), F. S.

Mr. Hall questioned whether there is any leeway to go forward to the establishment license also.

The Chair responded, "Not at this time. This is strictly regarding the funeral director and embalmer license."

Ms. Dudley questioned whether the Respondent requested a relinquishment because he did not want it to be permanent.

Mr. Blankner stated that was correct so that the Respondent could reapply at a certain point in time, but that is not in the near future.

Ms. Surles stated that the Department would like to set forth on the record that aggravating factors are present clearly in this case which include the fact that the Respondent, as a licensed funeral director, was placed in a position of authority and trust to ensure that preneed funds received from consumers' payments for final expenses were not in fact deposited into the required and necessary trust funds for the funeral home at Wilson-Eichelberger Funeral Home and did so in his position as the funeral director in charge. This would be the reasoning behind the Department's recommendation of permanent revocation.

Mr. Hall questioned what needs to be done in order for the Board to consider discipline against the establishment license.

Ms. Dudley stated that a case has to be opened but the Board cannot get into whether a case has been opened because it may not have gone to Probable Cause yet.

Ms. Dudley questioned whether the motion would include the aggravators.

Ms. Surles stated it would also include the fact of the criminal conviction, of the 14-count felonies, 4 or 5 of those with the plea and sentencing agreement were in fact failing to deposit preneed trust funds which would support aggravating circumstances.

MOTION: Mr. Hall moved for permanent revocation of the dual funeral director and embalmer license of Bernard Mitchell based on the Department's presentation. Mr. Helm seconded the motion, which passed unanimously.

(2) *Summers, Alvis: Case No. 110897-11-FC (SR1-640190760)*

Ms. Hubbell recused herself as she participated on Probable Cause Panel A.

Ms. Surles stated that on February 23, 2011 the Department filed an Administrative Complaint alleging that Alvis Summers violated sections of Chapter 497, F.S. and Chapter 69K, F.A.C. by failing as the licensed responsible funeral director in charge to ensure that the funeral establishment and the employees of Summers Funeral Home comply with all the applicable state and federal laws and rules to ensure that the funeral director and embalmer license for Jessica Hadley McGlon and casket

prices were conspicuously displayed in a manner visible to the public, and that the October 2009 Bodies Handled Report was timely filed with the Department.

Service of this Administrative Complaint was obtained by process of publication in this matter. The Voice of South Marion published a notice of Administrative Complaint in its paper for 4 consecutive weeks from May 5 – May 26, 2011. The Department did not receive a response from the Respondent to the Department's Administrative Complaint. On June 28, 2011 the Department filed a Motion for Determination of Waiver and for Final Order, which is before the Board today.

The Department believes that it is appropriate at this time for The Chair to entertain a motion that the Respondent has waived his right to elect a hearing in the administrative procedure.

Mr. Rudolph requested that the Respondent, Mr. Alvis Summers be sworn in to testify to the service of process.

Ms. Dudley stated that the Respondent has an issue with the service of process and that is something that the Board is about to vote on so the Board should hear from him at this point. Typically people do not argue against this motion, but this is not a motion that should automatically be rubber stamped. The Board should hear from Mr. Rudolph as to why he believes his client was not properly served.

Mr. Shropshire requested that Mr. Summers raise his 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?"

Mr. Alvis Steve Summers answered, "I do Sir."

Mr. Rudolph questioned whether Mr. Summers was served with an Administrative Complaint for Summers Funeral Home.

Mr. Summers answered, "Yes Sir."

Mr. Rudolph questioned Mr. Summers' actions upon receiving that Administrative Complaint.

Mr. Summers stated if he was not at the funeral home to receive it, he went to the Post Office with the pink slip and picked it up.

Mr. Rudolph questioned whether Mr. Summers received a notice that there was an Administrative Complaint for him individually.

Mr. Summers answered, "No Sir, I did not."

Mr. Rudolph questioned whether Mr. Summers was ever contacted by a process server.

Mr. Summers answered, "No Sir, I was not."

Mr. Rudolph stated that the notice of publication indicated a newspaper that the notice was published in. Mr. Rudolph questioned whether Mr. Summers is familiar with the newspaper.

Mr. Summers answered, "Yes Sir, I do."

Mr. Rudolph requested that Mr. Summers explain to the Board what that newspaper does.

Mr. Summers stated that he is from Ocala, Marion County Florida. The main newspaper is the Ocala Star Banner that circulates throughout Marion County. This paper is a South Marion Mirror and it is in just one local section and is not circulated nor can you go into any store and pick up or is it one that someone actually reads all the time. This is just a little local newspaper. All the obituaries and most of the advertisement is put into the Ocala Star Banner not the South Marion Mirror. Mr. Summers added that he normally reads the Ocala Star Banner online but the South Marion Mirror is unavailable online.

The Chair questioned the requirements for publication.

Ms. Dudley stated from a technical standpoint the requirement has been met as they are required to send it by certified mail to the known address of record. That was done and it was not claimed. Then they are required to attempt personal service through a process server, which was done but was unsuccessful. The 3rd option is publication in the County, which was done.

Mr. Rudolph stated that there was an Administrative Complaint filed on Summers Funeral Home under these exact same allegations. An Election of Proceedings was filed and a request for formal administrative hearing was filed in the Summers' case. That was done well before this waiver. The Respondent did not receive the Administrative Complaint until it was sent to Mr. Rudolph by email. Mr. Rudolph was preparing a notice for a hearing at the time that this waiver came about. Mr. Rudolph has talked with Mr. Summers consistently regarding whether he received the complaint and the procedures for receipt of registered mail, as evidenced by the fact that he got the 2 registered mailings for the Summers Funeral Home and he immediately responded to them. The Respondent is requesting an informal hearing to address these issues.

Ms. Surles stated that the Department would argue that the Respondent has waived this hearing.

Ms. Dudley stated even with the waiver, the Respondent would receive an informal hearing.

Mr. Rudolph concurred.

Ms. Dudley questioned whether Ms. Surles disagrees.

Ms. Surles stated that it is an informal hearing but not in the sense of the true informal hearing. There are no disputed facts here.

Mr. Rudolph stated that the facts were already disputed in the Summers' case.

Ms. Surles stated that this is a different Licensee. The license on the Secretary of State's page and in the license screen profile for Mr. Summers, the record of address for the Department is 2238 NW 10th Street, Ocala, Marion FL. Ms. Surles questioned whether this is the correct address for Mr. Summers.

Mr. Summers answered, "That is the funeral home's address. Yes ma'am it is."

Ms. Surles stated that the mail was returned so the Department could not serve him there. As the Board counsel noted, Mr. Summers has been noticed. Service was attempted through the manner allowed through the Department and he was actually served through publication.

MOTION: Mr. Hall moved that the Respondent has waived his right to elect a hearing in the administrative procedure. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

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

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

Ms. Surles stated that the Department contends that the Board's Findings of Fact support a finding of a violation of Chapter 497 Florida Statutes and Chapter 69K Florida Administrative Code as charged in the Administrative Complaint filed by the Department. At this time, it is appropriate at this time to entertain a motion adopting the Conclusions of Law as set forth in the Administrative Complaint.

MOTION: Mr. Jones moved to adopt the Conclusions of Law. Ms. Huggins seconded the motion, which passed unanimously.

The Department believes that it is also appropriate at this time for The Chair to entertain a motion that finding the Respondent has violated Chapter 497 Florida Statutes and Chapter 69K Florida Administrative Code set forth in the Administrative Complaint. The Board may hear from the Respondent as to mitigating evidence.

Mr. Rudolph requested that Mr. Summers tell the Board about the casket that did not have a price on it in the funeral home at the time of this inspection.

Mr. Summers stated that he had helped a family out because they were going to have a viewing followed by a cremation. The casket got soiled, so it was taken out. It was not for sale. We were waiting for a representative from Corner (SP) Casket Company to come through and determine whether they could repair the casket. They did come through later on after the inspection. The casket could not be repaired, so it has been disposed of and is not for sale.

Mr. Rudolph questioned whether there were prices on the other caskets.

Mr. Summers answered, "Yes I did."

Mr. Rudolph requested that Mr. Summers tell the Board about the license of the funeral director that was not up on the wall.

Mr. Summers stated that during a previous inspection that same license was viewed by the Inspector and passed. The picture was in there; both I and the Licensee, Jessica Hadley McGlon knew there was a picture in it. During this inspection, the picture was not in there. Ms. McGlon was contacted and was worried about where her picture was so she came down the same day and put another picture in the license.

Mr. Rudolph questioned whether that was cured within 15 days.

Mr. Summers stated it was cured within a matter of days.

Mr. Rudolph requested that Mr. Summers tell the Board about the October 2009 Bodies Handled Report.

Mr. Summers stated that the report was prepared and ready to be mailed out. Apparently it did not get mailed out in a timely manner to make it by the deadline but it has been taken care of.

Mr. Rudolph questioned how soon the report was filed from the time of the inspection to when the inspection report came.

Mr. Summers stated that it was taken care of as soon as it was discovered. It was already prepared. It just had to be mailed.

Mr. Rudolph questioned whether Mr. Summers has ever been disciplined before.

Mr. Summers answered, "No Sir, I have not."

Mr. Rudolph questioned how long Mr. Summers has been a funeral director.

Mr. Summers stated he has been a funeral director since 1984 or 1985.

Mr. Rudolph argued that under these circumstances and under the Board's Rule 69K-30.021, where it discusses letters of guidance on minor violations and all 3 of these are listed under there. It has a "may" in it, that the Department may do that, but where you have a first time offense on minor violations that are cured quickly, Mr. Rudolph believes that the Board should tell the Department that the first thing to do, when there is no danger to the health, safety and welfare of the citizens of the State of Florida, is send a letter of guidance. If it is not corrected within the first 15 days, then a citation can be issued. The citations are specific on what the citation is. Mr. Rudolph believes that in this instance that is what is warranted in this case; a letter of guidance should have been issued to Mr. Summers, or at most, a citation that does not include probation. The Department is asking for probation for a first time offense on 3 minor issues. Under all the facts and circumstances of this case, that is what Mr. Rudolph is requesting the Board do.

Mr. Hall questioned whether the license was correct but the picture was missing.

Mr. Summers answered, "Yes Sir."

Mr. Hall questioned whether the license was in a frame with glass or was it open where the picture could fall out.

Mr. Summers stated that it was in a frame.

Mr. Hall questioned how the picture came out of the frame.

Mr. Summers stated that was his question as well as Ms. McGlon's.

Mr. Hall questioned whether the casket was used as a rental type unit and then it was slid back into the selection room.

Mr. Summers stated that it was not supposed to be put in there. The back portion of the funeral home is also used for viewings by the families. The casket was moved out and just put there, but it was not moved back before the inspector came. That is why it was mistakenly in there. There was never any intention to sell the casket due to the fact that it was soiled.

Mr. Hall questioned whether there is a set fee in the rule for these late reports.

Mr. Rudolph stated that this occurred well before that back in 2009.

The Chair questioned whether the casket was displayed in the casket room in a similar manner to where the other caskets were displayed that were for sale to the customers.

Mr. Summers stated it has been a while but not to his recollection. It should not have been. Mr. Summers stated that honestly, under oath he could not say definitely. The casket was closed and not displayed in that manner. The other ones are closed also to avoid getting soiled from dust and other debris.

Col. Stiegman questioned whether there was pricing on the other caskets.

Mr. Summers stated there was.

Col. Stiegman questioned whether there was pricing on the casket in question.

Mr. Summers answered, "No Sir."

Mr. Helm questioned whether there have been any more inspections.

Ms. Surles stated that there has been another inspection since then but there have not been any charges against Mr. Summers. As Mr. Rudolph indicated, there are 2 Administrative Complaints that were filed against Summers Funeral Home.

Mr. Shropshire questioned whether Mr. Rudolph knows the answer to the inspection question.

Mr. Rudolph stated that one is a matter in litigation right now. A request for hearing has been filed.

The Chair stated that the Department inspects funeral establishments not funeral director and embalmer licenses.

Mr. Helm questioned whether the license issue would fall under the funeral home inspection.

The Chair stated it would but not Mr. Summers' funeral director and embalmer license which is before the Board today.

Mr. Shropshire stated that it is involved because of Mr. Summers' capacity as FDIC.

Ms. Surles stated that the Department recommends a \$500 administrative fine and placing the license of the Respondent on 2 years of probation with the condition that if the Department has reasonable cause to believe that the Respondent has failed to ensure that the funeral establishment and the employees of Summers Funeral Home have not complied with all of the applicable state and federal laws and rules or failed to ensure that the required licenses of the funeral directors and embalmers employed by Summers Funeral Home are conspicuously displayed in a manner visible to the public or failed to ensure that casket prices are conspicuously displayed in a manner visible to the public or to ensure that the Monthly Bodies Handled Reports for Summers Funeral Home are not timely filed with the Department then the Department will immediately suspend the licenses of Mr. Alvis Summers for 60 days. Mr. Surles stated while the Department is aware that citations may have been issued to this Licensee for the alleged violations in the Administrative Complaint, the Department is not required under s. 497.155, F. S. to issue a citation. It is permissive not mandatory.

Mr. Rudolph stated that the point he would like to make is that this Board can set a standard that if it is a first time offense, you have not done anything wrong, it is a minor violation, it does not involve danger to the health, safety and welfare, no consumers are damaged that you should have a notice of non-compliance sent to the funeral home. That gives them the right to find out about these issues, get them corrected and to cure them. Instead, we are having Administrative Complaints filed on first time offenses with someone who has never been disciplined before and that Department is asking for 2 years probation. Under all the facts and circumstances of this case, the testimony of Mr. Summers, reading the Rule, Mr. Rudolph requested that the Board consider issuing a letter of guidance or in the alternative a \$500 with no probation.

Ms. Huggins questioned whether there was a letter of non-compliance or was that what was returned.

Mr. Rudolph answered, "No."

Ms. Surles stated that this establishment has been inspected more than once.

Mr. Rudolph stated that there was no letter of non-compliance sent.

Ms. Surles concurred.

The Chair agreed with Mr. Rudolph that the Board does have an opportunity to do so.

Mr. Hall stated that he agrees with Mr. Rudolph on a couple of issues and would hate to see the Board come in and start fining on some little incidental issues.

MOTION: Mr. Hall moved for an administrative fine in the amount of \$500. Mr. Jones seconded the motion, which passed with 1 dissenting vote.

*****BREAK*****

B. Order, Denying Renewal of Preneed License
(1) Florida Colonial Holdings, Inc., F039884; PNL Renewal Order #2011-123

This Applicant appeared before the Board at the June 23, 2011 meeting and the Board denied licensure renewal on the basis of inadequate net worth. An Order of Denial was issued. The Applicant has requested an informal hearing and is here today for that informal hearing. The case will be presented for the Department by Division Assistant Director Mr. Anthony Miller.

Mr. Miller stated that this application was originally considered at the June 23, 2011 Board meeting. Based on the materials provided to the Board at that time, the Board voted to deny renewal of licensure based on inadequate net worth. Subsequent to the June 23rd Board meeting and subsequent to the issuance of the Order Denying Renewal of Preneed License, on July 27, 2011, the Applicant submitted supplemental information to the Division which was sent out to the Board members as a supplemental item. It included a narrative statement, revised balance sheet and income statement as of June 30, 2011 as well as a revised Section E, Net Worth Alternative Form.

Mr. Shropshire stated that he has reviewed the supplemental materials which have been provided to the Board. Mr. Shropshire requested an opportunity to ask the Licensee some questions about this submission prior to formulating a recommendation to the Board at this meeting.

Mr. Shropshire requested that the Applicants raise their right hands 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?"

Mr. Gidden B. Giddens answered, "Yes Sir."

Mr. Michael Zeigler answered, "I do."

Mr. Shropshire stated that the Applicant submitted a revised balance sheet for 12 months ending June 30, 2011.

Mr. Zeigler concurred.

Mr. Shropshire questioned whether the 12-month period is shown (7/1/2010 – 6/30/2011).

Mr. Zeigler concurred.

Mr. Shropshire stated looking at this the net worth as of June 30, 2011 is \$40,973, which is against a required net worth on December 31, 2010 of \$40,000. So apparently the Applicant would meet the net worth, at least as of June 30th. Mr. Shropshire stated that he noticed that one of the assets on the supplemental. The Preneed Trust Asset increased very substantially. It went from approximately \$172k on the December 31st financials to \$217k on the June 30th financials. Mr. Shropshire requested an explanation as that seemed like a sudden and significant increase.

Mr. Zeigler stated that Mr. Giddens had a lot of preneed sales and that is the reason for that asset increasing.

Mr. Shropshire questioned whether those were all new sales; this is not like a correction of something prior.

Mr. Zeigler stated it was not a correction.

Mr. Shropshire questioned whether the revised financials for June 30th include any corrections to the prior financials.

Mr. Zeigler stated that there are no corrections. This is what the current status is.

Mr. Shropshire stated that the other major change identified was that the \$55k line of credit liability that was shown on the December 31st financial is now gone.

Mr. Zeigler stated that it was paid off.

Mr. Shropshire stated that he did not see much of a drop in cash.

Mr. Zeigler stated that it was paid by the owners, personally. That is paid in capital. The reason the line of credit was established was for the convenience of being able to draw money quickly. Since that dropped them below the net worth standard they decided to go ahead and pay that personally to bring the net worth back up. The line of credit was basically a matter of convenience.

The Chair stated that the Income Statement being looked at is not a 12-month but rather a 6-month.

Mr. Zeigler concurred.

Mr. Shropshire stated that he was referring to the Balance Sheet.

Mr. Zeigler stated that the Balance Sheet is a snapshot in time so it is going to be what it is.

Mr. Shropshire stated that he stands corrected on that.

Mr. Hall questioned whether there is an obligation from the company to the owners for paying off the line of credit.

Mr. Zeigler stated that it was paid in as Paid-In Capital by the owners. It is not a loan from the owners to the company.

Mr. Hall stated that the same amount of preneed showing on the Assets side is showing on the Liabilities side as well. Mr. Hall questioned how did that build it to that level.

Mr. Zeigler stated that it is 100% trusted so there is a receivable there for what has not been paid by the customers. There is an amount that has been paid by the customers that is showing as an asset and then the preneed itself is on the liability side.

Mr. Hall stated that if it is 100% trust and entered in then it would show up on the liability side as well. Mr. Hall questioned how it would be such a significant increase because there would be a liability from that preneed also.

Mr. Zeigler stated that the only reason the numbers changed is because of the new sales by the company. There was no correction or anything like that. The liability increased from the previous year due to more sales as did the asset side also increased.

Mr. Hall stated that he is inquiring upon the significant increase from the 2010 to the 2011 statement. Mr. Hall added that the preneed sales may have made the numbers bigger but the assets and liabilities should not have shown that much of an increase. It has to be shown on both sides.

Mr. Zeigler stated that it does. If we are strictly talking about the preneed, the preneed trust is listed as a liability and that increased from 2010 to 2011. Then you also have on the asset side the amount that has been paid into the trust. That amount has increased as has the receivable which is the difference between what is paid in and what is still owed on the preneed sales. All of those increase from year to year.

Mr. Hall questioned whether it is close to a wash.

Mr. Zeigler stated that would be a wash. They both have to go up equally.

Mr. Shropshire stated that the December 31st financials show a preneed liability of \$228k roughly and if you look at the June 30th financials it is up to \$272k, so it did jump. It appears that what made him well was paying off that outside payment of the line of credit.

Col Stiegman questioned whether the new information changes the Department's recommendation.

Mr. Shropshire stated that it appears, as of June 30th, that the Licensee now meets the \$40k minimum net worth so the Division at this point in time would amend its recommendation to recommend renewal subject to the condition of 100% trusting, which the Applicant indicated he is currently doing.

Mr. Helm questioned the net worth in 2010.

Mr. Shropshire stated that in 2009 the required net worth was \$10k and the Applicant showed a net worth of \$13,827. In 2010, the required net worth was \$20k and the Applicant showed a net worth of \$27,024. The Applicant was okay until this 2011 renewal.

Ms. Hubbell apologized for not printing the initial information as she has not reviewed it.

Mr. Shropshire provided Ms. Hubbell with the information for review.

Mr. Helm questioned the Division's position.

Mr. Shropshire stated that the Division recommends approval of the renewal subject to the condition of 100% trusting or insurance funded.

MOTION: Mr. Helm moved to approve the application with the condition of 100% trusting or insurance funded. Ms. Huggins seconded the motion, which passed unanimously.

Mr. Shropshire commented that there seems to be a perception that once the Licensee's receive this type of accommodation by the Board they think it is automatic that they get renewed on the same conditions next year, but it is not. The Division will be looking at the data again and if the Licensee is still under water the Division is likely to recommend denial.

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 Renewal
A. Request(s) for Waiver of Late Fee
(1) Recommended for Approval with Conditions
(a) Elijah Bell Funeral Services, LLC (F047494) (Lauderdale Lakes)

CURRENT RENEWAL: Licensee reports a net worth of \$ 270,151 against a required minimum net worth of \$10,000. Licensee appears to meet all requirements for renewal of license, except for payment of certain late fees.

This matter is before the Board on the licensee's request for waiver of late fees. Licensee's application filing was due at the FCCS Division office not later than April 1, 2011, but was in fact was received on June 20, 2011. Pursuant to section 497.453(5) (e) and Rule 69K-5.0026(2), late fees are assessable.

Licensee submits a written explanation of the cause of the late filing from the accounting firm, attached. In summary, the financial statements could not be provided by the deadline due to the 2010 records not being available at the time due to the licensee undergoing an audit by the Internal Revenue Service (IRS). As a result, the records were not available until the conclusion of the IRS audit. Licensee was initially issued their preneed license in 2009.

It should be noted that in 2009 Licensee's preneed renewal application was recommended for denial due to failure to file timely at the June 24, 2009 Board meeting. At the October 7, 2009 Board meeting, approval of licensee's preneed renewal application was granted with the condition of payment of late fees in the amount of \$1000. Licensee's preneed renewal application was filed timely in 2010 and was approved without conditions.

The FCCS Division recommends that the Board deny waiver of the late fees and approve the renewal subject to payment of late fee in the total aggregate amount of \$1,000.

MOTION: Mr. Helm moved to approve the renewal subject to payment of late fee in the total aggregate amount of \$1,000. Ms. Huggins seconded the motion, which passed unanimously.

7. Application(s) for Preneed Branch License
A. Recommended for Approval without Conditions – Addendum B

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

The Chair stated that he thought the Board had requested that the Division move forward as long as the branch applications were clean so that these would not have to come before the Board for approval.

Ms. Dudley stated that her recollection is that it was just discussion and the Board had not made a decision on that.

8. **Application(s) for Continuing Education Course Approval**
A. *Recommended for Approval without Conditions – Addendum C*
(1) *Academy of Graduate Embalmers of GA #13609*
(2) *Carriage Services, Inc #12408*
(3) *Florida Morticians Association, Inc #133*
(4) *Independent Funeral Directors of Florida Inc #135*
(5) *International Order of the Golden Rule #2201*
(6) *National Funeral Directors Association #136*
(7) *Pinellas County Funeral Home Association #58*
(8) *SCI Management - Dignity University #99*

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.

Mr. Helm questioned whether it is unusual for a course to be 16 or 18 hours long.

Ms. Huggins stated it depends on whether the provider is having a convention.

9. **Application(s) for Florida Law and Rules Examination**
A. *Recommended for Approval without Conditions – Addendum D*
(1) *Direct Disposer*
(a) *Monnier, Karen A*
(2) *Funeral Director and Embalmer by Endorsement*
(a) *Fogle, Cory M*
(3) *Funeral Director and Embalmer by Internship and Exam*
(a) *Hood, Jarren*
(b) *Troutt, Rachel N*

The Division recommends approval of the application(s).

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

10. **Application(s) for Internship**
A. *Recommended for Approval without Conditions – Addendum E*
(1) *Funeral Director and Embalmer*
(b) *Brown, Christopher R*
(c) *Eichenblatt, Debora*
(d) *Lane, Evaughan*

The Division recommends approval of the application(s).

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

11. **Application(s) for Embalmer Apprentice**
A. *Recommended for Approval without Conditions – Addendum F*
(1) *Fischer, Adam L*
(2) *Johnson, Darrell D*

The Division recommends approval of the application(s).

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

B. Recommended for Approval with Conditions (Criminal History)
(1) Chambery, Paul L

The Applicant submitted an application to become an Embalmer Apprentice on June 6, 2011. The application was incomplete when submitted. All deficient items were returned on June 22, 2011. The Applicant submitted a fingerprint card, the processing of which returned a criminal history, to wit:

- In 1998, Mr. Chambery was found guilty of Sexual Battery by a Law Enforcement Officer. He was originally sentenced to 8 years incarceration; however the judge set aside that sentence and was subsequently sentenced to 2 years probation and 1 year community control due to Improper Council.

All sanctions imposed by the court have been satisfied. The court ordered probation has been successfully completed by the Applicant. In addition to the required Adverse History Disclosure Form, the Applicant has submitted a written statement included in the materials in explanation and mitigation of the criminal record and the Applicant has submitted letters of recommendation.

The Division is recommending approval subject to the condition that the Applicant be placed on probation for 24 months, to commence at time of licensure.

Col. Stiegman questioned why the following question was not answered on the Criminal History Form:

Do you have other criminal record items to disclose?

Mr. Shropshire stated that Ms. Jasmin Richardson will inform the Board that the Applicant submitted a revised, corrected form that answered "no" to that question.

Ms. Richardson concurred and provided the Board with copies of the revised form.

The Chair requested that Mr. Shropshire swear in the Applicant.

Mr. Shropshire requested that Mr. Chambery raise his 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?"

Mr. Paul Chambery answered, "I do." Mr. Chambery thanked the Board for this opportunity as he has really come a long way in his life since 1996. Mr. Chambery stated that he and his wife worked through this together and have been married 32 years today.

The Chair questioned whether Mr. Chambery would be serving his embalmer's apprenticeship with Joe y Pinello.

Mr. Chambery answered, "Yes, Joseph Pinello."

Ms. Thomas-Dewitt questioned whether Mr. Chambery was aware of the fact that each time he takes a step as far as getting his license he would have to reappear before the Board. At all times the decision would be left to the Board's discretion as to the approval.

Mr. Chambery answered, "Absolutely."

Col. Stiegman questioned what was meant by Mr. Chambery's statement attached to the Criminal History Form, particularly "In addition..."

Mr. Chambery stated that was just an additional statement as it was indicated that additional comments should be attached on a separate sheet of paper. Those were just Mr. Chambery's comments as to what went on with the case.

Ms. Thomas-Dewitt questioned whether Mr. Chambery was a police officer or a correctional officer.

Mr. Chambery responded that he was a Corrections Officer and was accused by a female inmate who had a history of dishonesty, fraudulent cocaine use and crack use. Mr. Chambery tried his best to defend himself but unfortunately it did not work out that way. After the trial, Mr. Chambery obtained a new attorney who put together a brief for the Honorable Judge Hammond in regards to a 3850, which is incompetent counsel and also disciplinary action against the prosecutor. When Judge Hammond's saw this, Mr. Chambery's sentence went from 9 years in prison to 2 years probation and the prosecution was read the riot act for withholding information that could have cleared Mr. Chambery. Once Mr. Chambery got out of prison and went on the probation, he could have had a new trial, but at that point Mr. and Mrs. Chambery had spent all of their savings, over \$50k. Mr. Chambery stated that although the new attorney was 99.9% sure, he could not guarantee a win. Mr. Chambery was given the opportunity to speak with his wife and children who advised him to take the probation as they did not want to lose him again.

MOTION: Ms. Huggins moved to approve the application subject to the condition that the Applicant is placed on probation for 24 months, to commence at time of licensure. Ms. Hubbell seconded the motion, which passed unanimously.

12. Consumer Protection Trust Fund Claim(s)
A. Recommended for Approval without Conditions – Addendum G

The Division recommends approval of the claim(s).

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

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

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

14. Application(s) for Change in Ownership
A. Recommended for Approval with Conditions
(1) Gendron Funeral & Cremation Services Inc Related Applications
(a) Cinerator Facility
(1) Gendron Funeral & Cremation Services Inc d/b/a Hope Memorial Crematory (Sarasota)
(b) Funeral Establishment(s)
(1) Gendron Funeral & Cremation Services Inc (Fort Myers)
(2) Gendron Funeral & Cremation Services Inc (Sarasota)

Michael P. Gendron applies herein to the Board for approval to acquire 100% of the stock of Gendron Funeral & Cremation Services, Inc., and thereby to acquire control of three licensed entities, as follows:

a) GENDRON FUNERAL & CREMATION SERVICES INC
D/b/a Hope Memorial Crematory
Cinerator, License # F062962
135 N Lime Avenue, Sarasota
FDIC after approval would be: Myriah Cummings, F044632

b) GENDRON FUNERAL & CREMATION SERVICES INC
No d/b/a
Funeral establishment, license # F057222
4224 Cleveland Ave, Ste 1, Fort Myers
FDIC after approval would be: Michael P. Gendron, F042014

c) GENDRON FUNERAL & CREMATION SERVICES INC
No d/b/a
Funeral establishment, license # F062961

135 Lime Avenue, Sarasota
FDIC after approval would be: Myriah Cummings, F044632

Michael P. Gendron is represented in this matter by attorney Wendy Wiener. See Ms. Wiener's attached letter to the Division, dated July 20, 2011, regarding this proposed transaction.

At the April 8, 2009 meeting of this Board an application for a funeral establishment license was submitted by Gendron Funeral Home-Cremation Service Inc. The funeral establishment was to be located at 4224 Cleveland Ave, Fort Myers. The president of that April 2009 Applicant was Michael P. Gendron. The materials presented to the Board at that April 2009 meeting showed that in 2000 Vermont regulatory authorities revoked Michael Gendron's funeral director license (copies of the Vermont orders are attached). The cause for the revocation is here summarized as follows: Michael Gendron's father, Paul Gendron, also then a licensed Vermont funeral director, had his funeral director's license suspended for three years by Vermont authorities. Michael Gendron thereafter pre-signed certain documents related to preneed sales, and allowed his father to use same to engage in activities related to preneed sales, in violation of the suspension of the father's license. Michael P. Gendron was also at the time a Florida licensed funeral director. In 2001 Florida regulatory authorities filed administrative charges against Michael Gendron based on the revocation of his Vermont license. In 2002 Florida authorities under former ch. 470, Florida Statutes, adopted a settlement stipulation under which Florida authorities fined Michael Gendron \$1,000, imposed \$557 in costs, and placed him on probation for 2 years. At its April 2009 meeting, this Board denied the April 2009 funeral establishment license application.

The matter came back before the Board at its August 5, 2009 meeting. The Board allowed Gendron Funeral Home-Cremation Service Inc. (Michael P. Gendron) to withdraw its April 2009 funeral establishment application.

Also at the August 2009 Board meeting, a new application for a funeral establishment at the 4224 Cleveland Ave, Fort Myers, location was submitted. The new Applicant was Gendron Funeral & Cremation Services Inc., whose president was William Savino. The FDIC of the new Applicant was also William Savino. This new Applicant submitted a Stipulation for Licensure. Among the conditions agreed to in the August 2009 Stipulation for License was:

- Applicant would be on probation for 24 months if its funeral establishment license application is approved.
- Applicant intended to employ Michael Gendron as an employee, working as a funeral director and embalmer for Applicant; but Applicant agreed it would not, for a period of 2 years from the date the funeral establishment is initially licensed, make or seek to make Michael Gendron the FDIC at the funeral establishment.

At that August 2009 Board meeting, the Board approved the application by Gendron Funeral & Cremation Services Inc. (William Savino) for a funeral establishment license at 4224 Cleveland Ave, Fort Myers, subject to the terms and conditions of the Stipulation for Licensure.

The Division's records show no complaints of any type against Michael P. Gendron or any of the 3 entities that are the subject matter of this Board action, since the August 2009 Board meeting. All three applications were complete when submitted. The fingerprint cards for all principals were returned with no criminal history.

Pursuant to s. 497.380(12) (a), FS, a change in ownership of a funeral establishment requires relicensure and inspection of the establishment.

Pursuant to s. 497.606(7), FS, a change in control of a cinerator facility is subject to approval by the licensing authority and to reasonable conditions imposed by the licensing authority, for the protection of the public to ensure compliance with this chapter.

The Division recommends approval of all three applications subject to conditions as follows:

- (1) That the closings 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 closings have 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 two funeral establishments and the cinerator facility all pass an on-site inspection by a member of the Division Staff prior to operation under the new owner/controlling person.

Mr. Helm questioned the stipulation that Michael Gendron would not be hired as an employee for a period of 2 years.

Ms. Wiener stated that Mr. Gendron was not to be FDIC of that location.

Mr. Shropshire stated that the Applicant in the prior case was advising the Board that he intended to employ Mr. Gendron as an employee but would not employ him as the FDIC for 2 years.

Ms. Wiener stated that those conditions were all complied with. There was always an intention for Mr. Gendron to be employed there and he was employed there. As stated in the Board cover sheet, there are no issues associated with the location.

Ms. Dudley stated this is not a contract so Ms. Wiener's testimony that the intent was Mr. Gendron would still work as an employee as a funeral director and embalmer but did not for 2 years as a FDIC is on the record, regardless of the wording of this statement.

Mr. Shropshire added that the condition being quoted was re a transaction that came before the Board previously.

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

(2) Stone Funeral Home LLC Related Applications

(a) Funeral Establishment(s)

(1) Stone Funeral Home LLC d/b/a Stone Funeral Home (Cocoa)

An application for a Funeral Establishment was received on July 14, 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 Janoris Stone (F044261). 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.

(2) Stone Funeral Home LLC d/b/a Stone Funeral Home (Melbourne)

An application for a Funeral Establishment was received on July 14, 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 Lloyd Sanders (F043815). 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. Hall moved to approve the application with the condition that the establishment passes an on-site inspection by a member of the Division staff. Ms. Thomas-Dewitt seconded the motion, which passed unanimously.

15. Application(s) for Cinerator Facility

A. Recommended for Approval *with* Conditions

(1) Oxley-Heard Funeral Directors Inc d/b/a La Flora Mission Crematorium (Fernandina Beach)

An application for a Cinerator Facility was received on June 21, 2011. The application was incomplete when submitted. All deficient items were returned on July 14, 2011. The fingerprint cards for all principals were returned with no criminal history. The Funeral Director in Charge will be John Heard (F046396). 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. Anderson 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.

16. Application(s) for Funeral Establishment

- A. *Recommended for approval without Conditions*
(1) *Rahming Memorial Chapel Inc (Deerfield Beach)*

An application for a Funeral Establishment was received on March 25, 2011. The application was incomplete when submitted. All deficient items were returned on May 12, 2011. The fingerprint cards for all principals were returned with no criminal history. The Funeral Director in Charge will be Peggy Rahming (F043590). 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. Mr. Hall seconded the motion, which passed unanimously.

17. Amendment(s) to Cemetery Bylaws

- A. *Recommended for Approval with Conditions*
(1) *Deland Memorial Gardens Inc (F039418) (Deland)*

The proposed bylaws for Deland Memorial Gardens have been submitted for approval by the Board.

In accordance with Rule 69K-6.003, notice has been published in *The Beacon*. Notice is also to be published in the July 15, 2011 *Florida Administrative Weekly*.

The Division's review finds that the proposed bylaws do not unreasonably restrict use of burial rights, increase costs to burial rights owners, nor unreasonably restrict competition.

The Division recommends approval of the proposed revisions to the bylaws with the conditions that as a result of publication of notice of the revised bylaws to the Florida Administrative Weekly, no adverse comments are received by the Division within the allotted period of 30 days as set forth in Rule 69K-6.003(3).

Col. Stiegman stated that amendment means a correction or a proposed alteration. In this case there were no amendments as this is a new set of bylaws. Going forward, in the event that there are, Col. Stiegman questioned whether the Board would receive a copy of the old bylaws with red lines through the correction.

Mr. Shropshire concurred. That was an oversight on the Division's part. In fact, though, these bylaws are completely new but the Division should have inserted into the Board packet the old bylaws.

Mr. Helm questioned why the Board is granting approval of bylaws that are prohibited by our Statutes already, with regards to Items 77, 87 and 94. The last line of Item 77, which reads "The Cemetery also reserves the right to specify the date and time for any installation by a contractor" is incorrect as it must be during normal business hours.

The Chair stated that is a part of the Rule. The bylaws cannot supersede a statute or a rule.

Mr. Helm stated that this is not protecting the public.

Ms. Wiener stated that the intent of the bylaws is not to in any way circumvent either Chapter 497 or any of the relevant rules. Of course, as the Chair states, the rule and law is the overarching concept. This does not in any way go against that. It simply means that within the confines of the rule and the law the cemetery can specify the date and time.

Mr. Helm stated that #77 does not include normal business hours.

Ms. Wiener stated within the normal business hours the cemetery can specify the date and time. It does not appear that the Licensee can ask in a way that it is in violation of the law or statute simply by virtue of its bylaws. Ms. Wiener added that

with regards to this particular bylaw, the Licensee was not on notice that there were any questions about any of these so she was unable to speak specifically to this particular issue. These bylaws are nearly identical to the bylaws that are already approved and enforced for other Lohman Family Property locations in Daytona, Daytona Memorial Park; and when they acquired this cemetery from Northstar, this is bringing it into the Lohman family, putting those bylaws in place.

Mr. Hall questioned whether Ms. Wiener feels the intent is not to restrict installation but to basically accommodate if there are other funeral services in the area.

Ms. Wiener concurred. Ms. Wiener has represented the Lohman family for about as long as she has been practicing before this Board and there has never been a complaint by a consumer or a monument installation company filed that the Lohman's have unnecessarily restricted the installation of a marker, monument or anything of that nature. The intent, in fact, is not to go above and beyond the Law.

Mr. Hall questioned whether Mr. Helm was comfortable with Ms. Wiener's response as he is in the monument business.

Mr. Helm answered "No." Mr. Helm stated that he knows how cemeteries could use this to their advantage.

Ms. Wiener questioned whether it would make Mr. Helm feel better to know that the Lohman's have been using these for probably about 10 years in their other cemeteries and there have not been any problems.

Mr. Helm stated that he would be wrong to state that he knows anything about the organization as he does not, but he is just reading what the bylaws say.

The Chair stated if any bylaws contained herein violate any provision of Chapter 497, F.S. or related bills, such bylaws shall be considered void and unenforceable. It is the responsibility of the cemetery to ensure compliance with all applicable laws and rules.

Mr. Helm stated that he read that as well, but he also knows that the cemetery will not provide you with that information.

The Chair stated it is a part of the bylaws.

Col. Stiegman stated that the explanation of this sentence can be within the confines of the law, but they are just specifying it a little more.

Mr. Hall questioned whether monument dealers have issues with some cemeteries that restrict access and schedule around funerals, etc.

Mr. Helm answered, "Certainly." Mr. Helm added that he has not had any issues but has heard of others that have.

Ms. Huggins stated that they are usually unregulated. That is the problem. Ms. Huggins added that they sometimes run into the same problem. The problem is it is usually the unregulated cemeteries.

Mr. Helm stated that the Item should just indicate "normal business hours."

Ms. Wiener stated that is tricky because you cannot just say "normal business hours" because monument installers could be coming in and there is a funeral going on. The intent is really to just set up a scenario.

Mr. Helm stated that the cemetery would have the right to deny access at that time.

Ms. Wiener stated that is why that sentence is for. It is not to break the law, expand the law. Ms. Wiener stated that she did not believe the Division has received any kind of complaints on issues of this nature regarding the Lohman family or their cemeteries. This is not going to be a problem cemetery that is going to give the Board trouble. Ms. Wiener added that this does not actually speak to a timeframe. It just says "specify the date and time for any installation by a contractor". There has to be language in the bylaws giving the cemetery the right to set the date and time.

Mr. Hall stated if you do not have that there will be chaos in the cemetery.

Ms. Wiener concurred.

Mr. Helm stated he understands that but also knows how that can be used.

Ms. Wiener stated if it is used improperly there will be a complaint coming because that is not right.

Mr. Helm stated if the language is fixed so that there is nothing to complain about there would not be any worries. Item #87 appears to be giving the cemetery a big hand when you say "unsightly, dilapidated or a nuisance". Mr. Helm questioned how would you determine what happened to the memorial.

Ms. Wiener stated that this bylaw contemplates that the owner can take some action to resolve the problem first. Of the 3 that Mr. Helm is mentioning, these are long-standing bylaws that are common in lots and lots of cemeteries. The problem is that sometimes you do have monuments and markers that become problematic in their appearance. The Lohman's, in particular have some really beautiful properties and they take a lot of pride in their properties so they like to make sure that they stay beautiful.

Mr. Hall stated if you do not allow that you subject the cemetery to not being able to correct the problem and then you create a liability issue. The fact that they are willing to go in, address it and try to clean it up or fix it is a plus.

Mr. Helm stated that he does not know of any memorial, marker or anything that gets dilapidated nowadays.

Mr. Helm directed the Board's attention to the last sentence of Item #94, "Any contractor who willfully violates the Bylaws, specifications or installation requirements of the Cemetery shall be prohibited from performing any further work in the Cemetery." Mr. Helm stated that a cemetery down south just tried to do that. The bylaws were violated and the powers to be said it could not be done.

Col. Stiegman questioned what could not be done.

Mr. Helm stated that the cemetery could not prohibit them from entering the cemetery again.

Ms. Wiener stated that the cemetery cannot prohibit access but you can prohibit contractors from doing work on your property if the cemetery bylaws are violated.

Mr. Helm stated not according to Tampa Division staff.

Ms. Wiener stated that the statute does allow cemeteries to set rules and regulations. If those rules and regulations are not complied with, as a business owner you are entitled to not do business with.

Mr. Helm concurred but indicated that the cemetery he is referring to was told they could not do it.

The Chair questioned whether it is a licensed cemetery.

Mr. Helm answered, "Yes."

Ms. Wiener stated that this is also one that is very standard in most cemetery bylaws because the power to set rules and regulations is reserved to a cemetery.

The Chair questioned whether this verbiage was part of the cemetery's bylaws.

Mr. Helm stated that he did not know and could not say much as there is an ongoing investigation. The Tampa Division stated that the cemetery could not have this.

Ms. Wiener questioned whether it was indicated that the cemetery could not restrict someone from performing work in the cemetery, even when they were violating the rules and regulations.

The Chair added "willfully violating."

Ms. Wiener disagreed with the Tampa Division on that because it is a power reserved to cemetery owners in the State of Florida.

Mr. Helm stated that the guy made an installation after hours and he knew he was not supposed to be there.

The Chair stated this is designed to address that.

MOTION: Col. Stiegman moved to approve the proposed revisions to the bylaws with the conditions that as a result of publication of notice of the revised bylaws to the Florida Administrative Weekly, no adverse comments are received by the Division within the allotted period of 30 days as set forth in Rule 69K-6.003(3). Ms. Huggins seconded the motion, which passed with 1 dissenting vote.

- 18. **Contract(s) or Other Related Form(s)**
 - A. *Recommended for Approval with Conditions*
 - (1) *Preneed Sales Contract*
 - (a) *Homesteaders Life Company (West Des Moines, IA)*

The Applicant, Homesteaders Life Company (HLC) submitted an amendment to its guaranteed Preneed Funeral Agreement and Assignment (X-G-FL, E-FLEX-FL) and non-guaranteed Preneed Funeral Agreement and Assignment (X-NGT-FL, E-FLEX-FL) forms, to be used for preneed sales exclusively for licensed preneed establishments. HLC is an approved life insurance company that holds a current certificate of authority with the Florida Office of Insurance Regulation (OIR). HLC received approval by OIR as of July 20, 1981. The Division recommends 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. Hubbell seconded the motion, which passed unanimously.

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

The Applicant, National Guardian Life Insurance Company (NGLIC), has filed an amendment to its pre-approved insurance-funded Preneed Funeral Agreement (3000G&S-FL-04/11) 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 recommends approval with the condition that the Department receives within 60 days two full-sized print-ready copies.

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

19. **Chairman's Report (Oral)**

The Chair stated that the September meeting is a conference call.

Ms. Bryant-Parker stated that the October meeting will be held at the Aloft Tapestry Park in Jacksonville.

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

None

21. **Executive Director's Report**

A. May Cremated Remains Be Held By a Licensee Pending Payment for Services Rendered?

The Board had asked for the Division's position on whether cremated remains may be held by a Licensee conditioned on payment for services rendered.

Issue: May a funeral establishment or direct disposal establishment decline to release cremated remains (sometimes referred to as "cremains") to a legally authorized person, until receipt of payment for services rendered by the licensee?

Applicable Law, Rules, and Other Reference Material

Section 497.152(8)(b), Florida Statutes, provides that the following conduct is a violation of chp. 497:

(b) Refusing to surrender promptly the custody of a dead human body upon the express order of the person legally authorized to its custody; however, this provision shall be subject to any state or local laws or rules governing custody or transportation of dead human bodies.

Section 497.005(38), Florida Statutes, defines "dead human body" as follows:

(38) "Human remains" or "remains," or "dead human body" or "dead human bodies," means the body of a deceased human person for which a death certificate or fetal death certificate is required under chapter 382 and includes the body in any stage of decomposition.

Section 497.005(19), Florida Statutes, defines "cremated remains as follows:

(19) "Cremated remains" means all the remains of the human body recovered after the completion of the cremation process, including processing or pulverization that leaves only bone fragments reduced to unidentifiable dimensions and may include the residue of any foreign matter, including casket material, bridgework, or eyeglasses that were cremated with the human remains.

Discussion

The FCCS Division believes that under section 497.005(38), the terms "human remains," "remains," "dead human body" or "dead human bodies," are interchangeable and have the same meaning as used in Chapter 497. Thus, if material constitutes "human remains" or "remains," the material also constitutes a "dead human body" for purposes of Chapter 497.

The Division believes that "cremated remains" as defined at s. 497.005(19) are included within (as a subset of) the broader definition of "human remains," "remains," "dead human body" or "dead human bodies," defined at 497.005(38).

Consequently, the FCCS Division believes that cremated remains are subject to the provision at 497.152(8)(b), so that refusal to surrender the custody of cremated remains upon the express order of the person legally authorized to custody of the cremated remains, would violate s. 497.152(8)(b).

Of course, surrender of the cremated remains would not eliminate a licensee's right to pursue by other means their legal remedies for non-payment of amounts due the licensee for services rendered.

Furthermore, a licensee has the right to insist upon compliance by the customer with any payment terms specified in the written contract for services. Although the licensee cannot hold the cremated remains

“hostage” to compel payment, the licensee is not required to continue providing services once the customer defaults on payments required under the contract for services. Provided, the licensee’s treatment of human remains, whether the licensee is paid or not, is at all times subject to the over-arching requirement under s. 497.386(4) that “*all human remains transported or stored must be completely covered and at all times treated with dignity and respect.*”

Ms. Huggins stated that in the past she has always heard that when a family is disputing about the release of the cremated remains they become personal property. Ms. Huggins questioned at what point the Licensee stop looking at them as a cremated body and do they then become personal property.

Mr. Shropshire stated that the Division’s research indicates that the law concerning remains is that they are at best quasi property and what the family has, as the Florida Supreme Court has indicated, is more a right of possession than a property right. It is a very gray area of the law whether remains are ever property and is so whose property they are. Our Supreme Court addressed it in the 2000s and said that the family has a quasi property right, more properly called a right of possession for purposes of disposition. Having said that, as to particular relations with customers and the liabilities involved, Licensee’s should seek their own counsel’s advice.

Ms. Huggins confirmed that the remains cannot be held hostage for payment.

Mr. Shropshire stated that is the Division’s position.

B. Duplicative Rules

The Governor has initiated a program to eliminate duplicative rules. The CFO and Department of Financial Services is supporting that effort.

The Department has determined that the same rules regarding Pressure Relief Ventilation of Mausoleums appear in both Chapter 497 rules, as well as in the Florida Building Code. This is duplicative.

It appears that builders would more intuitively look in the Building Code for rules regarding construction standards for mausoleums, rather than in licensing rules under Chapter 497. Accordingly, the Department is seeking to repeal the mausoleums venting rule under Chapter 497 (69K-13.005), so that the rules appear only in one location (the Florida Building Code).

22. Administrative Report

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

23. Disciplinary Report

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

The Chair acknowledged Mr. Juhan Mixon.

Mr. Mixon stated that the Legislature is going to be meeting in January and February because of reapportionment. The time is getting close for the filing of bills for this next session. They will start in committee work in September and October. They are almost in the whole month of October, November and then a week or so in December; then we start the second week of January, right after New Year’s. Mr. Mixon stated if the Board has not discussed its legislative priorities he would like to impress upon the Board the need to get them out there so that those of us in the Industry and the Coalition can begin to discuss those. Mr. Mixon questioned whether the Board has had any discussion with regard to the bill from last year regarding mausoleums on speedway property. Mr. Mixon stated that he fully expects that will be a bill filled again and wondered whether the Board had any comments or thoughts on that individually because it is not on the Agenda but probably needs to be discussed. They are talking right now 2 speedways; the one in Daytona Beach and one in Miami. If you

can put it at a speedway, you can put it at a football stadium or a baseball stadium. Mr. Mixon stated it did not bother him but if he were the owner of a cemetery competing for business with a large investment that would be very devastating to the company. Mr. Mixon requested that the Board discuss this issue at the next meeting as an agenda item.

The Chair questioned whether Mr. Mixon would be willing to outline the subject in writing and submit it as a basis to go forward on discussion.

Mr. Mixon concurred.

24. Adjournment

The meeting was adjourned at 12:18 p.m.