

MINUTES
BOARD OF FUNERAL, CEMETERY AND CONSUMER SERVICES
December 1, 2016 - 10:00 A.M.
Department of Financial Services
2020 Capital Circle SE, Alexander Bldg. #230
Tallahassee, FL 32301

1. Call to Order, Preliminary Remarks and Roll Call

Mr. Jody Brandenburg, Chair – Good morning everyone. Welcome to the Board of Funeral, Cemetery, and Consumer Services meeting. It's December 1, 2016. We're at the Department of Financial Services' building in Tallahassee FL. Ms. Simon, will you make the customary opening remarks and do a roll call, please?

Ms. Ellen Simon – Yes Mr. Chairman. My name is Ellen Simon. I am Assistant Director of the Division of Funeral, Cemetery, and Consumer Services. Today is December 1, 2016; and it is approximately 10:00am. This is a public meeting of the Board of Funeral, Cemetery and Consumer Services. Notice of this meeting has been duly published in the Florida Administrative Register. An agenda for this meeting has been made available to interested persons and extra copies are available in the room. This meeting is occurring in Tallahassee FL This meeting is being recorded by Jasmin Richardson and minutes will be prepared. 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.

At this time, Mr. Chairman, I will take the roll:

Joseph "Jody" Brandenburg, Chairman
Keenan Knopke, Vice Chair **{ABSENT}**
Jean Anderson
Francisco "Frank" Bango
Andrew Clark
James "Jim" Davis **{ABSENT}**
Lewis "Lew" Hall
Powell Helm
Ken Jones
Vanessa Oliver **{ABSENT}**

Ms. Simon – Mr. Chairman there is a quorum for the business of the Board.

Chair – Good.

Also noted as present:

Doug Shropshire, Director
Tom Barnhart, Board Legal Advisor
Jim Bossart, Department Counsel
Deirdre Farrington, Department Counsel
Stephanie Gray, Department Counsel
Matthew Daley, Department Counsel
Jasmin Richardson, Department Staff
Crystal Grant, Department Staff
Nicole Singleton, Department Staff

2. Action on the Minutes

A. November 3, 2016

Chair – The first agenda item is the November 3, 2016 minutes.

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

3. Old Business

A. Disciplinary Proceedings

(1) Collective Coversheet: Related Cases – Division No. ATN-24288

(a) StoneMor Florida Subsidiary LLC D/B/A Atlantis Cremation and Volusia Crematory: Case No. 173610-15-FC; Division No. ATN-24288 (F071082 – Direct Disposal Establishment and F071081 – Cinerator Facility) AND Lohman, Ty: Case No. 173624-15-FC; Division No. ATN-24288 (F035734 – Funeral Director and Embalmer)

Ms. Simon – Mr. Bossart will be presenting.

Mr. Jim Bossart – Mr. Chairman, I believe this matter was originally presented to the Board in August and now it is before you again. If I could refresh your memory concerning Stonemor Florida Subsidiary, this investigation inspection supports allegations that StoneMor is liable for the following violations. StoneMor Florida Subsidiary LLC is a licensed direct disposer establishment and cinerator facility licensed under Chapter 497, F.S., holding license numbers F071081 and F071082. At all times material to this case StoneMor Florida Subsidiary was doing business in Daytona Beach FL as Atlantis Cremation and Volusia Crematory within the meaning of s. 497.380(7), F. S. Pursuant to a consumer complaint, an inspection was performed at Volusia Crematory on December 1, 2014, by Investigator Del Valle at the request of Kimberly Valle. I remind you that the investigator and the complainant have similar names but they are not related. It is merely coincidence. They were concerned about the refrigeration, the condition of the remains of her deceased mother who had been refrigerated at the crematory pending final disposition. Ms. Valle’s mother had died on November 22, 2014. Our investigator Del Valle observed on December 1, 2014 that the temperature of the refrigeration unit holding the remains was above 40 degrees and that the body was in advance state of decomposition. This would be a violation of s. 497.386(2), F. S., which provides that a dead human body may not be held at any place or in transit for over 24 hours after death or pending final disposition unless the body is maintained under refrigeration at a temperature of 40 degrees or below or is otherwise embalmed, or otherwise preserved in a manner approved by the licensing authority. The Respondent had entered into a proposed stipulation for a fine of \$1500 and a six (6) month probation. Rather than approve the stipulation in August, the Board sent it back for further investigation and that’s the subject of this proceeding today.

Ms. Simon – Mr. Chairman, if I may?

Chair – Please.

Ms. Simon – Based upon a request from the Board, the Division conducted additional investigation into this matter and based upon the thorough additional investigation we did, our position remains the same in that we are recommending the discipline to the Board that Mr. Bossart stated.

Chair – In your additional investigation, is there anything in that investigation that should come to the Board’s attention that may mitigate what our decision might be?

Ms. Simon – No. I think that you’ve had the packet in front of you. The Board packet included interviews that were conducted subsequent to the time and the same facts were revealed during that time that were during the initial investigation.

Chair – Thank you.

Ms. Jean Anderson – Mr. Chairman, I served on Probable Cause Panel B and I am recusing myself.

Chair – Thank you, Ms. Anderson. Board, any comments?

Mr. Andrew Clark – Mr. Chairman? Were the findings presented to the complainant? I mean, you took some affidavits. Did Ms. Valle get a copy of it?

Mr. Bossart – I don't know. Of the new investigation, Ms. Simon would have to speak to that.

Ms. Simon – Actually, the investigation, I believe, was forwarded to the Legal Department and that was forwarded to Ms. Valle's attorney, the additional investigation. I know that she has contacted the Division on several occasions about this matter.

Mr. Bossart – Which reminds me, they did make a public records request and her attorney has been provided it.

Mr. Clark – I know she was very vocal at the August meeting about the fines so I was just curious if the additional information was provided to her, as the complainant.

Mr. Bossart – Yes sir, I believe so. Also, she was invited to be here. I was under the impression that she was going to be here today, but so far I don't believe she's shown up.

Chair – Ms. Valle? Ms. Valle? Hearing no response. Thank you. Ms. Wiener?

Ms. Wendy Wiener – Only here to answer questions.

Chair – Thank you.

MOTION: Mr. Helm moved to approve both Settlement Stipulations as presented. Mr. Lew Hall seconded the motion, which passed unanimously.

4. Disciplinary Proceedings

A. Settlement Stipulation(s)

(1) Waiver of Probable Cause

(a) Related Cases – Division No. ATN-23405

1. Ross, Gerald: Case No. 196644-16-FC; Division No. ATN-23405 (F043954 – Funeral Director)

Ms. Simon – Mr. Daley will be presenting for the Department.

Mr. Matthew Daley – Good morning.

Chair – Welcome, Mr. Daley.

Mr. Daley – This matter is presented to the Board for consideration of the Settlement Stipulation for Consent Order negotiated with Respondent Gerald Ross, who is pro se. The Division alleges an investigation supports the allegations that Respondent engaged in the unlicensed practice of embalming. Respondent has waived probable cause and stipulated that he shall pay a fine of \$2500 and his license shall be placed on probation for one (1) year. The terms of the Settlement Stipulation are reasonable under the facts and circumstances of this case. The Department requests that the Board approve the settlement and issue the Consent Order to conclude this matter.

Chair – Thank you. Mr. Ross? Is Mr. Ross here or is he represented here? Hearing no response. Board?

MOTION: Mr. Jones moved to approve the Settlement Stipulation with an administrative fine of \$2500 and probation for one (1) year. Mr. Hall seconded the motion.

Chair – Is there a question, Mr. Helm?

Mr. Helm – He's on one (1) probation. What license does he hold?

Mr. Daley – He holds a funeral director license.

Mr. Helm – Ok, thank you.

Chair – Motion has been made and seconded. All those in favor, aye?

Board members – Aye.

Chair – And any opposed? That motion carries. Thank you.

2. Ross Family Mortuary, LLC: Case No. 196632-16-FC; ATN-23405 (F070923 – Funeral Establishment)

Ms. Simon – Mr. Daley?

Mr. Daley – This matter is presented to the Board for consideration of the Settlement Stipulation for Consent Order negotiated with Respondent Ross Family Mortuary, LLC, also pro se. The Division alleges an investigation supports the allegations that Respondent failed to treat a deceased human body with dignity and respect. Respondent has waived probable cause and stipulated that it shall pay a fine of \$1000 and its license shall be placed on probation for one (1) year. The terms of the Settlement Stipulation are reasonable under the facts and circumstances of this case. The Department requests that the Board approve the settlement and issue the Consent Order to conclude this matter. Are there any questions?

Chair – Yes. Who is the funeral director in charge?

Mr. Daley – The funeral director in charge is, well there's current no funeral...I believe in the Board packet in the ALIS printout...

Chair – I didn't see it in my packet. I'm sorry if I overlooked it. I guess the most important question is, well, is there a funeral director in charge and who is the funeral director in charge at the time of the incident.

Mr. Daley – I don't see in this ALIS printout. I believe it's Ms. Mullins-Prince, but I can look at a more current ALIS printout and supply that information at a later date, if necessary.

Mr. Tom Barnhart – I think the Stipulation says Harold Felder was.

Chair – At the time?

Mr. Barnhart – In the Settlement Stipulation.

Ms. Jasmin Richardson – Mr. Brandenburg?

Chair – Yes?

Ms. Richardson – Yes, Harold Felder was the FDIC at the time. Apparently he resigned on December 25, 2015, so there is no one currently, but at the time Harold Felder was.

Chair – Can the Division look into the standings of FDIC at that location?

Ms. Simon – Yes sir.

Chair – Thank you.

Mr. Daley – Mr. Chairman?

Chair – Yes?

Mr. Daley – Also, there’s an email from Gerald Ross stating that his FDIC informed him that he’d be leaving the State of Florida in December 2015 and that Mr. Ross immediately notified the State and the establishment has been closed from 2015 until the current date, as of this email, which is August 4, 2016.

Chair – Thank you. Let’s make sure that that statement is valid.

Ms. Simon – Yes sir.

Chair – Thank you so much. Board?

Ms. Richardson – That is a valid statement. We did receive a notification on December 24, 2015 that the establishment is going to be inactive until an FDIC is found.

Chair – Thank you. Board.

MOTION: Mr. Hall moved to approve the Settlement Stipulation with an administrative fine of \$1000 and probation for one (1) year. Mr. Clark seconded the motion, which passed unanimously.

3. Baker, Damon: Case No. 196641-16-FC; ATN-23405 (Never licensed)

Mr. Daley – This matter is presented to the Board for consideration of the Settlement Stipulation for Consent Order negotiated with Respondent Damon Baker, who is pro se. The Division alleges an investigation supports the allegations that Respondent engaged in the unlicensed practice of funeral directing. Respondent has waived probable cause and stipulated that he shall pay a fine of \$2500. The terms of the Settlement Stipulation are reasonable under the facts and circumstances of this case. The Department requests that the Board approve the settlement and issue the Consent Order to conclude this matter. Are there any questions?

Chair – Mr. Baker? Damon Baker? Mr. Baker? Hearing no response.

MOTION: Mr. Helm moved to approve the Settlement Stipulation with an administrative fine of \$2500. Ms. Anderson seconded the motion, which passed unanimously.

Ms. Simon – Thank you, Mr. Daley.

Mr. Daley – Thank you.

Chair – Thank you, Mr. Daley.

(b) Stevens Brothers Funeral Home: Case No. 166459-15-FC; Division No. ATN-23562 (F041633 – Funeral Establishment)

Ms. Simon – Ms. Stephanie Gray will be presenting for the Department.

Ms. Stephanie Gray – Morning, Mr. Chairman.

Chair – Morning.

Ms. Gray – This matter is presented to the Board for consideration of the Settlement Stipulation for Consent Order negotiated with owner of Stevens Brothers Funeral Home, James Stinson. Respondent is pro se. The Division alleges that the licensee failed to furnish a contract on a form that contained the signature of a representative of Respondent and the date signed, transacted business under a name other than that which is licensed and was negligent in the identification of dead human remains. The investigation number was 23562, DFS Case No. 166459-15-FC and the Respondent has a funeral establishment license number F041633. Respondent has waived probable cause and stipulated that it shall pay a fine of \$1750. The terms of

the Settlement Stipulation are reasonable under the facts and circumstances of this case. The Department requests that the Board approve the settlement and issue the Consent Order to conclude this matter. Are there any questions?

Chair – Ms. Gray, the \$1750 and one (1) year probation, I believe?

Ms. Gray – Yes that is included in the Settlement Stipulation.

Chair – Good, because I didn't hear you mention that. Thank you.

MOTION: Mr. Jones moved to approve the Settlement Stipulation with an administrative fine of \$1750 and one (1) year probation. Mr. Hall seconded the motion, which passed unanimously.

Ms. Gray – Thank you, Mr. Chairman.

Chair – Thank you, ma'am.

(c) Related Cases – Division No. ATN-25701

1. Jones, Michelle Nicole: Case No. 183130-16-FC; Division No. ATN-25701 (F086236 – Funeral Director and Embalmer)

Ms. Simon – Ms. Deirdre Farrington will be presenting for the Department. Ms. Farrington?

Ms. Deirdre Farrington – Good morning, Mr. Chair.

Chair – Good morning.

Ms. Farrington – Ms. Jones is a concurrent funeral director and embalmer intern holding license number F086236. This matter is presented to the Board for consideration of the Settlement Stipulation for Consent Order negotiated with Michelle Nicole Jones. She is pro se and I do not believe she is present today. The Division alleges that the Respondent used the name or title "funeral director" suggesting licensure that she, at that time, did not hold. Ms. Jones has waived probable cause and stipulated that she shall pay a fine of \$1000. The terms of the Settlement Stipulation are reasonable under the facts and circumstances of this case. The Department requests that the Board approve the settlement and issue the Consent Order to conclude this matter. I'd be happy to answer any questions you may have.

Chair – Thank you. Board?

Mr. Helm – Mr. Chairman, is there any probation on this?

Ms. Farrington – Yes sir. Uh no, I'm sorry. There is no probation.

Chair – Is there a motion?

Ms. Farrington – There's no probation primarily because Ms. Jones was employed very briefly at Memories Funeral Home. That funeral home is now out of business. My understanding is that she was there for maybe two (2) to three (3) months. That the owner of the funeral home advised her that she could do her internship there. He asked her to sign some papers that he told her were an application. I asked her if she recalled what they looked like and she could not. I think this is a very hard way for Ms. Jones to learn to read what you sign. She learned shortly after from an incoming FDIC, the subject of the next case that it was not a training establishment and so she left. Her involvement with that funeral home was brief and unfortunate. I'm sure it will have an impact on her future licensure and that's why there is no probation. I think she was, in large part, misled.

Chair – Mr. Hall?

Mr. Hall – Just a question for the Division, maybe. If she had identified as “funeral director intern” would she have not had this issue? In other words, it is my understanding she just identified herself as “funeral director,” but if she had done “funeral director intern” on her title would that have affected this?

Ms. Simon – I think, if I may, Mr. Chairman?

Chair – Please.

Ms. Simon – The concern is that it was not a training facility at the time, so placing intern next to her name, I don’t think, would have affected it.

Mr. Hall – It wouldn’t have helped because of that.

Ms. Farrington – If she signed as intern and a licensed funeral director had signed with her, I think there would have been...

Mr. Hall – If they had been licensed.

Ms. Farrington – The violation that is alleged against her is that she used the title “funeral director” when she was not in fact a funeral director. Holding itself out as a training facility would be against the establishment not against her as an intern.

Mr. Hall – So just as a point of information, if she had signed “funeral director intern” and they had been licensed as a training facility and her supervisor had signed with her, she would have been okay?

Ms. Farrington – Yes she would have. That’s correct.

Mr. Clark – Because she did sign the contract under funeral director.

Ms. Farrington – That’s right. It was a preprinted form and underneath were the words printed “funeral director” and she signed on that line.

MOTION: Mr. Hall moved to approve the Settlement Stipulation with an administrative fine of \$1000. Mr. Clark seconded the motion.

Ms. Simon – Mr. Chairman?

Chair – Yes?

Ms. Simon – I believe that this individual has submitted an application to become a licensed funeral director and at the time that the application is heard by the Board, probation may be included at that time as part of the agreement.

Chair – Thank you. Motion has been made and seconded to approve. Those in favor, aye?

Board Members – Aye.

Chair – And any opposed? And that motion carries.

2. *Logan, Ana Alicia: Case No: 183122-16-FC; Division No. ATN-25701 (F062028 – Funeral Director and Embalmer)*

Ms. Simon – Ms. Farrington?

Ms. Farrington – Ms. Logan carries license number F062028. This matter is presented to the Board for consideration of the Settlement Stipulation for Consent Order negotiated with Respondent Ana Alicia Logan. She is pro se and I do not believe she is present. The Division alleges that while Respondent was funeral director in charge of Memories Funeral Home, a licensed

funeral establishment, the establishment failed to display the current licenses of each funeral director and embalmer employed at the establishment with a photograph of the licensee taken within the previous six (6) years permanently affixed to each displayed license and failed to maintain written procedures for handling complaints. Ms. Logan waived probable cause and stipulated that she shall pay a fine of \$1000. The terms of the Settlement Stipulation are reasonable under the facts and circumstances of this case. The Department requests that the Board approve the settlement and issue the Consent Order to conclude this matter. I'd be happy to answer any questions you may have.

Chair – Mr. Helm?

Mr. Helm – She states in her letter of resignation that October 15th was her last day and then on the monthly report of cases embalmed bodies handled she's got it signed and the date says 10/29. Did you all look into that?

Ms. Farrington – I did speak with Ms. Logan. She in fact told me that the last day she was in the funeral home was October 1st. I did note that there were documents signed by her after that date. Evidently the owner of the funeral home asked her to sign a report for that month, which she did. She told me any other signatures after that date were not her signatures. Again, this FDIC was employed at Memories Funeral Home briefly. There were a number of other technical violations at this inspection. They were cured, which is why she is not charged with those. It was apparent again that this was a poorly managed funeral home. They had gone through a number of FDICs in the preceding year and she submitted her resignation very soon after the inspection. I think it made her aware of the deficiencies in the establishment and she disassociated herself from that establishment very quickly.

Chair – Anything else, Mr. Helm? Board?

MOTION: Mr. Jones moved to approve the Settlement Stipulation with an administrative fine of \$1000. Mr. Hall seconded the motion, which passed unanimously.

Ms. Farrington – For my clarification the conditions are those in the stipulation or are there additional conditions?

Mr. Jones – Those listed.

Ms. Farrington – Thank you.

(d) Related Cases – Division No. ATN-26981

1. Cohen, Thomas J.: Case No. 192750-16-FC; Division No. ATN-26981 (F043919 – Funeral Director and Embalmer)

Ms. Simon – Ms. Deirdre Farrington will also be presenting this case. Ms. Farrington?

Ms. Farrington – I believe the case number is 192750-16-FC. Mr. Cohen is a funeral director and embalmer holding license number F043919. Are you Mr. Cohen?

Mr. Thomas Cohen – I am.

Ms. Farrington – Good to meet you, sir. This is Mr. Cohen who is pro se. This matter is presented to the Board for consideration of the Settlement Stipulation for Consent Order negotiated with Mr. Cohen. The Division alleges that Mr. Cohen, as the funeral director in charge of Cremations of Greater Tampa Bay, Inc., a licensed direct disposal establishment, arranged for the placement of at least six (6) death notices or obituaries, in which a funeral service, memorial service or graveside service was mentioned, and in which the direct disposal establishment's name appeared. Mr. Cohen waived probable cause and stipulated that he shall pay a fine of \$1000 and his license shall be placed on probation for a period of one (1) year. The terms of the Settlement Stipulation are reasonable under the facts and circumstances of this case. The Department requests that the Board approve the settlement and issue the Consent Order to conclude this matter. Mr. Cohen, if you have anything that you'd like to say to the Board, this would be your opportunity.

Chair – I'll call on Mr. Cohen. Mr. Cohen, thank you for coming in this morning. Do you want to address the Board or are you here to answer any questions the Board may have?

Mr. Cohen – I was here to answer any questions the Board may have.

Mr. Helm – He has to be sworn in.

Chair – I understand. We'll get to that if we ask him any questions or anything. I have alerted you to please swear in Mr. Cohen.

Ms. Simon – Please raise your right hand, sir. Do you solemnly swear that the information you will be providing in this matter is the truth, the whole truth and nothing but the truth?

Mr. Cohen – Yes.

Ms. Simon – Thank you.

Chair – And state your name, please.

Mr. Cohen – Thomas J. Cohen. T. J. Cohen.

Chair – Thank you so much. Board, Mr. Cohen is here to answer any questions that you may have. There's been a Settlement Stipulation that's being presented before us. Is there a motion?

Mr. Helm – Are we just doing one (1) case right now?

Chair – Yes.

MOTION: Mr. Helm moved to approve the Settlement Stipulation with an administrative fine of \$1000 and probation for one (1) year. Mr. Frank Bango seconded the motion, which passed unanimously.

2. Cremations of Greater Tampa Bay, Inc.: Case No. 192741-16-FC; Division No. ATN-26981 (F069037 – Direct Disposal Establishment)

Ms. Simon – Ms. Farrington?

Ms. Farrington – Cremations of Greater Tampa Bay holds license number F069037. This matter is presented to the Board for consideration of the Settlement Stipulation for Consent Order negotiated with Cremations of Greater Tampa Bay, Inc. The corporation is pro se and Mr. Cohen is here today on behalf of the corporation. The Division alleges that the Respondent arranged for placement of at least six (6) death notices or obituaries, in which a funeral service, memorial service or graveside service was mentioned, and in which the establishment's name appeared. The Respondent waived probable cause and stipulated that it shall pay a fine of \$2000. The terms of the Settlement Stipulation are reasonable under the facts and circumstances of this case. The Department requests that the Board approve the settlement and issue the Consent Order to conclude this matter. I'd be happy to answer any questions you may have. Mr. Cohen has already been sworn, if you have any questions regarding the corporation.

Chair – Any questions of Ms. Farrington? Mr. Cohen, are you here to answer any questions or address the Board?

Mr. Cohen – Possibly both.

Ms. Farrington – We just wanted to be sure that the terms of the stipulation were as stated to the Board and they are correct.

Mr. Cohen – Question for the Board. From this point forward, I have been told by the state inspector, Kurt Schuller, I have written an email to the paper telling them, because my families send obits to the paper directly, I have told the paper any obits

that come through with any date or service time and I have it via email to, any obits that come through with date and service times not to associate my name with it at all, Cremations of Greater Tampa Bay at all. I was informed by Kurt Schuller at that time that being that I had that email out there if this happens in the future, being that the obit never crosses my hand any more, I'm in the clear. I have no control what the family sends to the paper.

Chair – I can't tell you whether you're in the clear or not. If I were in your position, I would do two (2) things. First, have a written notice that you offer to every client family informing of this having them acknowledge that and number two, make sure you have a response back from the newspaper. Just because you sent a request, I would have that response back from the newspaper. I don't know that those two (2) things would indemnify you but best practices...

Mr. Cohen – Right and Kurt Schuller did mention that and I do have that in place. The Tampa Bay Times does send me back copies of the obituaries once I approve them. There has been two (2) since then that I approved and sent back to them that they did not, when I approved it, did not have my name at the bottom. When I sent it back, the paper subsequently put my name and number at the bottom, at which point Kurt Schuller said that's fine because I had proof of that but I just want to make sure that I'm doing this right.

Chair – Thank you. Any other questions? Comments? Motion?

MOTION: Mr. Helm moved to approve the Settlement Stipulation with an administrative fine of \$2000. Mr. Hall seconded the motion, which passed unanimously.

(e) RJ Gainous Funeral Home, Inc.: Case No. 196621-16-FC; Division No. ATN-27141 (F041765 – Funeral Establishment)

Ms. Simon – This case will also be presented by Ms. Farrington.

Chair – Ms. Farrington?

Ms. Farrington – RJ Gainous Funeral Home holds license number F041765. This matter is presented to the Board for consideration of the Settlement Stipulation for Consent Order negotiated with Respondent, RJ Gainous Funeral Home. The establishment is represented by John Rudolph who is present with Mr. Wynn, the funeral director in charge and owner. The Division alleges that the Respondent held an unembalmed, dead human body for over twenty-four (24) hours after death without maintaining the body under refrigeration at a temperature of 40 degrees Fahrenheit or below and without embalming. Respondent waived probable cause and stipulated that it shall pay a fine of \$2500 and its license shall be placed on probation for a period of one (1) year. The terms of the Settlement Stipulation are reasonable under the facts and circumstances of this case. The Department requests that the Board approve the settlement and issue the Consent Order to conclude this matter. At this point, I'd be happy to answer any questions and Mr. Rudolph, I'm sure, would be happy to do the same.

Chair – Any questions for Ms. Farrington? Mr. Rudolph, would you want to address the Board or just here to answer questions?

Mr. John Rudolph – Answer any questions.

Chair – Okay. Any questions of Mr. Rudolph? If not, is there a motion?

Mr. Helm – This is RJ Gainous, right?

Mr. Rudolph – RJ Gainous, yes.

Mr. Helm – On mine it has without counsel.

Mr. Rudolph – Well, I came in late.

Ms. Farrington – I’m sorry. I prepared the memo and shortly afterwards Mr. Rudolph contacted my office. So at the time the memo was prepared...

Mr. Helm – So everything is still the same as it is?

Mr. Rudolph – Except that I’m representing him.

Ms. Farrington – Yes.

MOTION: Mr. Helm moved to approve the Settlement Stipulation with an administrative fine of \$2500 and probation for one (1) year. Mr. Clark seconded the motion, which passed unanimously.

(f) Related Cases – Division No. ATN-27101

1. Richardson Sr., Derryck T.: Case No. 197853-16-FC; Division No. ATN-27101 (F045502 – Funeral Director and Embalmer

Ms. Simon –This matter is being presented by Ms. Farrington. Ms. Farrington?

Ms. Farrington – Mr. Richardson holds license number F045502. This matter is presented to the Board for consideration of the Settlement Stipulation for Consent Order negotiated with Mr. Richardson, who is represented by Ms. Wiener, who is present. Mr. Richardson’s not with us today?

Ms. Wiener – Nope. I’m here on his behalf.

Ms. Farrington – Okay. The Division alleges that the Respondent entered into a preneed sales contract without first having valid preneed sales agent license. He waived probable cause and stipulated he shall pay a fine of \$1000 and his license shall be placed on probation for a period of one (1) year. The terms of the Settlement Stipulation are reasonable under the facts and circumstances of this case. The Department requests that the Board approve the settlement and issue the Consent Order to conclude this matter. I’d be happy to answer any questions and I’m sure Ms. Wiener would as well.

Chair – Thank you. Any questions for Ms. Farrington? Ms. Wiener, do you want to address the Board or just here to answer questions?

Ms. Wiener – Answer any questions.

Chair – Any questions? Is there a motion?

MOTION: Mr. Jones moved to approve the Settlement Stipulation with an administrative fine of \$1000 and probation for one (1) year. Mr. Hall seconded the motion, which passed unanimously.

2. Richardson’s Family Funeral Care Inc.: Case No. 197852-16-FC; Division No. ATN-27101 (F055378 – Funeral Establishment)

Ms. Simon –Ms. Farrington?

Ms. Farrington – Richardson’s Family Funeral Care is a funeral establishment holding license number F055378. This matter is presented to the Board for consideration of the Settlement Stipulation for Consent Order negotiated with Richardson’s Family Funeral Care, Inc. through its counsel, Wendy Wiener. The Division alleges the Respondent entered into a preneed sales contract without first having valid preneed sales agent license. The establishment waived probable cause and stipulated that it shall pay a fine of \$1000 and that its license shall be placed on probation for a period of one (1) year. The terms of the Settlement Stipulation are reasonable under the facts and circumstances of this case. The Department requests that the Board approve the settlement and issue the Consent Order to conclude this matter. I’d be happy to answer any questions and Ms. Wiener is present.

Chair – Any questions for Ms. Farrington? Ms. Wiener, I have a question. Do you know the steps that your client is taking to ensure this will not happen again until they do have a preneed main license?

Ms. Wiener – Mr. Richardson doesn't intend to engage in preneed. This was a limited circumstance in which his pastor, close family friend at his church, approached him and asked about making funeral arrangements. He did so. He did enter into this singular preneed contract and that was that. So it was a one off incident involving close family friends from his church and Mr. Richardson. He doesn't intend to engage in preneed. This was just a limited circumstance.

Chair – Thank you.

MOTION: Mr. Hall moved to approve the Settlement Stipulation with an administrative fine of \$1000 and probation for one (1) year. Mr. Clark seconded the motion, which passed unanimously.

(g) Related Cases – Division No. ATN-27438

1. Dunphy, Gregory: Case No. 196605-16-FC; Division No. ATN-27438 (F046286 – Funeral Director and Embalmer)

Ms. Simon – This matter is being presented by Ms. Farrington.

Ms. Farrington – Mr. Dunphy holds license number F046286. This matter is presented to the Board for consideration of the Settlement Stipulation for Consent Order negotiated with Respondent, Gregory Dunphy, who is pro se. I don't believe Mr. Dunphy is present. The Division alleges Respondent, while employed as a funeral director at Brock's Hometown Funeral Home, a licensed funeral establishment, held five (5) dead human bodies for over twenty-four (24) hours after death without maintaining the bodies under refrigeration at a temperature of 40 degrees Fahrenheit or below and without embalming. The Respondent waived probable cause and stipulated that he shall pay a fine of \$2500 in six (6) monthly payments. In addition, he agreed that his license shall be permanently restricted to practice as an embalmer only, that he should be placed on probation for a period of two (2) years and that he shall take and pass the Law and Rules Exam at his own expense and provide to the Division proof of compliance prior to the lifting of probation. The terms of the Settlement Stipulation are reasonable under the facts and circumstances of this case. The Department requests that the Board approve the settlement and issue the Consent Order to conclude this matter. I'd be happy to answer any questions you may have at this time.

Chair – Any questions? Mr. Hall?

Mr. Hall – Ms. Farrington, we're going to restrict him to embalming only?

Ms. Farrington – Yes sir.

Mr. Hall – And we're removing his funeral director license?

Ms. Farrington – Essentially.

Mr. Hall – Why wouldn't we take both? What thought process was there? He's a hazard to us, from the perspective of funeral directing, why not the embalming?

Ms. Farrington – He's a competent embalmer. The fact that these bodies were not embalmed was because they were all scheduled to be cremated. You probably recall the discipline against Brock's Hometown Funeral Home, which resulted in revocation or voluntary surrender of the license of that funeral home because essentially bodies were not being cremated in a timely way. Mr. Dunphy was the funeral director. The companion case, which we'll hear in a few moments, is the FDIC. Mr. Dunphy clearly did not handle the situation well, as a funeral director but as I said, his competence as an embalmer is not in question. The bodies were not embalmed because there was not, in the contract for any of them, embalming. They were all scheduled for cremation. So, essentially, we don't have confidence that he would perform well as a funeral director, contact with the public and operating a funeral home, but we stop short of feeling that we should remove the only profession that he evidently has practiced.

Mr. Hall – Was he the director on those five (5) cases or was he receiving his instruction from someone else, whether to proceed with cremation or embalming? Do you know that?

Ms. Farrington – The FDIC, Mr. Martin, was not very involved in the funeral home, which is why he's also subject to discipline in the next case. I think one of Mr. Dunphy's main failings was that he failed to contact the FDIC to request guidance with how to deal with the situation. Again, he simply is not operating very well as a funeral director.

Mr. Hall – Okay.

Mr. Clark – If I can, Mr. Hall, on page 18 he writes a letter that states he brought it to the attention of Mr. Martin and was told basically just to focus on taking care of families. That's on page 18.

Mr. Doug Shropshire – Mr. Chairman?

Chair – Yes?

Mr. Shropshire – May I? I think the main mitigating factor in the Division's thinking was that it was Mr. Dunphy's sense of professionalism, in our opinion, because he was the one that reported it to the police. In the interest of the situation, he couldn't do anything about it. It wasn't financially able to do anything about it but it did report it to the police and thereby put himself and his license in jeopardy and we thought that was a significant mitigating factor.

Chair – Thank you, Mr. Shropshire. Is there a motion?

MOTION: Mr. Helm moved to approve the Settlement Stipulation with an administrative fine of \$2500 in six (6) monthly payments, his license shall be permanently restricted to practice as an embalmer only, his license shall be placed on probation for a period of two (2) years and he shall take and pass the Law and Rules Exam at his own expense and provide to the Division proof of compliance prior to the lifting of probation. Ms. Anderson seconded the motion.

Mr. Clark – Ms. Farrington?

Chair – Mr. Clark?

Mr. Clark – This may be an odd question, Ms. Farrington, but did you speak to Mr. Dunphy about this case?

Ms. Farrington – I did not.

Mr. Clark – Okay. I'm just curious which license he'd rather keep. I hear your justification for that but he's a skilled embalmer and most embalmers say that about themselves so I don't know how we know that.

Ms. Farrington – We know that through our investigator who's been in charge of this part of the western panhandle for a number of years. He is very well-known, well respected within the community and he knows basically all of the players. Through him, I am aware that Mr. Dunphy has not been an FDIC at any establishment for years and years. He's essentially a trade embalmer and apparently certain circumstances lead Brock's to ask Mr. Dunphy to take over. They had not completed any of the paperwork to make him FDIC and evidently it simply is something that's not in his skillset but primarily he's known in that area and does embalming, had previously done embalming for a number of establishments and Mr. Deason, our investigator, told me his skills as an embalmer are fine. He has no qualms about that. He said this guy just really doesn't need to have the responsibility of operating a funeral home and I trust his judgement.

Mr. Clark – Thank you.

Chair – There's been a motion made and it's been seconded. All those in favor, aye?

Board Members – Aye.

Chair – And any opposed? That motion carries.

2. *Martin, Marvin: Case No. 196618-16-FC; Division No. ATN-27438 (F044132 – Funeral Director and Embalmer)*

Ms. Simon –The next related matter is being presented by Ms. Farrington. Ms. Farrington?

Ms. Farrington – Mr. Martin holds license number F044132. This matter is presented to the Board for consideration of the Settlement Stipulation for Consent Order negotiated with Mr. Martin, who is pro se. The Division alleges that Mr. Martin was funeral director in charge at Brock’s Hometown Funeral Home, which held five (5) dead human bodies for over twenty-four (24) hours after death without maintaining the bodies under refrigeration at a temperature of 40 degrees Fahrenheit or below and without embalming. Mr. Martin waived probable cause and stipulated that he shall surrender his license to practice as a funeral director and embalmer and he shall never reapply for licensure under Chapter 497, F. S. The terms of the Settlement Stipulation are reasonable under the facts and circumstances of this case. The Department requests that the Board approve the settlement and issue the Consent Order to conclude this matter.

MOTION: Mr. Hall moved to approve the Settlement Stipulation which stipulated that Mr. Martin shall surrender his license to practice as a funeral director and embalmer and he shall never reapply for licensure under Chapter 497, F. S. Mr. Helm seconded the motion, which passed unanimously.

Chair – Thank you, Ms. Farrington.

(b) *Hines, Charles Edward: Division No. ATN-27268 (F043758 – Funeral Director and Embalmer)*

Ms. Simon –Mr. Chairman, with your permission, I would like to present the case for the Division.

Chair – Please do.

Ms. Simon – This is a matter that was investigated by the Division. During that investigation, it was determined that the licensee, while FDIC at the Kuzniar Group d/b/a First Coast Funeral Home, allowed the funeral establishment to have onsite human remains that were in a severely decomposed state. After the investigation, the licensee determined that it was in his best interest to enter into a Stipulation Agreement whereby his license is permanently revoked and he is prohibited from applying for new licensure issued by the Division. The Division believes that the terms of the Settlement Stipulation proffered to the Board are reasonable under the facts and circumstances of this case and we ask that the Board approve that agreement.

MOTION: Mr. Hall moved to approve the Settlement Stipulation which states that Mr. Hines’ license is permanently revoked and he is prohibited from applying for new licensure issued by the Division. Mr. Clark seconded the motion.

Chair – Mr. Helm?

Mr. Helm – Could you tell me how old this man is? Is that something you would know?

Ms. Farrington – If I may, he is advanced in years. I think he’s in his late 60s. He has a trach, too.

Chair – Any other questions, Mr. Helm?

Mr. Helm – No.

Chair – Motion’s been made and it’s been seconded. All those in favor, aye?

Board Members – Aye.

Chair – And any opposed? That motion carries.

(2) Probable Cause Panel A

(a) Auxiliadora Funeraria Nacional: Case No. 175615-15-FC; Division No. ATN-24520 (F040896 – Funeral Establishment)

Ms. Simon – Ms. Farrington will be presenting the disciplinary case. However, after the disciplinary case, the Division will request that the Board handle the application for a change of ownership under Item 14(A), out of place, on your agenda.

Chair – 14(A)?

Ms. Simon – Yes sir.

Chair – Thank you.

Ms. Farrington – This funeral establishment holds license number F040896. I'll defer to Mr. Bayo for the correct pronunciation. The matter is presented to the Board for consideration of the Settlement Stipulation for Consent Order negotiated with the Respondent through counsel, Mr. Edwin Bayo. The Division alleges the Respondent committed fraud, negligence and misrepresentation in advertising placed in the obituary section of the Miami Herald Newspaper. The Respondent was served with an Administrative Complaint, but through counsel has entered into a negotiated settlement in which it stipulated it shall pay a fine of \$4000 and its license shall be placed on probation for a period of one (1) year. The terms of the Settlement Stipulation are reasonable under the facts and circumstances of this case. The Department requests that the Board approve the settlement and issue the Consent Order to conclude this matter. I'd be happy to answer any questions you may have and of course Mr. Bayo is here on behalf of the Respondent.

Chair – Any questions of Ms. Farrington? Mr. Bayo, did you want to address the Board or are you here to answer questions?

Mr. Edwin Bayo – Only to answer questions, Mr. Chairman.

Chair – Thank you. Is there a motion?

MOTION: Mr. Jones moved to approve the Settlement Stipulation with an administrative fine of \$4000 and probation for one (1) year. Mr. Helm seconded the motion, which passed unanimously.

14. Application(s) for Change of Ownership (Miami Funeral Services)

A. Application(s) for Funeral Establishment

(1) Recommended for Approval with Conditions – Collective Coversheet

(a) Miami Funeral Services & Crematories Inc. (Miami)

(b) Miami Funeral Services & Crematories Inc. (Miami)

Ms. Simon – Miami Funeral Services & Crematories Inc., being a Florida corporation, seeks approval to acquire ownership/control of two (2) funeral establishments. The fingerprints for the principal were returned without criminal history. These establishments are not the qualifying entity for any preneed licensee. The proposed owner is Dayana Sosa Reyes. More specifically, the entities to be acquired, all currently owned by Rafaiy Alkhalifa a/k/a Hilbert Mohabir, are as follows:

- (1) Auxiliadora Funeraria Nacional, a licensed funeral establishment, license #F040896, physical address 151 NW 37th Avenue, Miami
- (2) Auxiliadora Funeraria Nacional, a licensed funeral establishment, license #F041062, physical address 6871 SW 40th Street, Miami

The Division recommends approval of the applications referenced above, subject to the following conditions:

- 1) That the closing on the transactions to acquire ownership/control of the afore-mentioned entities occurs within 60 days of the date of this Board meeting.
- 2) That the closing on the transaction shall be on terms and conditions as represented to the Board at this meeting.
- 3) That Applicant shall assure receipt by the Division within 75 days of the Board meeting, of a letter signed by applicant or applicant's attorney, addressed to the Division, certifying that closing has occurred and stating the date of closing,

and stating that closing occurred on terms and conditions not inconsistent with those as represented to the Board at this Board meeting. Applicant shall also provide a copy of the fully executed Asset Purchase Agreement, or any other document by which the acquisition transaction is consummated, executed by all parties, and any and all amendments, schedules, and other attachments thereto, also fully executed.

- 4) That the Director of the Division of Funeral, Cemetery, and Consumer Services may extend any deadline set out in these conditions, by up to 90 days, for good cause shown. The Director shall report any such extensions to the Board as an informational item.
- 5) That all representations by the applicant in the application and related materials provided to the Board or FCCS Division by the applicant, in support of the application(s), are deemed material to the Board's action herein.
- 6) That the funeral establishments, including the cinerator facilities, pass an onsite inspection by a member of Division Staff.
- 7) That all fictitious names are registered with the Division of Corporations and the registration confirmation be given to the Division.
- 8) That the Board approve the enclosed stipulation for licensure signed by the new owner, Dayana Sosa Reyes.

Chair – Mr. Bayo, are you here to answer questions or would you like to address the Board.

Mr. Bayo – Brevity is the soul of wit, Mr. Chairman. I'm here to just answer questions.

Chair – Wise counsel.

MOTION: Mr. Clark moved to approve the application subject to the conditions recommended by the Division. Mr. Jones seconded the motion.

Ms. Michele Hood – Before you call the question, I have a question of my own.

Chair – We're voting.

Ms. Hood – Before you the question, may I interject something?

Chair – We've called the question. Please come forward.

Ms. Hood – Michele Hood with the Independent Funeral Directors of Florida and this is Bill Williams with FSI. As trustees...

Ms. Simon – Ms. Hood, in order to provide testimony, will you please raise your right hand and be sworn in? Do you solemnly swear that the information you are about to provide to the Board will be the truth, the whole truth and nothing but the truth?

Ms. Hood – I do.

Mr. Bayo – Before she proceeds, can I ask a question?

Ms. Simon – Yes sir?

Chair – Just a moment please.

Mr. Barnhart – Mr. Bayo?

Mr. Bayo – Yes?

Mr. Barnhart – Did you want to address the Board first?

Mr. Bayo – Yes. I'm unaware of any process to have somebody from the audience join in, especially after the motion is seconded and the question has been called. I'm unaware of any authority for somebody like this to come in so to the extent that that is improper, I would like to state my objection for the record.

Chair – Thank you.

Mr. Barnhart – There is a right for public comment. Did anybody request public comment before the meeting started or indicate what agenda item they wanted to speak about?

Ms. Hood – Not prior to this meeting, no. I was speaking with Mr. Williams about the fact that we are both trustees of preneed funds that are the property of the previous licensee and I had a question about the treatment of those contracts after the change of ownership.

Mr. Barnhart – Wouldn't that be proper to ask of the Division after the vote itself. I mean, you could contact the Division if you had any concerns about the way those were handled.

Ms. Hood – I wanted to find out whether the Settlement Stipulation included those items.

Chair – It's not a Settlement Stipulation.

Ms. Hood – I believe there was a settlement in the conditions for licensure.

Chair – Yes.

Ms. Simon – If I may, Mr. Chair?

Chair – Please.

Ms. Simon – Ms. Hood, you are welcome to contact the Division after the vote is taken and we will be happy to discuss the matter with you at that time.

Chair – There's been a motion made and it's been seconded.

Mr. Hall – Is it in order for a Board member to ask a question in reference to this?

Mr. Bayo – Sure.

Mr. Hall – This case before us has been before us before and I guess my question is the new owner that's purchasing it, what is the experience level or what do they have in running these two (2) funeral homes? I think in the past we've experienced this owner having people as FDIC and running the facility and us having issues before the Board, but what experience does this new person have. Can you share that with us?

Mr. Bayo – The person, Dayana Sosa Reyes, has been working at this facility for several years. She has almost completed her associates degree in funeral services and is going to sit for the funeral director's examination. So she has plenty of experience.

Chair – Thank you.

Mr. Hall – You can assure us there's no ownership or stock ownership or anything for the previous owner in the firm?

Mr. Bayo – The previous owner has transferred all stock to Ms. Sosa Reyes.

Chair – Thank you. We have a motion before us and it's been seconded. All those in favor, aye?

Board Members – Aye.

Chair – And any opposed?

Mr. Hall – No.

Chair – One opposed and the motion carries.

Mr. Bayo – Thank you.

Chair – Thank you.

B. Material Facts Not Disputed (Section 120.57(2) Hearings)

(1) Probable Cause Panel A

(a) Cuevas, Odalys: Case No. 176270-15-FC; Division No. ATN-25101 (F071720 – Preneed Sales Agent)

Ms. Simon – This matter will be presented by Mr. Bossart. Mr. Bossart?

Mr. Bossart – Thank you. Mr. Chairman?

Chair – Please.

Mr. Bossart – This case, members of the Board, refers to Odalys Cuevas, Case No. 176270-15-FC. This matter has been scheduled for an informal hearing to consider the Motion for Determination of Waiver and for entry of a Final Order by Hearing Not Involving Disputed Issues and Material Fact. Ms. Cuevas is a preneed sales agent, licensed under Chapter 497. She holds license number F071720. On March 5, 2012, Ms. Cuevas, in the Circuit Court of Miami-Dade County, in the case of State of Florida vs. Odalys Cuevas, Case No. F14-011721, pled *nolo contendere* to Grand Theft, in the third degree, a felony, in violation of section 812.014, F.S. and pled *nolo contendere* to Public Assistance Fraud, in the third degree, a felony, in violation of section 414.39(1), F.S. Adjudication of guilt was withheld. She was sentenced to serve eight (8) years of probation. This constitutes a violation of section 497.152(2), F.S., which provides of being convicted or found guilty of or entering a plea of guilty or a plea of *nolo contendere*, as was in this case, regardless of adjudication, to any crime any jurisdiction that relates to the practice of or the ability to practice a licensing profession or occupation of this Chapter is a disciplinable offense and it is the Department's position in this case that grand theft and fraud are include offenses which relate to her profession. In addition, even though it's not in the Administrative Complaint, I would remind the Board of s. 497.466(5)(c)(2), which states that a person with a criminal record may not be licensed as a preneed sales agent unless it is determined that the person would not pose an unreasonable risk to members of the public who might deal with that person. It's our contention that standard has not been met in this case.

An Administrative Complaint was filed on May 31, 2016 against Ms. Cuevas, alleging a violation of section 497.152(2), F.S. This was subsequent to a finding of probable cause. Mr. Baxley and Ms. Hubbell were on the Probable Cause Panel which found probable cause. After numerous attempt to serve Ms. Cuevas through personal service, she was eventually served the Administrative Complaint by publication on September 1, 2016. Included within the Administrative Complaint was a Notice of Rights informing her that the failure to respond in writing within twenty-one (21) days of receipt of the Notice would constitute a waiver of the right to request a proceeding on the matters alleged in the Administrative Complaint and an Order of suspension or revocation would be entered against her. The Department did not receive an Election of Proceeding form or any other written response from Respondent within the twenty-one (21) day period following the date of publication, i.e. September 22, 2016, nor did they receive any communication from her any time thereafter. This fact is attested to in you packet by the Agency Clerk's affidavit of non-service.

Respondent's failure to file a response constitutes a *de jur* waiver of the right to request a proceeding on the matters alleged in the Administrative Complaint. Therefore, the Department requests the Chairman of the Board to entertain a motion finding that Respondent Odalys Cuevas was served with the Administrative Complaint by publication and containing a Notice of Rights and an Election of Proceeding form, that she failed to respond with the allotted twenty-one (21) day period, and has, therefore, waived her right to request a proceeding involving disputed issues of material fact in this matter. A copy of this memo, along with a copy of the Motion for Determination of Waiver and for Final Order by Hearing Not Involving Disputed Issues of Material Fact, have been sent by U.S. Mail to Odalys Cuevas at her last known address of record.

Chair – Is there a motion to that effect from the Board?

MOTION: Mr. Jones moved to find that Respondent Odalys Cuevas was served with the Administrative Complaint by publication and containing a Notice of Rights and an Election of Proceeding form, that she failed to respond with the allotted twenty-one (21) day period, and has, therefore, waived her right to request a proceeding involving disputed issues of material fact in this matter. Mr. Helm seconded the motion, which passed unanimously.

Mr. Bossart – Now that the Board has determined the Respondent has waived her right to request a proceeding in this matter, the Department believes it is appropriate at this time for the Chair to entertain a motion adopting the allegations of fact as set forth in the Administrative Complaint.

Chair – Is there a motion?

MOTION: Mr. Jones moved to adopt the allegations of fact as set forth in the Administrative Complaint. Ms. Anderson seconded the motion, which passed unanimously.

Mr. Bossart – The Department contends that the Board’s findings of fact support a finding of violations of Chapter 497, F.S., as alleged in the Administrative Complaint. It would be appropriate at this time for the Chair to entertain a motion finding Respondent’s violation of the Florida Statutes as charged in the Administrative Complaint.

Chair – Is there a motion?

MOTION: Mr. Bango moved to find Respondent’s violation of the Florida Statutes as charged in the Administrative Complaint. Mr. Clark seconded the motion, which passed unanimously.

Mr. Bossart – The Department also offers into evidence at this time the investigative report with exhibits, which is a part of your packet, a copy which has been previously furnished to the Board, to establish a prima facie case for the violations alleged in the Administrative Complaint that Ms. Cuevas did commit the acts as alleged in the Administrative Complaint.

Chair – Thank you.

Mr. Bossart – As to penalty, we would recommend revocation of her license.

Mr. Barnhart – Can I be heard?

Chair – Please.

Mr. Barnhart – Mr. Bossart, what is the usual penalty for this type of offense according to the rules?

Mr. Bossart – It would be up to the Board. The fact that she didn’t appear at this hearing to offer evidence as to why she should be allowed to retain a preneed sales license would dictate the revocation of her license.

Mr. Barnhart – The fact that she failed to appear here?

Mr. Bossart – Yes.

Mr. Barnhart – Well what is the usual penalty for a first time violation of this?

Mr. Bossart – I believe it’s a six (6) month suspension.

Mr. Barnhart – Can you point us to the rules for that because I didn’t find it?

Mr. Bossart – Not at this time.

Mr. Barnhart – I'm sorry?

Mr. Bossart – Not at this time, sir.

Mr. Barnhart – Okay. What I found looking through the rules is that the usual penalty for first offense is a penalty of \$1000 to \$2500 plus costs. Are you citing a number of aggravating factors that you think would raise it to revocation?

Mr. Bossart – No sir. It's essential to the fact that she didn't respond to the complaint is what justified the revocation, but if it's the Board's prerogative to charge a \$2500 fine, the Department would have no objection to that.

Mr. Barnhart – Board members, my recommendation would be to follow your rules, which provides for a fine of \$1000 to \$2500 plus costs, unless there's a number of aggravating factors which you think should make it rise to more of a penalty than that. I was looking at your rules, 497.152(2), which I think this is a one-count AC, correct?

Ms. Simon – Yes.

Mr. Barnhart – On my page, I believe it shows first offense, the usual charge as being a reprimand, a fine of \$1000 to \$2500 plus costs. Then revocation, as a usual offense would be for a subsequent offense.

Chair – What about suspension? Is that mentioned in there?

Mr. Barnhart – Not for a first offense.

Mr. Bossart – I would point out, sir, that would be a direct, not to argue this, but that would be in contradiction to s. 497.466(5), which says a person with a criminal record may not be licensed, period.

Mr. Barnhart – That is a licensing question though. It's not a disciplinary matter, correct?

Mr. Bossart – Yes sir, now that you point that out, yes.

Mr. Barnhart – The only charge of the AC was s. 497.152(2), correct?

Mr. Bossart – Correct.

Mr. Barnhart – Sot that would be my recommendation.

Mr. Clark – Can we indicate the crime that was committed here as an aggravating factor?

Mr. Barnhart – Well, if it fits into your criteria for aggravating factors that is found in subsection 2 of the rule. There is a list of things that you could consider to be either aggravating or mitigating factors.

Chair – Were you about to read that list?

Mr. Barnhart – Well, it's a fairly long list. Do you have the rules in front of you?

Chair – Let me call on Mr. Jones. Mr. Jones?

Mr. Jones – My question was if a fine is proposed and not paid within a specific period of time, it comes to us as default, at which time secondary action would be taken, correct?

Mr. Barnhart – If they failed to follow a Final Order that would be grounds for another Administrative Complaint.

Mr. Jones – Okay.

Mr. Helm – But that has to go through Legal when they don't pay the fine. Is that correct?

Mr. Barnhart – Right. It would generally go through probable cause in the form of an Administrative Complaint for not following a Final Order of the Board.

Chair – I'm sorry, you were about to talk about some mitigating factors.

Mr. Barnhart – There's a list of factors that the Board can consider in imposing penalties: danger to the public; the length of time since date of violation; the number of complaints filed against the licensee; the length of time licensee has practiced; the actual damage, physical or otherwise, caused by the violation; the deterrent effect of the penalty imposed; the effect of the penalty upon the licensee's livelihood; any efforts for rehabilitation; the actual knowledge of the licensee pertaining to the violation; attempts by licensee to correct or stop violations or refusal by licensee to correct or stop violations; related violations against the licensee in another state; actual negligence of the licensee pertaining to any violation; penalties imposed for related offenses; and any other mitigating or aggravating circumstances. Many of these factors, I don't think would apply here because we don't really know that much about the background of what she did, but you certainly could consider some of the factors, but if you believe those factors are set forth or are apparent in the investigative Board materials that you have in front of you.

Mr. Clark – We just voted to accept those facts and it's my opinion that she had the grand theft as well as public assistance fraud. Considering that it is involving funds and her role as preneed sales agent, which a significant part of that role is collecting funds, I would say that this individual is a danger to the public in regards to funds and I do think that is an aggravating factor. I am not ready to make a recommendation on what the penalty should be, but I see the things before us as this person could be a danger to the public and I would consider that aggravating factor beyond the recommended entry-level baseline penalty.

Chair – Mr. Helm?

Mr. Helm – Mr. Barnhart, is there any way that we as a Board can make a motion so that if she doesn't respond then we could use that as a factor and then revoke her license so we don't have to go through the Legal Department and everything?

Mr. Barnhart – Well, you could take a step less than revocation. You could allow her to keep her license and still make requirements on the Final Order that if she didn't follow then she could be brought forward to a probable cause panel in the form of another Administrative Complaint for not following the Final Order of the Department.

Mr. Helm – But there's no way to avoid that?

Mr. Barnhart – Well, the only way to avoid it I think would be if you did anything less than revocation you're going to have to see that she follows through with all the requirements but perhaps she could keep her license that way and remedy this. If you don't think it's something that she can remedy or basically get rehabilitated from but it would be way beyond the recommendation of the first offense that you have in your rules, but with aggravating factors, if you think those are strong enough than you can go beyond that.

Mr. Jones – Is she currently working in Florida?

Chair – Ms. Simon?

Ms. Simon – If I may, Mr. Jones? Mr. Helm, when you were asking about if she hasn't responded make that a condition, just to be clear, she has not responded yet. There has been notice that has been sent to her and she has been served through constructive publication, constructive notice and she has not responded to the Department in this matter as of this time.

Mr. Hall – Mr. Chair?

Chair – I suppose one of my questions is if this application for preneed sales agent, with this disclosure, came before us today would this application for licensure be approved and I think all know the answer to my rhetorical question. Mr. Hall?

Mr. Hall – I would agree with Mr. Clark. I think it is a danger to the public. I think as far as trying to remedy or come up with a solution for this person, it's hard to do that if someone doesn't want to communicate back and forth with you and respond. So that's my two concerns. I don't think you can remedy anything with her if she won't respond and I think with the charges she has against her, she definitely is a danger to the public.

Chair – Mr. Barnhart?

Mr. Barnhart – Well its certainly valid. If she were to ever apply with this type of violation then I would think it would be unlikely that she could get a license, at least for a period of time. I just wanted to point this out that it's not as straight, revocation is not clearly in your range of possibilities for a first time offense unless there's aggravating factors that the Board finds. I think Mr. Helm's question was whether she was still practicing currently or was she still in the field working and I don't know if the Department even knows where she is or what she's doing.

Ms. Simon – If I may?

Chair – Ms. Simon?

Ms. Simon – I do not have the answer to that. When I look up the system I am unable to say that she is working at this time.

Ms. Richardson – She does not have any active appointments.

Mr. Hall – If there was a revocation today due to the mitigating circumstances, Mr. Barnhart, she would have the right to file an application later if she so chose to come back into the field and do that for it to come before the Board? We'd be protecting the public at this point on revocation, but she would have the right to come back in and file a new application, would she not?

Mr. Barnhart – I believe that is correct. Ms. Simon, is that correct?

Ms. Simon – Yes sir.

Mr. Barnhart – She could always apply and try to convince the Board that she should be licensed at a later date.

Chair – Is there a motion?

MOTION: Mr. Hall moved for revocation due to the circumstances with the grand theft, the communication and danger to the public (aggravating factors). Mr. Clark seconded the motion.

Chair – Mr. Bossart do you have a question?

Mr. Bossart – No, thank you, sir.

Mr. Helm – May I ask a question of Legal?

Chair – Please.

Mr. Helm – With the motion, which I agree with, what you're saying, Mr. Barnhart, is that she can legally come back and say you can't do that? Is that correct? Is that what you're saying?

Mr. Barnhart – Well, certainly she can allege that and she can appeal. She would have appeal rights. So in appellate court we would be looking at the record before you to determine if you were correct in saying there was an aggravating factor, which allowed you to go beyond what the usual offense dictated for that in your disciplinary rules.

Chair – So, anything else? There's a motion before us for revocation and its's been seconded. All those in favor, aye?

Board Members – Aye.

Chair – And any opposed? And that motion carries. Thank you, Mr. Bossart.

Mr. Bossart – Thank you.

- 5. Application(s) for Preneed Sales Agent**
A. Informational Item (Licenses Issued without Conditions) – Addendum A

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

- 6. Application(s) for Continuing Education Course Approval**
A. Recommended for Approval without Conditions – Addendum B
(1) Cremation Association of North America (16008)
(2) National Funeral Directors Association (136)
(3) Newcomer Funeral Service Group (25408)

Ms. Simon – The majority of the Continuing Education Committee and the Division recommends approval of the applications for the number of hours indicated on Addendum B in the right hand corner.

MOTION: Mr. Hall moved to approve the applications. Mr. Helm seconded the motion, which passed unanimously.

- 7. Application(s) for Florida Law and Rules Examination**
A. Informational Item (Licenses Issued without Conditions) – Addendum C
(1) Direct Disposer
(a) Vital, Mullanda
(2) Funeral Director (Endorsement)
(a) Forrest, Ian W
(b) Newkirk, Terri M
(3) Funeral Director (Internship and Exam)
(a) Gillaspie, Jonathan P
(4) Funeral Director and Embalmer (Endorsement)
(a) Evans Jr, Joe R
(b) Testerman, Jeffrey R
(5) Funeral Director and Embalmer (Internship and Exam)
(a) Lowery, Michael D
(b) Russell, Miranda L
(c) Smith, David C
(d) Torres, David E

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

- 8. Application(s) for Internship**
A. Informational Item (Licenses Issued without Conditions) – Addendum D
(1) Funeral Director
(a) Young, Mitchell R F113027
(2) Funeral Director and Embalmer
(a) Bermudez, Abigail F118058
(b) Clymer, Tara L F081385
(c) Jones, Norral J F113978
(d) Seden, Omar F117669
(e) Stephens, Michael J F113521

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

- B. Recommended for Approval without Conditions (Criminal History)**
 - (1) Funeral Director and Embalmer**
 - (a) Watts, Brittney L**

Ms. Simon – The applicant submitted an application for a Concurrent Internship License on August 24, 2016. The application was incomplete when submitted. All deficient items were received on October 19, 2016. A fingerprint result was returned with criminal history. The criminal history is as follows:

- In 2015 the applicant pled guilty to Rendering a Worthless Check. She was fined \$900.

Notwithstanding her criminal past, the Division is recommending approval without conditions.

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

- 9. Application(s) for Embalmer Apprenticeship**
 - A. Informational Item (Licenses Issued without Conditions) – Addendum E**
 - (1) Berry, Julia E F113484**
 - (2) Lindsay, Corey R F118059**

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

- 10. Notice of Change in Location**
 - A. Informational Item (Licenses Issued without Conditions) – Addendum F**
 - (1) Cremation Services of Polk County LLC (DDE) (F078902) (Winter Haven)**

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

- 11. Consumer Protection Trust Fund Claims**
 - A. Recommended for Approval without Conditions – Addendum G**

Ms. Simon – The Division recommends that these claims be approved for the amounts indicated in the column titled “Amount Recommended.”

MOTION: Mr. Jones moved to approve the claim(s) for the amount indicated on the Addendum entitled “Amount Recommended.” Mr. Clark seconded the motion, which passed unanimously.

Chair – I think, just a note, that five (5) claims is the smallest we’ve seen in quite a while. When I was going through the packet, I was looking for the next page.

- 12. Application(s) for Change of Ownership (Beckman – Atlantic Funeral Homes)**
 - A. Recommended for Approval with Conditions – Collective Coversheet**
 - (1) Application(s) for Cinerator Facility**
 - (a) Atlas Crematory LLC (Rockledge)**
 - (2) Application(s) for Funeral Establishment**
 - (a) Beckman – Atlantic Funeral Homes & Crematory Inc. d/b/a Beckman-Williamson Funeral Homes & Crematory (Cocoa Beach)**

(b) Beckman – Atlantic Funeral Homes & Crematory Inc. d/b/a Beckman-Williamson Funeral Homes & Crematory (Rockledge)

Ms. Simon – Beckman – Atlantic Funeral Homes & Crematory Inc. and Atlantic Crematory LLC, being a Florida corporation, seek approval to acquire ownership/control of two (2) funeral establishments and a Cinerator facility. The fingerprints for the principal were returned without criminal history. Beckman-Atlantic Funeral Homes & Crematory Inc. is assuming responsibility for all outstanding preneed contracts that have previously been issued by or for fulfillment at the above referenced funeral establishments and/or cemeteries.

The proposed owner is June E. Smith. More specifically, the entities to be acquired, all currently owned by William Pickens, Oliver Follweiler II and Lamar Hudgins, are as follows:

- (1) Atlas Crematory LLC, a licensed Cinerator Facility, license # F041425, physical address 2111 Highway US 1 South, Rockledge
- (2) Beckman-Williamson Funeral Home, a licensed funeral establishment, license # F041887, physical address 101 North Brevard Avenue, Cocoa Beach
- (3) Beckman-Williamson Funeral Home, a licensed funeral establishment, license # F041517, physical address 2111 Highway US 1 South, Rockledge

The Division recommends approval of the applications referenced above, subject to the following conditions:

- 1) That the closing on the transactions to acquire ownership/control of the afore-mentioned entities occurs within 60 days of the date of this Board meeting.
- 2) That the closing on the transaction shall be on terms and conditions as represented to the Board at this Board meeting.
- 3) That Applicant shall assure receipt by the Division within 75 days of the Board meeting, of a letter signed by applicant or applicant's attorney, addressed to the Division, certifying that closing has occurred and stating the date of closing, and stating that closing occurred on terms and conditions not inconsistent with those as represented to the Board at this Board meeting. Applicant shall also provide a copy of the fully executed Asset Purchase Agreement, or any other document by which the acquisition transaction is consummated, executed by all parties, and any and all amendments, schedules, and other attachments thereto, also fully executed.
- 4) That the Director of the Division of Funeral, Cemetery, and Consumer Services may extend any deadline set out in these conditions, by up to 90 days, for good cause shown. The Director shall report any such extensions to the Board as an informational item.
- 5) That all representations by the applicant in the application and related materials provided to the Board or FCCS Division by the applicant, in support of the application(s), are deemed material to the Board's action herein.
- 6) That the funeral establishments, direct disposal establishments and cinerator facility under the application(s) herein pass an onsite inspection by a member of Division Staff prior to commencement of operations under the new ownership.
- 7) That the Applicant (new owner or controlling party) shall assume all existing preneed liabilities of the location(s) being acquired.
- 8) That all fictitious names are registered with the Division of Corporations and the registration confirmation be given to the Division.

Chair – Thank you. We'll take them individually.

Cinerator MOTION: Mr. Jones moved to approve the application subject to the conditions recommended by the Division. Mr. Hall seconded the motion, which passed unanimously.

FH (Cocoa Beach) MOTION: Mr. Helm moved to approve the application subject to the conditions recommended by the Division. Ms. Anderson seconded the motion, which passed unanimously.

FH (Rockledge) MOTION: Ms. Anderson moved to approve the application subject to the conditions recommended by the Division. Mr. Clark seconded the motion, which passed unanimously.

Ms. Simon – Before moving on to the next item, Mr. Chairman, one of the licensees that was up for discipline is in the audience. However, he failed to stand up when his matter was called and that would be Mr. Dunphy.

Chair – Mr. Barnhart?

Mr. Barnhart – What was the disposition of that? The Stipulation was accepted, correct?

Ms. Simon – Yes.

Mr. Barnhart – Does Mr. Dunphy want to say anything besides....

Ms. Farrington – He does, sir.

Mr. Barnhart – Okay.

Chair – Do you want to swear him in?

Ms. Simon – Yes. Please raise your right hand. Do absolutely swear that all the information you provide to the Board will be the truth?

Mr. Dunphy – Yes ma'am.

Chair – Thank you. Your name, please?

Mr. Dunphy – Gregory Dunphy.

Chair – Board members, help me out. Where are we on that?

Mr. Jones – 4. G.

Chair – 4. G.?

Ms. Simon – Yes. 4. G. 1.

Chair – Got it. Mr. Dunphy are you here to address the Board? I'm just curious, when your case came up why you didn't come forward.

Mr. Dunphy – I have never had any experience with the esteem members of this Board or proper protocol so I didn't know what to do actually.

Chair – Thank you, sir.

Mr. Dunphy – And I had no legal representation present to advise me of such.

Chair – Did you want to speak to this Board?

Mr. Dunphy – Yes sir, with your permission.

Chair – Please do.

Mr. Dunphy – Financially, any fines imposed, I cannot spare the burden of quite frankly. I owe the IRS a good deal of money. I'm no longer employed except on an as needed basis at any place. I'm supporting my son in his pursuit of a nursing career, since it's more important for me to get him his education and a future rather than have to have him worry about expenses. So I'm asking for you to alleviate any fines that may have been opposed.

Chair – When the Settlement Stipulation was presented to you, you approved and acknowledged your acceptance of the stipulations in the agreement, at that time, and approved them yourself.

Mr. Dunphy – Yes sir and at that time I was financially able to support them, based on the fact that I had a steady income from Brock's Funeral Home and Heritage Funeral Home was also assisting me in a pretty steady income.

Ms. Simon – Mr. Chairman, may I make a suggestion, if you would entertain it?

Chair – Yes.

Ms. Simon – The fine was \$2500 and it is included. Typically, an individual would have thirty (30) days to pay off the fine. If the Board so desires to alter the discipline imposed, I would simply suggest, if the Board chooses to do that, that the \$2500 fine is paid over the course of a year as opposed to the thirty (30). Especially in light of the fact that Mr. Dunphy will continue his practice as an embalmer. Mr. Barnhart?

Mr. Barnhart – The fee was agreed to be paid over six (6) months, correct?

Ms. Farrington – That's correct.

Mr. Barnhart – Mr. Dunphy, can you not make those payments of six (6) months that was set forth?

Mr. Dunphy – At this time, it does not look like that.

Mr. Barnhart – Could you make the payments over a year's time, twelve (12) months?

Mr. Dunphy – Provided I get enough work. Again, as I said, it's on the at needed basis the only way I'm getting work at this time.

Mr. Barnhart – Well, the posture you're in now is either to see if the Board would accept a change in the terms of this settlement agreement or you might be asking the Board to vacate their vote that they took previously and you'd be subjected to an informal hearing, which could impose even greater financial obligations than what you have here.

Mr. Dunphy – Obviously, the wise thing for me to do would be to ask for an extension of the timeframe in which I would be allowed to pay.

Mr. Barnhart – Do you think you could pay this over twelve (12) months? It would be a little over \$200 a month.

Mr. Dunphy – Yes sir, I would guess I could probably do that.

Mr. Barnhart – Do you think you could?

Mr. Dunphy – If nothing else unforeseen happens. Like I said, I have a great debt to the IRS and they're not very forgiving.

Mr. Barnhart – But this would allow you to keep working, I believe.

Mr. Dunphy – Yes sir, and that's a great thing to be able to do.

Mr. Barnhart – Right. So would you want to propose to the Board that this stipulation be modified to let you pay over twelve (12) months and see if they would accept that?

Mr. Dunphy – Yes sir.

Chair – The current stipulation calls for six (6) months and the request is to extend it to twelve (12) months. It is requested by Mr. Dunphy and he has agreeable to that. Mr. Hall?

Mr. Hall – So moved.

Chair – Do we have to have a motion to readdress?

Mr. Barnhart – Let’s have a motion to reopen the case and reconsider the acceptance of the settlement agreement.

MOTION: Mr. Hall moved to approve to reopen the case and reconsider the acceptance of the settlement agreement. Mr. Knopke seconded the motion, which passed unanimously.

Mr. Barnhart – Board members, I think you’d want to make a motion to modify the provisions of 9. A. and that the payment of the fine would be done over twelve (12) months in equal monthly payments instead of six (6).

MOTION: The Chair moved to approve the Settlement Stipulation with an administrative fine of \$2500 to be paid over twelve (12) months in equal monthly payments instead of six (6) monthly payments, his license shall be permanently restricted to practice as an embalmer only, his license shall be placed on probation for a period of two (2) years and he shall take and pass the Law and Rules Exam at his own expense and provide to the Division proof of compliance prior to the lifting of probation. Mr. Hall seconded the motion, which passed unanimously.

Mr. Barnhart – Mr. Dunphy, you’re agreeable to that, correct?

Mr. Dunphy – Yes sir.

Chair – Thank you for bringing that to our attention.

Mr. Dunphy – Thank you for your time.

Chair – Please stay on your payments because there’s consequences for not doing that.

Mr. Dunphy – Understood, sir.

Chair – Thank you, sir.

Mr. Dunphy – Thank you.

Chair – Good luck.

13. Application(s) for Change of Ownership (Legacy Funeral Holdings of Florida, LLC)

A. Recommended for Approval with Conditions – Collective Coversheet

- (1) Application(s) to Acquire Control of an Existing Cemetery**
 - (a) Rose Lawn Cemetery of Gulf Breeze LLC (F039372) (Gulf Breeze)**
 - (2) Application(s) for Funeral Establishment**
 - (a) Rose Lawn Funeral Home of Gulf Breeze LLC (F039975) (Gulf Breeze)**

Ms. Simon – Legacy Funeral Holdings of Florida, LLC (Legacy), a limited liability company, seeks approval for an application for a change of ownership of a funeral establishment (F039975), an application to acquire control of an existing cemetery (F039372), and two (2) applications to acquire the below listed locations as preneed branches under Legacy’s preneed main license # F079526 (please see Preneed Branch License Addendum). The change of ownership is due to a change of control via an asset purchase agreement wherein Michael L. Soper, (principal of applicant herein) is purchasing the funeral and cemetery assets of these locations. Mr. Soper will be the sole principal and owner of the LLC. The fingerprints for the principal were returned without criminal history.

More specifically, the entities that are being acquired is as follows:

- 1) Rose Lawn Funeral Home of Gulf Breeze, LLC, a licensed funeral establishment, license # F039975, physical address: 2942 Gulf Breeze Pkwy, Gulf Breeze
- 2) Rose Lawn Cemetery of Gulf Breeze, LLC, a licensed cemetery, license # F039372, physical address: 2942 Gulf Breeze Pkwy, Gulf Breeze

Enclosed herein, are the separate applications regarding the above listed properties. If approved, Applicant is assuming responsibility for any outstanding preneed contracts that have previously been issued by or for fulfillment at the above referenced locations. The Division has no record of disciplinary action in regard to Legacy.

The Division recommends approval of the applications referenced above, subject to the following conditions:

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

Chair – Ms. Wiener, just for questions?

Ms. Wiener – That's right.

Cemetery MOTION: Mr. Jones moved to approve the application subject to the conditions recommended by the Division. Mr. Hall seconded the motion, which passed unanimously.

Funeral Establishment MOTION: Mr. Helm moved to approve the application subject to the conditions recommended by the Division. Ms. Anderson seconded the motion, which passed unanimously.

14. **Application(s) for Change of Ownership (Miami Funeral Services)**
 - A. *Application(s) for Funeral Establishment*
 - (1) *Recommended for Approval with Conditions – Collective Coversheet*
 - (a) *Miami Funeral Services & Crematories Inc. (Miami)*
 - (b) *Miami Funeral Services & Crematories Inc. (Miami)*

PLEASE SEE PAGE 15.

15. **Application(s) for Cinerator Facility**
 - A. *Recommended for Approval with Conditions*
 - (1) *All Florida Crematory LLC (Debary)*

Ms. Simon – An application for a Change of Ownership for the Cinerator Facility was received on November 2, 2016. The application was complete when received. The Funeral Director in Charge will be Clifford Marchbanks (F042684). The fingerprints for the principal were returned with no criminal history. The Division is recommending approval subject to the condition(s) as follows:

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

Board meeting, and providing a copy of the fully executed Bill of Sale, Asset Purchase Agreement, or other document by which the acquisition transaction is consummated, executed by all parties, and any and all amendments, schedules, and other attachments thereto, also fully executed.

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

MOTION: Ms. Anderson moved to approve the application subject to the conditions recommended by the Division. Mr. Helm seconded the motion, which passed unanimously.

16. Application(s) for Funeral Establishment

A. Recommended for Approval with Conditions

(1) Burnett Cremation Services Inc. (Wauchula)

Ms. Simon – An application for a Funeral Establishment was received on October 6, 2016. The application was incomplete when submitted. All deficient items were received on November 2, 2016. The Funeral Director in Charge will be George Burnett (F071532). All fingerprint cards have been returned with no criminal history. The establishment is recommended for approval subject to the condition that the establishment passes an onsite inspection by a member of Division Staff.

MOTION: Mr. Hall moved to approve the application subject to the condition that the establishment passes an onsite inspection by a member of Division Staff. Mr. Clark seconded the motion.

Chair – Mr. Helm?

Mr. Helm- I just had a brief question. The title of the business is Burnett Cremation Services. Is it also going to be a funeral home?

Chair – It will be licensed, if we approve, as a funeral establishment.

Mr. Helm – Can it be a funeral home without offering embalming services? How are you going to have a funeral without them being embalmed?

Chair – Embalming is not required in Florida.

Mr. Helm – It just seems odd to be a funeral home and not offer embalming.

Ms. Wiener – It's so that you can offer cremation services and also do services, memorial services, because if you don't have a funeral establishment license and only have a direct disposal establishment license, you can't do memorials along with cremations.

Mr. Helm – That's probably the answer I was looking for.

Chair – We have a motion and it's been seconded. All those in favor, aye?

Board Members – Aye.

Chair – And any opposed? That motion carries.

(2) Foundation Partners of Florida LLC d/b/a Sun City Center Funeral Home (Sun City)

Ms. Simon – An application for a Change of Ownership for the Funeral Establishment was received on November 7, 2016. The application was complete when received. The Funeral Director in Charge will be Michael Langjahr (F044329). The fingerprints for the principal were returned with no criminal history. The establishment is the qualifying entity of any preneed licensee and has submitted a Preneed Branch application to be reviewed at this Board meeting. The Division is recommending approval subject to the condition(s) as follows:

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

Mr. Clark – Mr. Chairman?

Chair – Mr. Clark?

Mr. Clark – I'd like to note my affiliation with Foundation Partners of Florida. That affiliation will not affect my ability to render a fair and impartial decision.

Chair – Thank you for that disclosure.

MOTION: Mr. Hall moved to approve the application subject to the conditions recommended by the Division. Mr. Jones seconded the motion, which passed unanimously.

(3) Gillaspie Funeral Services LLC D/B/A Altman-Long (Debary)

Ms. Simon – An application for a Change of Ownership for the Funeral Establishment was received on November 2, 2016. The application was complete when received. The Funeral Director in Charge will be Clifford Marchbanks (F042684). The fingerprints for the principal were returned with no criminal history. The establishment is not the qualifying entity of any preneed licensee. The Division is recommending approval subject to the condition(s) as follows:

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

Chair – Ms. Wiener, do you represent this transaction?

Ms. Wiener – I am able to get the owners, the proposed owners, on the phone if there are any questions. They reached out to me yesterday because they were trying to make the trip but had a service that was scheduled and so could not make the trip here.

Chair – Thank you.

Ms. Wiener – I can get you an answer if you need one.

Chair – I just wanted to make sure that the podium didn't grow on you.

MOTION: Mr. Jones moved to approve the application subject to the conditions recommended by the Division. Mr. Hall seconded the motion, which passed unanimously.

B. Recommended for Approval without Conditions
(1) The Monticello Chapel D/B/A The Hagan and Bradwell Funeral Service (Monticello)

Ms. Simon – An application for a Funeral Establishment was received on October 6, 2016. The application was incomplete when submitted. All deficient items were received on November 2, 2016. The Funeral Director in Charge will be Shanna Walker (F048940). All fingerprint cards have been returned with no criminal history. The establishment passed its inspection on November 8, 2016. The establishment is recommended for approval without conditions.

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

17. Application(s) for Preneed Branch License
A. Recommended for Approval with Conditions – Addendum H

Ms. Simon – The Division recommends that the applicants provided on Addendum H be approved for the preneed license applied for.

Ms. Wiener – Mr. Chairman?

Chair – Ms. Wiener?

Ms. Wiener – Thank you. There's a typo on Legacy Funeral Holdings. The applications are for the names Rose Lawn Funeral Home and Rose Lawn Cemetery, not "of Gulf Breeze." That's their current name. So the branch license applications don't have the "of Gulf Breeze" and I just wanted to make sure that was clear in the record.

Chair – Thank you.

MOTION: Mr. Bango moved to approve the applications. Mr. Clark seconded the motion, which passed unanimously.

Ms. Simon – Mr. Chairman? Just for the record purposes, was the motion to approve the preneed license applications?

Chair – Yes.

Ms. Simon – Thank you, sir.

18. Cemetery Bylaws
A. Recommended for Approval with Conditions
(1) Heartwood Preserve Conservation Cemetery, LLC (F094889) (New Port Richey)

Ms. Simon – The attached bylaws for Heartwood have been submitted for approval by the Board. In accordance with Rule 69K-6.003, notice has been published in *Tampa Bay Times* of Tampa, and also published in the November 16, 2016 *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 is recommending approval subject to the condition that no adverse comments are received by the Division within the allotted period of 30 days, as set forth in Rule 69K-6.003(3).

MOTION: Mr. Hall moved to approve the bylaws subject to the condition that no adverse comments are received by the Division within the allotted period of 30 days, as set forth in Rule 69K-6.003(3). Mr. Jones seconded the motion, which passed unanimously.

Chair – Mr. Helm?

Mr. Helm – I just had some questions I wanted to ask Ms. Wiener.

Chair – I’m sorry I didn’t see it in time.

Mr. Helm – Can we ask for information?

Ms. Wiener – It’s not up to me.

Mr. Barnhart – Well it’s been voted on. Did you want to reopen the case to ask questions?

Ms. Wiener – Or you could always reach out to me after the meeting.

Mr. Helm – I’ll do that.

19. Contract(s) or Other Related Form(s)

A. Recommended for Approval with Conditions

(1) Request(s) for Trust Transfer

(a) NorthStar Cemetery Services of Florida, LLC / NorthStar Memorial Group, LLC (Ormond Beach)

Ms. Simon – NSMG seeks approval to transfer its cemetery care and maintenance and preneed trust accounts FROM: SunTrust Bank TO: Live Oak Banking Company (Live Oak) as more specifically set forth in Justin Wilson's letter dated November 3, 2016, and attachments to that letter. Live Oak is or will be the successor trustee and will continue to operate under the existing trust agreements for these trust accounts. The Division is recommending approval subject to conditions as follows:

- 1) That the representations of NSMG, through its representative, Mr. Wilson of Live Oak Bank, as set forth in the attached letter dated November 3, 2016 be deemed material to the Board's decisions herein.
- 2) That within 90 days of this Board Meeting Live Oak provide the FCCS Division (ATTN: LaShonda Morris), the effective date of the transfer and certifications, stated as following:
 - a) That Live Oak provides a letter signed and dated by one of its officers, certifying that it meets one or more of the applicable criteria in s. 497.266(1), and s. 497.458(1)(b), to act as trustee of the trusts to be transferred to Live Oak pursuant to Mrs. Wilson’s letter dated November 3, 2016.
 - b) A letter from Live Oak, signed and dated by one of its officers, stating:
 - That Live Oak provides a certificate stating the dollar amount of trust assets being transferred as identified in Mr. Wilson’s attached letter dated November 3, 2016.
 - That Live Oak provides acknowledgement of receipt of the amount of trust assets being transferred as specified under the former trust, stating separately for each trust, the dollar amount of the trust assets received, as referenced in Mr. Wilson’s attached letter dated November 3, 2016.
- 3) That the Board's executive director, for good cause shown, may extend the compliance time for the above specified conditions, an additional 90 days, with a report to the Board regarding any extension granted.

MOTION: Mr. Helm moved to approve the agreement subject to the conditions recommended by the Division. Mr. Jones seconded the motion, which passed unanimously.

20. Executive Director's Report

A. Rulemaking Cleanup Project (Informational)

Ms. Simon – The Office of the General Counsel is continuing with their review of rules and what needs to be corrected. This item is informational only.

B. Rulemaking for Rule 69K-16.001 (Action)

Ms. Simon – The Division is recommending approval of the SERC, which is attached to your Board packet under this item.

Mr. Barnhart – And Board members, I think this rule actually has three (3) zeros in it, 69K-16.0001.

Chair – Note that typo. Thank you.

Mr. Barnhart – There's a SERC checklist and this has been prepared by the Division. It will be signed by Mr. Shropshire. What they've done is they've estimated that there are not economic of at least \$200k in the first year as to the industry and to any increase in regulatory cost that it doesn't meet that threshold and it doesn't meet the threshold of \$1 million for the first five (5) years. So, it would be my recommendation that someone make a motion to adopt the SERC Checklist indicating that no SERC is required.

MOTION: The Chair moved to adopt the SERC Checklist indicating that no SERC is required. Mr. Jones seconded the motion, which passed unanimously.

Mr. Barnhart – We did not approve the language of this yet because the SERC Checklist was not prepared yet. Board members, if you look at page 4. I believe you've seen this language before, but I just wanted to get a vote on accepting this language as the proposed changes there in subsection 4.

Ms. Simon – And this is back to Rule 69K-16.0001, Mr. Chairman.

Chair – 20. B. I believe.

Mr. Barnhart – Correct, page 4.

MOTION: Mr. Jones moved to approve the language as the proposed changes in subsection 4. Mr. Hall seconded the motion, which passed unanimously.

Ms. Simon – Thank you, Mr. Barnhart.

Chair – Thank you for catching that.

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

Ms. Simon – This is the monthly report of fines and costs assessed and paid. Any comments on that item?

Chair – We usually have some questions on this? Any questions? Sorry, move right ahead.

Monthly Report of Fines and Costs Assessed and Paid
 Division of Funeral, Cemetery and Consumer Services
 December 1, 2016 Board Meeting
 Date of Report: November 21, 2016

Licensee	Board Meeting	Case No.	Total Fine & Cost Due	Date Due	Paid in Full?	Comments
Clarence P. Wilson Junior	Jun-16	169221-15-FC	\$1,500	10/9/2016	Note D	The Office of the General Counsel is entering into the administrative process for an immediate suspension of the license
Randy Straghn	Aug-16	184682-16-FC	\$1,000	9/19/2016	Paid in Full	
Straughn & Son Tri-City	Aug-16	184654-16-FC	\$1,000	9/19/2016	Paid in Full	
Oxley-Heard Funeral Directors, Inc.	Aug-16	183577-15-FC	\$2,000	9/19/2016	Paid in Full	
Douglas Covell	Aug-16	183174-15-FC	\$2,000	9/19/2016	Paid in Full	
Covell Funeral Home & Cremation Services	Aug-16	183168-15-FC	\$2,000	19-Sep-16	Paid in Full	
Carriage Florida Funeral Holdings, Inc., D/B/A North	Aug-16	190609-16-FC	\$2,000	9/19/2016	Paid in Full	
Affordable Monument Company	Jun-16	184198-15-FC	\$1,000	Monthly payments of \$83	Payments are current	
Patricia Narciso	Jun-16	184202-15-FC	\$1,000	Monthly payments of \$83	Payments are current	
Clifford N. Robinson d/b/a CN Robinson Memorial F	Jun-16	178019-15-FC	\$1,000	Monthly payments of \$83	Payments are current	
Clifford Nathaniel Robinson	Jun-16	178002-15-FC	\$1,000	Monthly payments of \$83	Payments are current	
Ronald Noble	Aug-15	134801-13-FC	\$2,500	8/1/2017	Note D	
James West	Feb-16	165110-14-FC & 165112-14-FC	\$2,500	3/14/2016	Note A	Notice of intent to enter an emergency order to Cease and Desist from practicing filed and waiting on service.
A. When payment in full becomes past due, the FCCS Division works with the DFS Legal Division to enforce payment. B. Once fines and costs are paid in full, licensee kept on this report 3 months, showing Paid in Full, and then dropped off report, also licensee dropped off report after disciplinary action filed due to nonpayment of the fine and costs. C. The Order re this case is still in process, so no Due date is not yet established. D. Due date has not passed, as of the date of this report. E. As of the date of this report, monthly payments were current.						

21. Chairman's Report (Verbal)

Chair – The next meeting, what's our meeting schedule?

Ms. Simon – It's the last page of the agenda.

Ms. Richardson – January 5th, February 2nd and then March 2nd.

Chair – Very good. I have no other comments.

22. Office of Attorney General's Report
A. Attorney General's Rules Report

Ms. Simon – The rules report is included in your Board packet. Mr. Barnhart?

Mr. Barnhart – Board Members, 69K-27.001, The Embalmer Apprentice Program, I'm still working upon that. We're going to get the two (2) forms involved incorporated into the rule and get the new language approved. I'm in the process of doing that. 69K-1.005, Change of Ownership Rule, there's been a request for public hearing and I believe it's Mr. Shropshire and Ms. Simon's intent to put that on for the February 2nd meeting, which is our next face to face meeting, so the public hearing will be held in conjunction with that meeting, I believe.

Chair – Has it been noticed?

Mr. Barnhart – It has not been noticed yet, but it will be shortly. And of course 69K-16.0001, which you just handled. So we'll get that published and get that on its way, hopefully.

Chair – Thank you.

Mr. Barnhart – Any questions?

23. Administrative Report

The information was provided on the Agenda.

24. Disciplinary Report

The information was provided on the Agenda.

25. Upcoming Meeting(s)

- A. *January 5th (Teleconference)*
- B. *February 2nd (Tallahassee)*
- C. *March 2nd (Teleconference)*
- D. *April 13th (Jacksonville)*
- E. *May 18th (Teleconference)*
- F. *June 29th (Tallahassee)*
- G. *July 13th (Teleconference)*
- H. *August 3rd (Altamonte Springs)*
- I. *September 7th (Teleconference)*
- J. *October 5th (Tampa)*
- K. *November 2nd (Teleconference)*
- L. *December 7th (Tallahassee)*

26. Adjournment

Chair – Board Members, anything for the good of the cause? Any announcements? Any accomplishments? Just being here is an accomplishment. Thank you all and thank everybody out there and I think I can say Merry Christmas, Happy Holidays and please everyone be safe out there. I was reminded the other day, by a nephew of mine, who is an executive with State Farm that there are more and more claims and deaths and accidents because of driving and texting and focusing on something other than what you're doing. So loving his uncle, he made a special effort to make sure that I knew that and know what I do when I driving so I'm trying to get better at that and I urge everyone else to because it does affect our safety and our welfare.

Mr. Rudolph – I saw somewhere where they passed a law against texting and driving in Florida.

Chair – I only do it out of state, John. Thank everybody. Happy healthy.

The meeting was adjourned at 11:51 a.m.