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State blamed for pre-need funeral fund losses

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In the strongest language yet, funeral homes that have lost millions of dollars from a pre-need funeral trust fund are blaming Illinois regulators charged with keeping money safe.

Furthermore, funeral home directors allege, the state comptroller's office, which regulates the pre-need funeral industry, kept the burgeoning financial crisis under wraps. By the time the truth emerged, it was too late to stave off losses that might now exceed \$100 million, say funeral directors who are suing the Illinois Funeral Directors Association and others.

"Even state regulators who took on the responsibility for monitoring the pre-need trust failed to protect plaintiffs and other pre-need trust depositors," funeral directors say in court documents filed Friday. "Indeed, when questioned by funeral directors on why the issue was not addressed in 2001, when the (Illinois Office of the Comptroller), but not the funeral directors, knew of a budding deficit, the (comptroller's) response was that the deficit was 'pennies on the dollar,' as if that excused (the comptroller) from doing anything about it."

The deficit has mushroomed, funeral home directors say, so that a fund with a worth once estimated at more than \$300 million might lose more than a third of its value.

Saying the association's attorneys are reviewing the new complaint, IFDA executive director Duane Marsh had no further comment Monday. A top official in the comptroller's office has refused to answer questions about what, if anything, regulators did between 2001 and 2006, when the comptroller's office notified IFDA that the deficit stood at \$38 million.

"I'm not going to talk to you, I think that's pretty clear," Peg Roth, assistant comptroller, told a reporter after a June 4 meeting with funeral directors upset about the fund's financial prospects.

Roth told a reporter to ask the department's spokeswoman what the comptroller's office did about the troubled fund before 2006. But spokeswoman Carol Knowles did not return a phone call.

The amended complaint filed last week is based in part on financial records from the comptroller's office recently obtained during discovery. The comptroller's office and the state Department of Financial and Professional Regulation have refused to release records in response to FOIA requests from The State Journal-Register.

Comptroller Dan Hynes won election in 1999 after promising to strengthen laws regulating the pre-need funeral industry. Two years later, the General Assembly passed a Hynes-backed bill that gave the comptroller's office more power to do so.

But funeral home directors in their lawsuit say Hynes and other state officials failed to enforce laws that give government the power to step in when pre-need funeral funds go sideways. Last fall, the pre-need funeral fund was written down by \$59 million to balance books, and the fund has continued losing money, funeral directors say.

"Of course, the original \$59 million write-down and the continued erosion of the pre-need trust could have been prevented from the outset or, alternatively, stopped once it was discovered had the (state Division of Banking) and (the comptroller) fulfilled the obligations they were charged with by Illinois law," the plaintiffs say.

Beyond taking no action as the fund's value plummeted, funeral home directors contend the comptroller's office and IFDA took pains to ensure no one would find out about the crisis.

A 2005 audit by Hynes staff showed a deficit of approximately \$38 million, prompting the comptroller's office to tell IFDA, which was then administering the fund, that the situation was "intolerable." But funeral home directors whose money is at risk didn't find out anything was amiss until the fall of 2007, when Hynes revoked IFDA's license under which it had acted as the fund's trustee. The license, issued when Roland Burris was comptroller during the 1980s, should never have been issued, the comptroller's office said.

"IFDA explicitly requested complete confidentiality of the purported audit, preliminary report, discussions, reports and all ultimate findings issued by (the comptroller's office)," the plaintiffs say. "Of utmost concern to the IFDA was shielding this information from the public and, thus, its members and consumers across Illinois, to avoid any negative impact such exposure might have. IFDA even went so far as to request that all audit-related materials be protected from otherwise lawful Freedom of Information Act requests."

By early 2008, funeral home directors who ultimately sued IFDA and others were getting nervous, even though association officials continued urging funeral directors to invest in the troubled fund. Regions Bank had considered taking over as trustee, but refused to do so unless life insurance policies that constituted virtually all of the fund's investments were liquidated, which would have cost millions of dollars in penalties and taxes.

A year ago, funeral home directors told IFDA to liquidate policies and put Regions in charge of their money despite financial penalties, but they backed off after the association board promised an actuarial study within six weeks that would reveal the fund's financial prospects. No such study was forthcoming, the plaintiffs say.

Less than two weeks after funeral directors backed down from their demand, the state Department of Financial and Professional Regulation issued a cease-and-desist order barring any disbursements from the fund except to pay for funerals, which prevented transfers to Regions.

"The IDFPR essentially froze the pre-need trust funds in the toxic ... insurance policies," the plaintiffs say.

Bruce Rushton can be reached at 788-1542.

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