

FILED

MAY 26 2015

Docketed by Ell



CHIEF FINANCIAL OFFICER
JEFF ATWATER
STATE OF FLORIDA

IN THE MATTER OF:

CASE NO. 167782-14-FC

HERITAGE CREMATION PROVIDER, L.L.C.,
LEGACY FUNERAL SERVICES L.L.C.,
ANTHONY JOSEPH (A.J.) DAMIANO, AND
JOSEPH DAMIANO

IMMEDIATE FINAL ORDER

COMES NOW JEFF ATWATER, in his capacity as Chief Financial Officer of the State of Florida or his designee, pursuant to sections 120.569(2)(n), and 497.157(3) Florida Statutes, and Rule 28-106.501, *Florida Administrative Code*, and issues this Immediate Final Order against Heritage Cremation Provider, L.L.C., Legacy Funeral Services, L.L.C., Anthony Joseph (AJ) Damiano, and Joseph Damiano which is within the purview of the Department of Financial Services, and as grounds therefore finds:

FINDINGS OF FACT

1. Pursuant to section 20.121 and chapter 497, Florida Statutes, and chapter 69K, *Florida Administrative Code*, the Department of Financial Services is the state agency charged with the regulation of funeral establishments and funeral establishment personnel in this state.
2. Heritage Cremation Provider, L.L.C.(hereinafter "Heritage") is a Florida limited liability corporation whose record address is 3526 N. Federal Highway, Ft. Lauderdale, Florida 33308, and whose mailing address is P.O. Box 26806, Ft. Lauderdale, Florida 33320. Legacy

Funeral Services L.L.C. (hereinafter “Legacy”) is a Colorado limited liability corporation doing business as Legacy Funeral and Cremation at 9800 Mt. Pyramid Court Ste. 400, Denver, Colorado 80112. Both limited liability corporations are managed and owned by Joseph Damiano and Anthony (A.J.) Damiano, and the corporate names are used interchangeably in funeral and cremation sales transactions.

3. Heritage is not currently licensed and never has been licensed in this state as a funeral establishment or as a direct disposer. Legacy is not currently licensed and never has been licensed in this state as a funeral establishment or as a direct disposer.

4. At no time relevant to the allegations of this order was either Heritage or Legacy licensed in this state as a funeral establishment pursuant to section 497.380, Florida Statutes, or as a direct disposer establishment pursuant to section 497.604, Florida Statutes.

5. At no time relevant to the allegations of this order was Anthony Joseph (A.J.) Damiano or Joseph Damiano licensed as a funeral director in this state pursuant to section 497.372, Florida Statutes.

6. At all times pertinent, Heritage and Legacy have conducted funeral-related services in this state without possessing a valid Florida license.

7. Upon information and belief, Heritage and Legacy operate in multiple jurisdictions under various aliases, including Heritage Cremation Provider, Legacy Funeral and Cremation Services, and Funeral Services Provider. The names and aliases are often used interchangeably, even in the same transaction.

8. On or about June 14, 2014, Heritage did hold itself out to Thomas A. Nicolette of Cooper City, Florida, a licensed funeral director in charge of John Hanks Memorial Services of Miami Springs, a Florida licensed funeral establishment, as a licensed funeral establishment and

did contract (or subcontract) for fourteen funeral and cremation services to be performed by John Hanks Memorial Services on behalf of the Florida funeral customers of Heritage. As part of this transaction, Heritage provided to Thomas A. Nicolette false and fraudulent documentation purporting to imply that Heritage was licensed and authorized in Florida to receive and handle human remains for cremation.

9. On or about May 16, 2013, Heritage and/or Legacy held themselves out to Gee & Sorenson Funeral Home of St. Petersburg, Florida, as a licensed funeral establishment and did contract (or subcontract) for seven funeral and cremation services to be performed by Gee & Sorenson Funeral Home on behalf of the Florida funeral customers of Heritage and Legacy. As part of this transaction, Heritage and/or Legacy provided to Gee and Sorenson Funeral Home false and fraudulent documentation purporting to imply that Heritage and Legacy were licensed and authorized in Florida to receive and handle human remains for cremation.

10. On or about September 17, 2014, Heritage did hold itself out via a website to be a licensed funeral establishment to Kristen Smith-Rodriguez of Titusville, Florida, who desired to make funeral and cremation arrangements on behalf of her deceased uncle, John Joseph Smith. As a result of information on the website, Kristen Smith-Rodriguez was operating under the premise that Heritage was a Florida licensed funeral establishment.

11. Heritage did enter into a contract with Francis Smith, the personal representative of the estate of John Joseph Smith, for funeral and cremation services for John Joseph Smith.

12. Pursuant to section 497.157(4), Florida Statutes, the violation of chapter 497 by an unlicensed person shall be presumed to be an irreparable harm to the public health, safety, and welfare. Funeral establishment directors and embalmers are called upon to provide their services to citizens at a time when the citizens are most vulnerable, immediately following the

death of a loved one. These citizens depend on licensees to care for the bodies of their loved ones in a manner consistent with the duties imposed by statute regarding proper care of the deceased. Nothing short of the immediate action described by this order will ensure the protection of the public from continued and potential harm.

APPLICABLE STATUTES

13. The evidence obtained by the Department demonstrates that Heritage Cremation Provider L.L.C. and Legacy Funeral Services, L.L.C. have violated the following provisions of chapter 497, Florida Statutes: sections 497.157, 497.372, 497.380(7) and 497.604 Florida Statutes. The provisions provide as follows:

14. Section 497.157, Florida Statutes, in pertinent part, provides that no person shall engage in activity for which a license is required under this chapter without holding a license in good standing.

15. Section 497.372, Florida Statutes, in pertinent part, provides that the practice of funeral directing shall be construed to consist of the following functions which may only be performed by a licensed funeral director:

(1)(a) Selling or offering to sell funeral services on an at-need basis.

(1)(b) Planning or arranging, on an at-need basis, the details of a funeral service with the family or friends of the decedent or any other person responsible for the service.

(1)(c) Making, negotiating, or completing the financial arrangements for a funeral services on an at- need-basis.

(1)(g) Using in connection with one's name or employment the words or terms "funeral director," "funeral establishment," "undertaker," "mortician," or any other word, term, title, or picture, or combination of any of the above, that when considered in the context of which it was used would imply that such person is engaged in the practice of funeral directing or that such person is holding himself out to the public as being engaged in the practice of funeral directing.

16. Section 497.380(3), Florida Statutes, in pertinent part, provides that no person may conduct, maintain, manage, or operate a funeral establishment unless a funeral establishment operating license has been issued under this chapter for that funeral establishment.

17. Section 497.380(7), Florida Statutes, in pertinent part, provides that each licensed funeral establishment shall have a one full time funeral director in charge and shall have a licensed funeral director reasonable available to the public during normal business hours for the establishment.

18. Section 497.604, Florida Statutes, in pertinent part, provides that no person may open or maintain an establishment at which to engage in or hold itself out as engaging in the practice of direct disposition unless such establishment is licensed to do so.

IT IS ORDERED THAT that Heritage Cremation Provider L.L.C.'s and Legacy Funeral Service's L.L.C.'s activities under chapter 497, Florida Statutes are restricted as follows:

(a) Heritage Cremation Provider L.L.C., Legacy Funeral Service L.L.C. Anthony Joseph (A.J.) Damiano, and Joseph Damiano are prohibited from and shall cease and desist immediately from selling or offering to sell funeral services, including direct disposition, on an at-need basis in this state.

(b) Heritage Cremation Provider L.L.C., Legacy Funeral Service L.L.C., Anthony Joseph (A.J.) Damiano and Joseph Damiano are prohibited from and shall cease and desist immediately from planning or arranging the details of any funeral service, including direct disposition, with the family or any friends of the decedent or any other person responsible for the service in this state.

(c) Heritage Cremation Provider L.L.C., Legacy Funeral Service L.L.C., Anthony Joseph (A.J.) Damiano and Joseph Damiano are prohibited from and shall cease and desist immediately from making, negotiating, or completing the

financial arrangements for a funeral service, including direct disposition, on an at-need basis in this state.

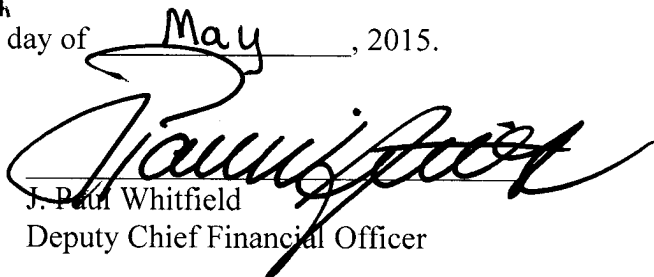
(d) Heritage Cremation Provider L.L.C., Legacy Funeral Service L.L.C., Anthony Joseph (A.J.) Damiano and Joseph Damiano are prohibited from and shall cease and desist immediately from any use of any word, term, title, or picture that would imply that it engaged in the practice of funeral directing, including direct disposition, or that it is holding itself out to the public as being engaged in the practice of a funeral establishment, including direct disposition in this state.

(e) Heritage Cremation Provider L.L.C. and Legacy Funeral Service L.L.C., Anthony Joseph (A.J.) Damiano and Joseph Damiano are prohibited and shall cease and desist immediately from engaging in any financial dealings with funeral home customers that involve the collection of monies or the determination of funeral expenses, including direct disposition expenses in this state.

(f) Heritage Cremation Provider L.L.C. and Legacy Funeral Service L.L.C. are prohibited and shall cease and desist immediately from holding themselves out to the people of this state through an internet web site to be licensed funeral establishments and licensed direct disposition.

DONE AND ORDERED this 26th day of May, 2015.



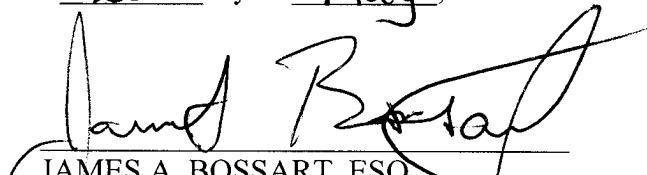

J. Paul Whitfield
Deputy Chief Financial Officer

NOTICE OF RIGHTS

Any party who is adversely affected by this Order is entitled to seek judicial review of this Order pursuant to section 120.68, Florida Statutes, and Florida Rules of Appellate Procedure 9.110 and 9.190.. Review proceedings must be instituted by filing a petition for review or notice of appeal with Julie Jones, Agency Clerk, at 612 Larson Building, 200 East Gaines Street, Tallahassee, Florida 32399-0333, and a copy of the same, accompanied by the applicable filing fees, with the appropriate district court of appeal within 30 days of rendition of this Order.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Immediate Final Order has been provided to the Respondents at 3526 N. Federal Highway, Ft. Lauderdale, Florida 33308, P.O. Box 28606, Ft. Lauderdale, Florida 33308, and 9800 Mt. Pyramid Court, Ste. 400, Denver, Colorado 80112, by U.S. Certified Mail on this 26th day of May, 2015.


JAMES A. BOSSART, ESQ.
Florida Department of Financial Services
Division of Legal Services

200 East Gaines Street
Tallahassee, Florida 32399-0333
(850) 413-4125

Attorney for Department

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AMENDED CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Immediate Final Order has been provided to Spiegel and Utrera, P.A., registered agent for Respondents Heritage Cremation Provider, L.L.C. and Legacy Funeral Services, L.L.C. at 1840 SW 22nd Street, 4th floor, Miami, Florida 33145 by U.S. Certified Mail on this 19th day of June, 2015.

A handwritten signature in black ink, appearing to read "James A. Bossart", is written over a horizontal line. The signature is stylized with a large, sweeping initial "J" and a long, horizontal stroke extending to the right.

JAMES A. BOSSART, ESQ
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