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Broussard's takes on defunct pre-need providers over contract financial obligations

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By Marilyn Tennissen

Like most funeral homes, Broussard's Mortuary offers pre-need arrangements to consumers through third-party planning service companies. However the Beaumont-based mortuary claims several of those third-parties have had their business suspended, leaving Broussard's with millions of dollars in financial obligations to customers.



Broussard's Mortuary Inc. filed suit against the pre-needs providers on April 28 in Jefferson County District Court.

Named as defendants in the suit are National Pre-Arranged Services Inc., RBT Trust II, National Heritage Enterprises Inc., Forever Enterprises Inc., Lincoln Memorial Life Insurance Co. and Memorial Life Insurance Co. According to the complaint, all of the defendants are owned by RBT Trust II.

According to the plaintiff's original petition, as part of its long history of service to the community Broussard's has cooperated with companies who offer pre-need planning services.

Broussard's Mortuary is a family-owned business that has been in service in Southeast Texas for more than 100 years. Five generations of the Broussard family have owned and operated the mortuary.

"Under its contracts, Broussard's pledges to provide services when due, at an initial price which can be locked-in so that people have peace of mind," the complaint states. "Broussard's looks to those third-party corporations and insurance companies to prudently invest up-front payments so that Broussard can receive a reasonable compensation for the effects of inflation when services are rendered years or decades later."

The plaintiff claims that the third parties have collected in excess of \$11 million from customers whose contracts are assigned to Broussard's.

But the value of those services when rendered, the suit states, "will be much greater than that because of the passage of time and the effects of inflation."

Broussard's says the defendants in the case have breached their agreement and have engaged in "imprudent and/or dishonest financial dealings that have caused them to have their business suspended by the state of Texas."

But the mortuary states it will continue to honor its obligations to the people who purchased the pre-need services and seeks to have the third-parties "live up to their agreements to fairly compensate Broussard's."

According to the suit, NPS has marketed and sold tens of thousands of pre-need contracts in a number of states since 1979.

By Texas statute, the pre-need contracts are secured by corresponding life insurance policies which are issued at the same time of the contract and owned by the purchaser of the contract. The policyholder assigns the right to receive death benefits under the policy to the pre-need contract seller, because the seller is required to pay for funeral expenses under the terms of the contract.

"Thus, in Texas, as long as the individual makes his or her pre-need contract payments, the pre-need contract seller must transmit to the insurer those payments as premium payments on the corresponding policies," wrote plaintiff's attorney John Werner of Read, Morgan & Quinn.

According to the complaint, Broussard's entered into an agreement with the defendants for a pre-need program for the funeral home on April 15, 1999. The contract provided that Broussard's would support the program benefits, assist in promoting the concept of preneed and provide prices on services and merchandise to NPS and give NPS at least a 30 day notice in advance of price changes.

In turn, the suit states, the defendants would pay the retail price of the funeral services to Broussard's and pay up to an additional 5 percent per year inflation factor.

Broussard's claims it fully performed its obligations under the contract.

At the same time Broussard's filed the lawsuit, it also gave written notice to the defendants advising of its specific complaints and the amount of actual damages and expenses it incurred.

In April, the state of Texas suspended the operations of NPS, Lincoln Memorial Life and Memorial Service Life Insurance as of March 17, 2008.

Under the terms of the order and Texas law, Broussard's will be compensated for the contract amount or the "base value" value of the contract.

"However, the state has informed plaintiff that they are unlikely to receive any of the 'inflation amount' (also sometimes referred to as the 'growth factor' or 'inflation factor')," the complaint states.

The law obligates Broussard's to provide funeral services under already executed pre-need contracts, and Broussard's says it will honor those agreements. But without the "inflation amounts," Broussard's says it is doing so at prices below the current cost of the services and the gap between values will continue to increase as time passes.

The plaintiff alleges that the defendants' "business model" was untenable and that defendants knew either in 1999 or thereafter that they would not be able to honor those contracts.

"As such, defendants are guilty of fraudulent inducement into contract and/or common-law fraud," the suit states.

Broussard's further alleges that because the defendants knew that they were making false representations, that it is entitled to exemplary damages.

The suit also lists several alleged violations of the Deceptive Trade Practices Act and the Texas Insurance Code, including:

- Representing that the policies and contracts had characteristics, uses, benefits or qualities which they did not have;
- Representing that policies and contracts conferred obligations that they either did not or intended not to honor;
- Misrepresenting material facts or policy provisions to clients relating to the coverage;
- Misrepresenting an insurance policy by making statements to mislead a reasonably prudent person to a false conclusion of fact;
- Filing false financial statements with a public official concerning the insurers' financial condition by making false entries or willfully omitting a material entity in books or reports to be examined by the official;
- Falsely representing statements regarding the terms of the policies, the benefits or advantages of the policies and the dividends or share of surplus to be received under the policies; and
- Failing to disclose information about goods and services that was known to defendants to induce plaintiff to enter into an agreement, which if plaintiff had knowledge of would not have entered into the agreement.

Broussard's is seeking reasonable cost of lost benefits under the contract, treble damages, attorneys' fees, interest, costs and other relief.

The case has been assigned to Judge Milton Shuffield, 136th Judicial District.

Case No. D181-676

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