

IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

**STATE OF GEORGIA ex rel.
CHRISTOPHER M. CARR, Attorney General
of the State of Georgia,**

COMPLAINANT,

v.

**HERITAGE CREMATION PROVIDER, LLC,
LEGACY FUNERAL SERVICES, LLC d/b/a
Legacy Cremation Services,
Joseph Damiano, Individually, and
Anthony Joseph Damiano, Individually**

RESPONDENTS.

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CIVIL ACTION FILE

2017CV287346

NO. _____

ASSURANCE OF VOLUNTARY COMPLIANCE

Pursuant to O.C.G.A. Sections 10-1-390 *et seq.*, the Fair Business Practices Act (“FBPA”), Christopher M. Carr, the Attorney General of the State of Georgia (“Attorney General”), has initiated an investigation and examination of certain acts or practices of the Respondent, Heritage Cremation Provider, LLC (hereinafter “Heritage”). This Assurance of Voluntary Compliance (“AVC”) is entered into pursuant to the Attorney General’s powers under the FBPA and related laws, and is being agreed to by the parties in lieu of the Attorney General pursuing claims against Heritage, Legacy Funeral Services, LLC d/b/a Legacy Cremation Services (“Legacy”), Joseph Damiano, Individually, and Anthony Joseph Damiano a/k/a A.J. Damiano a/k/a A.J. Styles, Individually (collectively “Respondents”) for the conduct described below, pursuant to O.C.G.A. § 10-1-402. It is therefore stipulated and agreed as follows:

I.

Heritage and Legacy are now and have been for a period of time engaged in consumer transactions or consumer acts or practices in the conduct of trade or commerce in part or wholly within the State of Georgia, as defined in O.C.G.A. § 10-1-392.

II.

Heritage is a foreign limited liability company that was incorporated in both the states of Florida and Colorado. Heritage's mailing addresses are P.O. Box 26806, Ft. Lauderdale, Florida 33320 and 1755 Telstar Drive, Colorado Springs, Colorado 80920. The Company's registered agent for service of process is Joseph Damiano, 1755 Telstar Drive, Colorado Springs, Colorado 80920. Heritage uses the following website to conduct business: www.heritagecremationprovider.com. Heritage is not registered with the Georgia Secretary of State's Office as a foreign limited liability company having authority to conduct business in the state of Georgia. Heritage does not possess any licenses issued by the Georgia Board of Funeral Services.

III.

Legacy is a foreign limited liability company that was incorporated in the state of Colorado. Legacy's mailing address is 9800 Pyramid Court, Denver, Colorado 80112. Legacy's registered agent for service of process is Joseph Damiano, 9800 Pyramid Court, Denver, Colorado 80112. Legacy uses the following website to conduct business: www.legacycremationservices.com. Legacy is not registered with the Georgia Secretary of State's Office as a foreign limited liability company having authority to conduct business in the state of Georgia. Legacy does not possess any licenses issued by the Georgia Board of Funeral Services.

IV.

Joseph Damiano is the owner of Heritage and Legacy. Anthony Joseph Damiano is the manager / operator of Heritage and Legacy. Joseph Damiano and Anthony Joseph Damiano are

residents of the states of Florida and/or Colorado. Neither Joseph Damiano nor Anthony Joseph Damiano possess any licenses issued by the Georgia Board of Funeral Services.

V.

Respondents consent to the personal jurisdiction of the Superior Court of Fulton County and acknowledge that subject matter jurisdiction and venue in connection with issues involving the subject matter of this AVC are proper and shall lie in the Superior Court of Fulton County.

VI.

The Attorney General contends that Respondents have used unfair or deceptive acts or practices in the conduct of consumer transactions and consumer acts or practices in trade or commerce as declared unlawful by O.C.G.A. § 10-1-393 *et seq.* Specifically, the Attorney General alleges that Respondents have engaged in the following acts or practices:

- A. You misrepresent to consumers that you perform services including but not limited to conducting funeral services, and performing embalming and crematory services, when in fact you do not perform the services as represented. This conduct violates O.C.G.A. § 10-1-393(a), the FBPA's prohibition against unfair and deceptive acts and practices; and O.C.G.A. § 10-1-393(b)(9) that prohibits advertising goods or services with intent not to sell them as advertised.
- B. You misrepresent to consumers through your website that you are physically located in Georgia and perform funeral services and crematory services in Georgia, when in fact you are not located in Georgia and do not perform any funeral services or crematory services in Georgia. This conduct violates O.C.G.A. § 10-1-393(a), the FBPA's prohibition against unfair and deceptive acts and practices; and O.C.G.A. § 10-1-393(b)(4) that prohibits using deceptive

representations or designations of geographic origin in connection with providing goods or services.

- C. You have disseminated and/or caused to be disseminated, advertisements in your website containing testimonials/endorsements that are not the representations of bona fide users of your goods and/or services. You have used testimonials of persons that could not be substantiated. This conduct violates O.C.G.A. § 10-1-393(a), the FBPA's prohibition against unfair and deceptive acts and practices; and O.C.G.A. § 10-1-393(b)(5) that prohibits representing that goods or services have sponsorship, approval, characteristics, uses, or benefits that they do not have.
- D. You hold yourself out to consumers to be in the business of practicing funeral directing in Georgia, without having complied with the requirements of O.C.G.A. § 43-18-1 *et seq.* This practice has been declared unlawful as set forth in O.C.G.A. § 43-18-5(a) and violates O.C.G.A. § 10-1-393(a), the FBPA's prohibition against unfair and deceptive acts and practices.
- E. You represent to consumers that you are a Georgia licensed funeral home and/or funeral establishment when in fact you do not have a license issued by the Georgia Board of Funeral Services as required by the provisions of O.C.G.A. § 43-18-1 *et seq.* This conduct violates O.C.G.A. § 10-1-393(a), the FBPA's prohibition against unfair and deceptive acts and practices; O.C.G.A. § 10-1-393(b)(2) that prohibits causing actual confusion or actual misunderstanding as to the source, sponsorship, approval, or certification of goods

or services; and O.C.G.A. § 10-1-393(b)(3) that prohibits causing actual confusion or actual misunderstanding as to the certification by another.

- F. You have provided goods and services to consumers that you did not have the legal authority to provide because you do not have and have not had a license issued by the Georgia Board of Funeral Services as required by the provisions of O.C.G.A. § 43-18-1 *et seq.* This conduct violates O.C.G.A. § 10-1-393(a), the FBPA's prohibition against unfair and deceptive acts and practices.
- G. You have represented to consumers that you are required to comply with the requirements of "The Federal Trade Commission Trade Regulation Rule on 'Funeral Industry Practices'" while at the same time intentionally violating the requirements of 16 C.F.R. § 453.2 (1994) and 16 C.F.R. § 453.3 (1994) requiring price disclosures with respect to cash advance items including but not limited to crematory services that you paid for on behalf of consumers. Conduct that violates the requirements of 16 C.F.R. §§ 453.2 and 453.3 has been declared a deceptive act and practice. These acts and practices violates O.C.G.A. § 10-1-393(a), the FBPA's prohibition against unfair and deceptive acts and practices.
- H. You have engaged in intentional, unlawful, systematic and deceptive practices intended to deceive and take advantage of highly vulnerable consumers who need to make decisions about a loved one/family member who has passed away, under tight time pressures and during very stressful circumstances. This conduct violates O.C.G.A. § 10-1-393(a), the FBPA's general prohibition against unfair and deceptive acts and practices.

VII.

Notwithstanding the foregoing, Respondents deny the allegations herein. However, pursuant to O.C.G.A. § 10-1-402, which provides that an Assurance of Voluntary Compliance shall not be considered an admission of violation of the FBPA for any purpose, Respondents hereby enter into this AVC in order to resolve this matter without the necessity of formal legal action. The Attorney General's acceptance of this AVC does not constitute his approval of any of Respondents' practices.

VIII.

By accepting this Assurance, the Attorney General agrees not to request the initiation of legal action against Respondents concerning the matters covered herein, subject, however, to the provisions of O.C.G.A. § 10-1-402, and Respondents' full compliance with all the terms and conditions set forth herein.

IX.

Upon breach of any of the provisions of this Assurance by Respondents and/or the Company's and/or Legacy's officers, directors, employees, agents, or successor business enterprises, the Attorney General reserves the right to request initiation of formal legal action against Respondents concerning the subject matter of this AVC.

X.

Respondents hereby acknowledge receipt of a copy of the FBPA and the referenced portions of 16 C.F.R. § 453.1 through § 453.9 ("the Funeral Rule"). Respondents further acknowledge their awareness and understanding of the FBPA and the Funeral Rule and the respective provisions thereof.

XI.

For purposes of this AVC, the term "consumer" shall include consumers who reside in the state of Georgia as well as consumers who reside in another state that are seeking services from Respondents with respect to deceased persons whose final disposition will be in the state of Georgia.

XII.

Respondents further agree that, that as of the effective date of this AVC, they shall abide by the following conditions:

- A. Respondents shall make every reasonable effort to fully comply with the FBPA and the applicable statutes under the Federal Trade Commission Act, including but not limited to the Funeral Rule.
- B. Respondents shall immediately cease and refrain from representing themselves to consumers as funeral service and/or crematory practitioners and establishments located in the state of Georgia.
- C. Respondents shall immediately cease and refrain from representing to consumers that they perform cremations in the state of Georgia.
- D. Respondents shall immediately remove and henceforth refrain from posting any testimonial on websites that can be accessed by consumers for which they does not possess documents identifying the person's name, address and phone number. All testimonials / endorsements posted by Heritage and Legacy must reflect the complete statement, honest opinion, finding, belief, or experience of the endorser.
- E. Respondents shall immediately cease and refrain from engaging in any business practices with respect to consumers including but not limited to practicing funeral directing, that requires licensing by the Georgia Board of Funeral Services as set forth in O.C.G.A. § 43-18-1 *et seq.* unless or until they obtain the required licensing.
- F. Respondents must comply with all disclosure requirements set forth in the Funeral Rule, specifically 16 C.F.R. § 453.2 requiring complete and accurate 1)

disclosures to consumers who ask by telephone about their offerings and prices, 2) disclosures in the required general price list, and 3) disclosures in the required statement of funeral goods and services selected, with respect to pricing disclosures and “cash advance items”, as that term is defined in 16 C.F.R. § 453.1, including but not limited to providing consumers with a statement of funeral goods and services listing “cash advance items”.

- G. Respondents shall refrain from representing and/or implying to consumers that prices charged to Heritage and Legacy for items obtained from third parties and that are paid for by Heritage and Legacy (defined as “cash advance items” in 16 C.F.R. § 453.1(b)) are the same cost to Heritage and Legacy when such is not the case. Respondents shall place the following statement in the itemized statement of funeral goods and services selected, in immediate conjunction with the list of itemized cash advance items required by 16 C.F.R. § 453.2(b)(5)(i)(B): “We charge you for our services in obtaining: (specify cash advance items)”, if and when Heritage and Legacy make a charge upon, or receives and retains a rebate, commission or volume discount upon a cash advance item.
- H. Within thirty (30) days of the effective date of this AVC, Respondents shall modify their websites accessible by consumers and all form documents disseminated to consumers, as necessary to comply with the terms of this AVC, including but not limited to all pricing lists, the Statement of Funeral Goods and Services Selected/Purchase Agreement, Authorization for Cremation and Disposition, Authorization for Return of Cremated Remains, and Identification

Acknowledgment. Respondents shall provide CPU with copies of modified documents within thirty (30) days of the effective date of this AVC.

- I. For a period of twenty-four months from the effective date of this AVC, CPU may periodically audit Respondents' advertising and business practices to ensure their compliance with the provisions of this AVC, as well as the FBPA. Respondents shall respond in a timely manner, but in no case to exceed three (3) business days, to all inquiries made by CPU regarding the subject matter of this AVC.
- J. For a period of twenty-four months from the effective date of this AVC, Respondents shall create and maintain a record summarizing all cremations and related services provided to consumers that includes the name of the deceased person, the name, address and phone number of the person who paid for the services, the name(s), addresses and phone numbers of all third-parties who provided the crematory and related services, and the date the services were performed. Respondents shall also retain a copy of the invoice provided to each consumer. Respondents shall provide CPU with copies of the record no less than quarterly, the first record being due on or before June 1, 2017. CPU may request in writing copies of the invoices related to such records. Respondents shall provide CPU with copies of the invoices within three (3) business days of the date of the written request.

XIII.

In addition to the conditions set forth in Section XI. above, Respondents Anthony Damiano and Anthony Joseph Damiano agree that they will comply with the following provisions:

- A. For a period of two (2) years from the effective date of this AVC, they will notify CPU in writing of any change in the name of either Heritage or Legacy, including the use of any alias or fictitious names, within thirty (30) days of the change in name or use of an alias or fictitious name.
- B. For a period of two (2) years from the effective date of this AVC, they will notify CPU in writing of their involvement (including employment, ownership, or other affiliation) with any other business offering funeral and/or cremation services to consumers. They shall provide CPU with the name, address, and telephone number of the business along with the name(s) of the owner(s) of any such business.

XIV.

For a period of twenty-four (24) months from the effective date of this AVC, if CPU receives any verifiable, actionable complaints against Heritage or Legacy with respect to matters addressed in this AVC, CPU shall forward the complaint to Heritage and/or Legacy for a response. Heritage and/or Legacy shall provide CPU with a written response no later than ten (10) calendar days from the date of the notice from CPU. Upon timely receipt of a response from Heritage and/or Legacy, if CPU determines that Heritage and/or Legacy have not adequately resolved the complaint then the Attorney General may in his sole discretion, direct Heritage and/or Legacy to provide a refund or other appropriate remedy to the consumer.

Additionally, if CPU does not receive Heritage's and/or Legacy's response to any such complaint within ten (10) calendar days, thereafter the Attorney General may in his sole discretion, direct Heritage and/or Legacy to provide a refund or other appropriate remedy to the consumer. Heritage and/or Legacy shall provide any remedy directed by the Attorney General within thirty (30) days of notice of the Attorney General's decision, and Heritage and/or Legacy will provide records of such remedy to CPU within fifteen (15) days of providing the remedy.

XV.

Upon submission of this AVC to the Attorney General, Respondents shall pay a filing fee in the amount of **ONE HUNDRED SEVENTEEN AND 70/100 DOLLARS (\$117.70)**, paid by certified check or money order made payable to "Clerk, Superior Court of Fulton County". Additionally, Respondents shall deliver to CPU a payment in the amount of **TWO HUNDRED THOUSAND AND NO/100 DOLLARS (\$200,000.00)**, to be used by the Attorney General for purposes that may include by are not limited to civil penalties, attorneys' fees, and other costs of investigation and litigation, or to be placed in or applied to any consumer protection law enforcement fund, including future consumer protection or privacy enforcement, consumer education, litigation or local consumer aid fund or revolving fund, used to defray the costs of inquiry leading hereto, or for other uses permitted by state law, at the sole discretion of the Attorney General. Respondents' payment shall be made via cashier's check or certified money order made payable to the Georgia Department of Law as follows:

- (1) The sum of **TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00)** on or before March 15, 2017.
- (2) Eight consecutive monthly installments in the amount of **\$5,000.00** each on or before the 15th day of each month beginning on April 15, 2017 and

continuing on the 15th day of each month thereafter until the sum of **FORTY THOUSAND AND NO/100 DOLLARS (\$40,000.00)** has been paid.

(3) One installment in the amount of **ONE HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$150,000.00)** shall be due no later than February 28, 2019, **at which time this final installment shall be waived in its entirety, provided the following conditions have been met:**

(a) Respondents have complied with Paragraphs A. through J. of Section XII., Paragraphs A. and B. of Section XIII., and Paragraphs 2(a) and (b) of this Section XIV;

(b) CPU receives no additional verifiable, actionable complaints that constitute violations of this AVC and are attributable to the actions of the Respondents or any of their officers, employees, independent contractors, representatives, or affiliated companies or businesses, for a period of twenty-four (24) months from the effective date of this AVC, that have not been resolved pursuant to Section XIV. above;

(c) Anthony Damiano and Anthony Joseph Damiano acknowledge and agree that they are jointly and several liable to pay the sums described in paragraphs 2(a), (b) and (c) of this Section XIV; and

(d) The parties agree that the obligations imposed in paragraphs 2(a), (b), and (c) of this Section XIV. represent an administrative

resolution and the agreed-upon obligation of the Respondents is therefore not subject to be discharged or set aside in any proceedings filed or held pursuant to the Title 11 of the United States Code (“Bankruptcy Code”).

XVI.

This AVC, when accepted by the Attorney General, will bind Respondents and Heritage’s and Legacy’s successors and/or assigns who take with notice of its terms and provisions. Heritage and Legacy hereby agrees to give notice of this AVC to their successors and/or assigns.

This Assurance of Voluntary Compliance, made and entered into by and between the undersigned parties, is effective upon the date of acceptance by the Attorney General.

ACCEPTED BY:



CHRISTOPHER M. CARR, Attorney General

Date: 3/14/17

[SIGNATURES CONTINUED ON NEXT PAGE]

Proposed, consented and agreed to by:

Joseph Damiano
on behalf of Heritage

Joseph Damiano Sr.
Printed Name

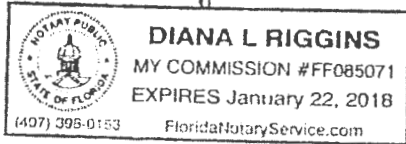
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Title

Date: 2-22-17

Sworn to and subscribed before me, this
22 day of February, 2017.

Diana L Riggins
NOTARY PUBLIC

My commission expires: 1/22/2018
Personally Known



Joseph Damiano
on behalf of Legacy

Joseph Damiano Sr.
Printed Name

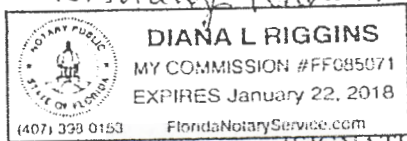
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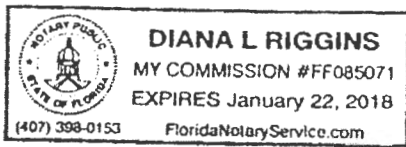
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22 day of February, 2017.

Diana L Riggins
NOTARY PUBLIC

My commission expires: 1/22/2018
Personally Known



[SIGNATURES CONTINUED ON NEXT PAGE]



Sworn to and subscribed before me, this
22 day of February, 2017

Diana Riggins
NOTARY PUBLIC

My commission expires: 1/22/2018

Personally Known

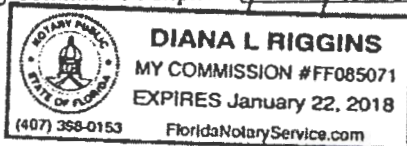
Joseph Damiano
JOSEPH DAMIANO

Anthony Joseph Damiano
ANTHONY JOSEPH DAMIANO

Sworn to and subscribed before me, this
22 day of February, 2017

Diana Riggins
NOTARY PUBLIC

My commission expires: 1/22/2018



Personally Known