

BEFORE THE ADMINISTRATIVE HEARING COMMISSION  
STATE OF MISSOURI

**FILED**

JUL 05 2012

ADMINISTRATIVE HEARING  
COMMISSION

STATE BOARD OF EMBALMERS )  
AND FUNERAL DIRECTORS, )  
3605 Missouri Boulevard )  
Jefferson City, Missouri 65102 )

PETITIONER, )

v. )

PHILLIPS FUNERAL HOME, INC., )  
5 South Oak Street )  
P.O. Box 5 )  
Eldon, MO 65026 )

RESPONDENT. )

Case number: 12-1226 EM

SERVE REGISTERED AGENT:  
R. G. Declue  
401 E. North Street  
Eldon, Missouri 65206

COMPLAINT

The State Board of Embalmers and Funeral Directors, by and through its counsel seeks authority to discipline the funeral establishment license held by Respondent and for its cause of action states:

*The Parties*

1. Petitioner, the State Board of Embalmers and Funeral Directors (the "Board"), is an agency of the State of Missouri, established and existing pursuant to Section 333.151, RSMo<sup>1</sup>,

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<sup>1</sup> All statutory references are to the Revised Statutes of Missouri, 2000, as supplemented, unless otherwise indicated.

and charged with enforcing the provisions of Chapter 333, RSMo, and portions of Chapter 436, RSMo, and the regulations adopted thereunder.

2. Respondent, Phillips Funeral Home, Inc. (“Phillips Funeral”) is a Missouri corporation, in good standing with its principal place of business at 5 South Oak Street, Eldon, Missouri 65206.

3. Phillips Funeral holds two funeral establishment licenses numbered 002487 (located at 5 South Oak, Eldon, Missouri) and 002488 (located in Eugene, Missouri) issued by the Board. These licenses are and have been current and active at all times relevant to this Complaint.

4. Kevin D. Simpson (“Simpson”) holds funeral director license number 005062 and serves as designated funeral director in charge of the both funeral establishments and served as such at all times relevant to this Complaint.

5. Simpson is registered as a preneed agent, registration number 2010001288.

6. Phillips Funeral holds seller license number 2009039238 issued by the Board. This license is and has been current and active at all times relevant to this Complaint.

7. Simpson serves as manager in charge of the seller’s business.

8. Phillips Funeral holds provider license number 2009039237 issued by the Board. This license is and has been current and active at all times relevant to this Complaint.

9. Phillips Funeral is a Missouri corporation in good standing and on its annual report filed with the Missouri Secretary of State it lists Simpson as its President, Secretary, Treasurer and as a member of the Board of Directors of the corporation.

10. Prior to August 28, 2009, the effective date of the current provisions of Chapter 436 related to preneed contracts, Phillips Funeral registered with the Board as a preneed seller

and held seller registration number S00646. This registration became void by operation of law on August 28, 2009.

11. Prior to August 28, 2001, the effective date of the current provisions of Chapter 436 related to preneed contracts, Phillips Funeral registered with the Board as a preneed seller and held provider registration number P01183. This registration became void by operation of law on August 28, 2009.

12. At all times relevant to this Complaint, Phillips Funeral has been authorized as a seller and provider of preneed funeral contracts in Missouri, either by registration or by license.

*Jurisdiction and Venue*

13. Jurisdiction and venue are proper.

14. Sections 333.330.2 and .3, RSMo, authorize this action and state, in relevant part:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any holder of any certificate of registration or authority, permit, or license required by this chapter, or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit, or license for any one or any combination of the following causes:

\* \* \*

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation, or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

\* \* \*

(14) Violation of any professional trust or confidence;

(15) Making or filing any report required by sections 436.400 to 436.520 regulating preneed which the licensee knows to be false or knowingly failing to make or file a report required by such sections;

\* \* \*

(19) Violation of any of the provisions of chapter 193, 194, 407, or 436;

...

3. After the filing of such complaint, the proceedings shall be conducted in accordance with the provisions of chapter 621. Upon a finding by the administrative hearing commission that the grounds, provided in subsection 2 of this section, for disciplinary action are met, the board may, singly or in combination, censure or place the person named in the complaint on probation on such terms and conditions as the board deems appropriate for a period not to exceed five years, or may suspend, for a period not to exceed three years, or revoke any certificate of registration or authority, permit, or license issued under this chapter.

*Relevant Statutes and Regulations*

Post August 28, 2009 statutes and regulations

15. Section 333.011, RSMo, states, in relevant part:

1. As used in this chapter, unless the context requires otherwise, the following terms have the meanings indicated:

(1) "Board", the state board of embalmers and funeral directors created by this chapter;

(2) "Embalmer", any individual licensed to engage in the practice of embalming;

(3) "Funeral director", any individual licensed to engage in the practice of funeral directing;

(4) "Funeral establishment", a building, place, crematory, or premises devoted to or used in the care and preparation for burial or transportation of the human dead and includes every building, place or premises maintained for that purpose or held out to the public by advertising or otherwise to be used for that purpose;

(5) "Funeral merchandise", caskets, grave vaults, receptacles, and other personal property incidental to the final disposition of a dead human body, including grave markers, monuments, tombstones, and urns;

(6) "Person", any individual, partnership, corporation, cooperative, association, or other entity;

... \* \* \*

(9) "Preneed agent", any person authorized to sell a preneed contract for or on behalf of a seller;

(10) "Provider", the person designated or obligated to provide the final disposition, funeral, or burial services or facilities, or funeral merchandise described in a preneed contract;

(11) "Seller", the person who executes a preneed contract with a purchaser and who is obligated under such preneed contract to remit payment to the provider.

16. Section 333.061.2(1), RSMo, requires that each funeral establishment shall be "under the general management and supervision of a duly licensed funeral director."

17. Regulation 20 CSR 1.040(14) defines the term "Funeral director-in-charge" as

[a]n individual licensed as a funeral director by the State Board of Embalmers and Funeral Directors responsible for the general management and supervision of a Missouri licensed funeral establishment in the state of Missouri. Each Missouri licensed funeral establishment shall have a Missouri licensed funeral director designated as the funeral director-in-charge.

18. Section 333.320, RSMo, states:

1. No person shall sell, perform, or agree to perform the seller's obligations under, or be designated as the seller of, any preneed contract unless, at the time of the sale, performance, agreement, or designation, such person is licensed by the board as a seller and authorized and registered with the Missouri secretary of state to conduct business in Missouri.

2. An applicant for a preneed seller license shall:

(1) File an application on a form established by the board and pay an application fee in an amount established by the board by rule;

(2) Be an individual resident of Missouri who is eighteen years of age or older, or a business entity registered with the Missouri secretary of state to transact business in Missouri;

(3) If the applicant is a corporation, each officer, director, manager, or controlling shareholder, shall be eligible for licensure if they were applying for licensure as an individual;

(4) Meet all requirements for licensure;

(5) Identify the name and address of a custodian of records responsible for maintaining the books and records of the seller relating to preneed contracts;

(6) Identify the name and address of each licensed provider that has authorized the seller to designate such person as a provider under a preneed contract;

(7) Have established, as grantor, a preneed trust or an agreement to utilize a preneed trust with terms consistent with sections 436.400 to 436.520. A trust shall not be required if the applicant certifies to the board that the seller will only sell insurance-funded or joint account-funded preneed contracts;

(8) Identify the name and address of a trustee or, if applicable, the financial institution where any preneed trust or joint accounts will be maintained; and

(9) File with the board a written consent authorizing the state board to inspect or order an investigation, examination, or audit of the seller's books and records which contain information concerning preneed contracts sold by or on behalf of the seller.

3. Each seller shall apply to renew his or her license on or before October thirty-first of each year or a date established by the division of professional registration pursuant to section 324.001. A license which has not been renewed prior to the renewal date shall expire. Applicants for renewal shall:

(1) File an application for renewal on a form established by the board by rule;

(2) Pay a renewal fee in an amount established by the board by rule; and

(3) File annually with the board a signed and notarized annual report as required by section 436.460.

4. Any license which has not been renewed as provided by this section shall expire. A licensee who fails to apply for renewal within two years of the renewal date may apply for reinstatement by satisfying the requirements of

subsection 3 of this section and paying a delinquent fee as established by the board by rule.

19. Regulation 20 CSR 2120-3.200(C) states:

All sellers shall designate an individual to serve as manager in charge of the seller's business. This individual shall either reside or work within the state of Missouri. The seller shall designate the manager in charge in its initial application for licensure. If the manager in charge changes, the seller shall provide written notice to the board within thirty (30) days of the change.

20. Section 436.405, RSMo, states, in relevant part:

1. As used in sections 436.400 to 436.520, unless the context otherwise requires, the following terms shall mean:

(1) "Beneficiary", the individual who is to be the subject of the disposition or who will receive funeral services, facilities, or merchandise described in a preneed contract;

(2) "Board", the board of embalmers and funeral directors;

(3) "Guaranteed contract", a preneed contract in which the seller promises, assures, or guarantees to the purchaser that all or any portion of the costs for the disposition, services, facilities, or merchandise identified in a preneed contract will be no greater than the amount designated in the contract upon the preneed beneficiary's death or that such costs will be otherwise limited or restricted;

(4) "Insurance-funded preneed contract", a preneed contract which is designated to be funded by payments or proceeds from an insurance policy or a deferred annuity contract that is not classified as a variable annuity and has death benefit proceeds that are never less than the sum of premiums paid;

(7) "Nonguaranteed contract", a preneed contract in which the seller does not promise, assure, or guarantee that all or any portion of the costs for the disposition, facilities, service, or merchandise identified in a preneed contract will be limited to the amount designated in the contract upon the preneed beneficiary's death or that such costs will be otherwise limited or restricted;

(8) "Preneed contract", any contract or other arrangement which provides for the final disposition in Missouri of a dead human body, funeral or burial services or facilities, or funeral merchandise, where such disposition, services, facilities, or merchandise are not immediately required. Such contracts include, but are not limited to, agreements providing for a membership fee or any other fee for the purpose of furnishing final disposition, funeral or burial services or facilities, or funeral merchandise at a discount or at a future date[.]

21. Section 436.412, RSMo, states:

Each preneed contract made before August 28, 2009, and all payments and disbursements under such contract shall continue to be governed by this chapter as the chapter existed at the time the contract was made. Any licensee or registrant of the board may be disciplined for violation of any provision of sections 436.005 to 436.071\* within the applicable statute of limitations. Joint accounts in existence as of August 27, 2009, shall continue to be governed by the provisions of section 436.053, as that section existed on August 27, 2009.

22. Section 436.415, RSMo, states:

1. Except as otherwise provided in sections 436.400 to 436.520, the provider designated in a preneed contract shall be obligated to provide final disposition, funeral or burial services and facilities, and funeral merchandise as described in the preneed contract.

2. The seller designated in a preneed contract shall be obligated to collect and properly deposit and disburse all payments made by, or on behalf of, a purchaser of a preneed contract and ensure that its statutory and contractual duties are met, in compliance with sections 436.400 to 436.520.

23. Section 436.425, RSMo, states:

1. All preneed contracts shall be sequentially numbered and in writing and in a font type and size that are easily read, and shall clearly and conspicuously:

(1) Include the name, address and phone number of the purchaser, beneficiary, provider and seller;



- (2) Identify the name, address, phone and license number of the provider and the seller;
- (3) Set out in detail the disposition, funeral and burial services and facilities, and merchandise requested;
- (4) Identify whether the contract is trust funded, insurance funded, or joint account funded;
- (5) Include notice that the cancellation of the contract shall not cancel any life insurance funding the contract, and that insurance cancellation is required to be made in writing to the insurer;
- (6) Include notice that the purchaser will only receive the cash surrender value of any insurance policy funding the contract if cancelled after a designated time, which may be less than the amount paid into the policy;
- (7) Include notice that the board provides by rule that the purchaser has the right to transfer the provider designation to another provider;
- (8) Prominently identify whether the contract is revocable or irrevocable;
- (9) Set forth the terms for cancellation by the purchaser or by the seller;
- (10) Identify any preneed trust or joint account into which contract payments shall be deposited, including the name and address of the corresponding trustee or financial institution;
- (11) Include the name, address and phone number of any insurance company issuing an insurance policy used to fund the preneed contract;
- (12) Include the name and signature of the purchaser, the provider or its authorized representative, the preneed agent responsible for the sale of the contract, and the seller or its authorized representative;
- (13) Prominently identify whether the contract is a guaranteed or nonguaranteed contract;
- (14) Include any applicable consumer disclosures required by the board by rule; and
- (15) Include a disclosure on all guaranteed installment payment contracts informing the purchaser what will take place in the event the beneficiary dies before all installments have been paid, including an explanation of

what will be owed by the purchaser for the funeral services in such an event;

(16) Comply with the provisions of sections 436.400 to 436.520 or any rule promulgated thereunder.

2. A preneed contract shall be voidable and unenforceable at the option of the purchaser, or the purchaser's legal representative, if it is determined in a court of competent jurisdiction that the contract is not in compliance with this section or not issued by a seller licensed under chapter 333, or if the provider has not consented to serve as provider at the time the contract was executed. Upon exercising the option by written notice to the seller and provider, all payments made under such contract shall be recoverable by the purchaser, or the purchaser's legal representative, from the contract seller, trustee, or other payee thereof.

3. A beneficiary who seeks to become eligible to receive public assistance under chapter 208 or any other applicable state or federal law may irrevocably waive their rights to receive any refund or payment of any moneys from the funds or insurance used to fund their preneed contract. Such irrevocable waiver may be executed at any time and shall be in writing, signed and dated by the beneficiary and shall be delivered to the seller and any applicable trustee, financial institution or insurance company.

4. All purchasers shall have the right as provided in this chapter to cancel or rescind a revocable preneed contract and transfer any preneed contract with or without cause.

5. A preneed contract, shall not be changed from a trust-funded, insurance-funded, or joint account-funded preneed contract without the written consent of the purchaser.

24. Section 436.450, RSMo, states:

1. An insurance-funded preneed contract shall comply with sections 436.400 to 436.520 and the specific requirements of this section.

2. A seller, provider, or any preneed agent shall not receive or collect from the purchaser of an insurance-funded preneed contract any amount in excess of what is required to pay the premiums on the insurance policy as assessed or required by the insurer as premium payments for the insurance policy except for any amount required or authorized by this chapter or by rule. A seller shall not receive or collect any administrative or other fee from the purchaser for or in connection with an insurance-funded preneed contract, other than those fees or amounts assessed by the insurer. As of August 29, 2009, no preneed seller,

provider, or agent shall use any existing preneed contract as collateral or security pledged for a loan or take preneed funds of any existing preneed contract as a loan for any purpose other than as authorized by this chapter.

3. Payments collected by or on behalf of a seller for an insurance-funded preneed contract shall be promptly remitted to the insurer or the insurer's designee as required by the insurer; provided that payments shall not be retained or held by the seller or preneed agent for more than thirty days from the date of receipt.

4. It is unlawful for a seller, provider, or preneed agent to procure or accept a loan against any insurance contract used to fund a preneed contract.

5. Laws regulating insurance shall not apply to preneed contracts, but shall apply to any insurance or annuity sold with a preneed contract; provided, however, the provisions of sections 436.400 to 436.520 shall not apply to annuities or insurance policies regulated by chapters 374, 375, and 376 used to fund preneed funeral agreements, contracts, or programs.

6. This section shall apply to all preneed contracts including those entered into before August 28, 2009.

7. For any insurance-funded preneed contract sold after August 28, 2009, the following shall apply:

(1) The purchaser or beneficiary shall be the owner of the insurance policy purchased to fund a preneed contract; and

(2) An insurance-funded preneed contract shall be valid and enforceable only if the seller or provider is named as the beneficiary or assignee of the life insurance policy funding the contract.

8. If the proceeds of the life insurance policy exceed the actual cost of the goods and services provided pursuant to the nonguaranteed preneed contract, any overage shall be paid to the estate of the beneficiary, or, if the beneficiary received public assistance, to the state of Missouri.

25. Section 436.460, RSMo, states, in relevant part:

1. Each seller shall file an annual report with the board which shall contain the following information:

(1) The contract number of each preneed\* contract sold since the filing of the last report with an indication of, and whether it is funded by a trust, insurance or joint account;

(2) The total number and total face value of preneed contracts sold since the filing of the last report;

(3) The contract amount of each preneed contract sold since the filing of the last report, identified by contract;

(4) The name, address, and license number of all preneed agents authorized to sell preneed contracts on behalf of the seller;

(5) The date the report is submitted and the date of the last report;

(6) The list including the name, address, contract number and whether it is funded by a trust, insurance or joint account of all Missouri preneed contracts fulfilled, cancelled or transferred by the seller during the preceding calendar year;

(7) The name and address of each provider with whom it is under contract;

(8) The name and address of the person designated by the seller as custodian of the seller's books and records relating to the sale of preneed contracts;

(9) Written consent authorizing the board to order an investigation, examination and, if necessary, an audit of any joint or trust account established under sections 436.400 to 436.520, designated by depository or account number;

(10) Written consent authorizing the board to order an investigation, examination and if necessary an audit of its books and records relating to the sale of preneed contracts; and

(11) Certification under oath that the report is complete and correct attested to by an officer of the seller. The seller or officer shall be subject to the penalty of making a false affidavit or declaration.

...

4. A seller that sells or who has sold any insurance-funded preneed contracts shall also include in the annual report required by subsection 1 of this section:

(1) The name and address of each insurance company issuing insurance to fund a preneed contract sold by the seller during the preceding year;

- (2) The status and total face value of each policy;
- (3) The amount of funds the seller directly received on each contract and the date the amount was forwarded to any insurance company; and
- (4) Certification under oath that the information required by subsections 1 to 3 of this section is complete and correct attested to by an authorized representative of the insurer. The affiant shall be subject to the penalty of making a false affidavit or declaration.

5. Each seller shall remit an annual reporting fee in an amount established by the board by rule for each preneed contract sold in the year since the date the seller filed its last annual report with the board. This reporting fee shall be paid annually and may be collected from the purchaser of the preneed contract as an additional charge or remitted to the board from the funds of the seller. The reporting fee shall be in addition to any other fees authorized under sections 436.400 to 436.520.

6. All reports required by this section shall be filed by the thirty-first day of October of each year or by the date established by the board by rule. Annual reports filed after the date provided herein shall be subject to a late fee in an amount established by rule of the board.

7. If a seller fails to file the annual report on or before its due date, his or her preneed seller license shall automatically be suspended until such time as the annual report is filed and all applicable fees have been paid.

8. This section shall apply to contracts entered into before August 28, 2009.

26. Section 436.465, RSMo, states, in relevant part:

A seller shall maintain:

- (1) Adequate records of all preneed contracts and related agreements with providers, trustees of a preneed trust, and financial institutions holding a joint account established under sections 436.400 to 436.520;
- (2) Records of preneed contracts, including financial institution statements and death certificates, shall be maintained by the seller for the duration of the contract and for no less than five years after the performance or cancellation of the contract.

27. Section 436.470, RSMo, states, in relevant part:

1. Any person may file a complaint with the board to notify the board of an alleged violation of this chapter. The board shall investigate each such complaint.

2. The board shall have authority to conduct inspections and investigations of providers, sellers, and preneed agents and conduct financial examinations of the books and records of providers, sellers, and preneed agents and any trust or joint account to determine compliance with sections 436.400 to 436.520, or to determine whether grounds exist for disciplining a person licensed or registered under sections 333.310 to 333.340, at the discretion of the board and with or without cause. The board shall conduct a financial examination of the books and records of each seller as authorized by this section at least once every five years, subject to available funding.

3. Upon determining that an inspection, investigation, examination, or audit shall be conducted, the board shall issue a notice authorizing an employee or other person appointed by the board to perform such inspection, investigation, examination, or audit. The notice shall instruct the person appointed by the board as to the scope of the inspection, investigation, examination or audit.

4. The board shall not appoint or authorize any person to conduct an inspection, investigation, examination, or audit under this section if the individual has a conflict of interest or is affiliated with the management of, or owns a pecuniary interest in, any person subject to inspection, investigation, examination, or audit under chapter 333 or sections 436.400 to 436.520.

5. The board may request that the director of the division of professional registration, the director of the department of insurance, financial institutions and professional registration, or the office of the attorney general designate one or more investigators or financial examiners to assist in any investigation, examination, or audit, and such assistance shall not be unreasonably withheld.

6. The person conducting the inspection, investigation, or audit may enter the office, premises, establishment, or place of business of any seller or licensed provider of preneed contracts, or any office, premises, establishment, or place where the practice of selling or providing preneed funerals is conducted, or where such practice is advertised as being conducted for the purpose of conducting the inspection, investigation, examination, or audit.

7. Upon request by the board, a licensee or registrant shall make the books and records of the licensee or registrant available to the board for inspection and copying at any reasonable time, including, any insurance, trust, joint account, or financial institution records deemed necessary by the board to determine compliance with sections 436.400 to 436.520.

8. The board shall have the power to issue subpoenas to compel the production of records and papers by any licensee, trustee or registrant of the board. Subpoenas issued under this section shall be served in the same manner as subpoenas in a criminal case.

9. All sellers, providers, preneed agents, and trustees shall cooperate with the board or its designee, the division of finance, the department of insurance, financial institutions and professional registration, and the office of the attorney general in any inspection, investigation, examination, or audit brought under this section.

10. This section shall not be construed to limit the board's authority to file a complaint with the administrative hearing commission charging a licensee or registrant with any actionable conduct or violation, regardless of whether such complaint exceeds the scope of acts charged in a preliminary public complaint filed with the board and whether any public complaint has been filed with the board.

28. Section 436.525, RSMo, states:

The board shall maintain as a closed and confidential record, not subject to discovery unless the person provides written consent for disclosure, all personal information about any individual preneed purchaser or beneficiary, including but not limited to name, address, Social Security number, financial institution account numbers, and any health information disclosed in the preneed contract or any document prepared in conjunction with the preneed contract; provided, however, that the board may disclose such confidential information without the consent of the person involved in the course of voluntary interstate exchange of information; or in the course of any litigation concerning that person or the provider, seller, or sales agent involved with the preneed contract; or pursuant to a lawful request or to other administrative or law enforcement agencies acting within the scope of their statutory authority. In any such litigation, the board and its attorneys shall take reasonable precautions to ensure the protection of such information from disclosure to the public.

29. Regulation 20 CSR 2120-2.100 establishes fees charged by the Board, and states, in relevant part:

- (1) The following fees hereby are established by the State Board of Embalmers and Funeral Directors:

...

(FF) Seller per Contract Annual Reporting Fee (for contracts executed on or after August 28, 2009) \$36

*Statutes Prior to August 28, 2009*

30. Prior to the enactment of Senate Bill 1, effective August 28, 2009, preneed contracts were governed by provisions of Section 436.005 through 436.071 (2000) (the “Old Law”).

31. Section 436.005, RSMo (2000), set forth definitions for the Old Law and stated, in relevant portion:

(5) “Preneed contract”, any contract or other arrangement which requires the current payment of money or other property in consideration for the final disposition of a dead human body, or for funeral or burial services or facilities, or for funeral merchandise, where such disposition, services, facilities or merchandise are not immediately required, including, but not limited to, an agreement providing for a membership fee or any other fee having as its purpose the furnishing of burial or funeral services or merchandise at a discount, except for contracts of insurance, including payment of proceeds from contracts of insurance, unless the preneed seller or provider is named as the owner or beneficiary in the contract of insurance[.]

32. Section 436.007, RSMo (2000), of the Old Law stated, in relevant portion:

1. Each preneed contract made after August 13, 1982, shall be void and unenforceable unless:

- (1) It is in writing;
- (2) It is executed by a seller who is in compliance with the provisions of section 436.021;
- (3) It identifies the contract beneficiary and sets out in detail the final disposition of the dead body and funeral services, facilities, and merchandise to be provided;



- (4) It identifies the preneed trust into which contract payments shall be deposited, including the name and address of the trustee thereof;
- (5) The terms of such trust and related agreements among two or more of the contract seller, the contract provider, and the trustee of such trust are in compliance with the provisions of sections 436.005 to 436.071;
- (6) It contains the name and address of the seller and the provider.

...

4. Subject to the provisions of subdivision (5) of section 436.005, the provisions of sections 436.005 to 436.071 shall apply to the assignment of proceeds of any contract of insurance for the purpose of funding a preneed contract or written in conjunction with a preneed contract. Laws regulating insurance shall not apply to preneed contracts, but shall apply to any insurance sold with a preneed contract.

33. Section 436.021, RSMo (2000) of the Old Law required each seller to file an annual report with the Board and stated, in relevant part:

2. Each seller under one or more preneed contract shall:
  - (1) Maintain adequate records of all such contracts and related agreements with providers and the trustee of preneed trusts regarding such contracts, including copies of all such agreements;
  - (2) Notify the state board in writing of the name and address of each provider who has authorized the seller to sell one or more preneed contracts under which the provider is designated or obligated as the contract's "provider";
  - (3) File annually with the state board a signed and notarized report on forms provided by the state board. Such a report shall only contain:
    - (a) The date the report is submitted and the date of the last report;
    - (b) The name and address of each provider with whom it is under contract;
    - (c) The total number of preneed contracts sold in Missouri since the filing of the last report;
    - (d) The total face value of all preneed contracts sold in Missouri since the filing of the last report;
    - (e) The name and address of the financial institution in Missouri in which it maintains the trust accounts required under the provisions of section 436.005 to 436.071 and the account numbers of such trust accounts[.]

34. Section 436.069, RSMo (2000) of the Old Law required a per contract annual reporting fee and stated:

1. After July 16, 1985, each seller shall remit an annual reporting fee in an amount of two dollars for each preneed contract sold in the year since the date the seller filed its last annual report with the state board. This reporting fee shall be paid annually and may be collected from the purchaser of the preneed contract as an additional charge or remitted to the state board from the funds of the seller.
2. After July 16, 1985, each provider shall remit an annual reporting fee of thirty dollars.
3. The reporting fee authorized by subsections 1 and 2 of this section are in addition to the fees authorized by section 436.071.

#### Conduct Giving Cause for Discipline

35. By letter dated August 9, 2011, the Board notified Phillips Funeral that the Board would conduct a financial examination of Phillips Funeral as a seller per Section 436.470.2, RSMo, and requested that Phillips Funeral provide specified records to the Board for the examination.

36. Phillips subsequently provided records to the Board.

37. On October 17 and October 18, 2011, the Board's examiner visited the premises of Phillips Funeral to physically examine the seller's books and records of Phillips Funeral.

38. On October 17, 2011, Kevin Simpson, on behalf of Phillips Funeral, signed and dated a "Financial Examination Attestation" that stated, among other things:

As a preneed seller, I attest to the following: To the best of my knowledge, I have provided the State Board of Embalmers and Funeral Directors full and complete access to all records necessary for the board to conduct a financial examination of the books and records of this seller.

39. On November 17, 2011, Board staff submitted to the Board a Financial Examination Report on Phillips Funeral (the "Examination Report"). Attached as Exhibit A to this Complaint is a true and accurate copy of the Examination Report that is incorporated herein

by reference as if fully set forth in this Complaint<sup>2</sup>. Exhibit A has two attachments: Exhibit 1 lists the consumers with no written preneed contracts and Exhibit 2 is the Financial Examination Attestation.

40. The Examination Report found one exception discovered in the examination: “1) Forty-four insurance policies for consumers lacked preneed contracts.”

41. Exhibit 1 to the Examination Report details the consumers for whom the funeral home was named as owner, beneficiary or assignee of an insurance policy and for which there was no accompanying written preneed contract.

42. Phillips Funeral provided the Board with its records regarding the insurance policies referenced in Exhibit 1 of the Examination Report.

43. By letter dated November 18, 2011, the Board mailed to Phillips Funeral a copy of the Examination Report with a request for response of verification that the deficiencies had been corrected or with a plan to correct the deficiencies within 30 days from November 18, 2011.

44. By letter dated December 13, 2011, Kevin Simpson, on behalf of Phillips Funeral, responded to the Board’s Examination Report with a carbon copy to Mr. Donald Otto, Jr., and stated:

Based on my understanding of the law which I feel was confirmed at the recent State Board meeting in Kansas City, no preneed contract is required on the identified insurance assignments. Further, I would note that almost all of them (37 of the 44) were before the changes to the law created by Senate Bill 1.

45. By letter dated December 29, 2011, the Board requested additional information from Phillips Funeral including a response as to why Phillips Funeral believed the insurance assignments fell outside the requirements of the preneed contract statutes.

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<sup>2</sup> Consumer names and identifying information have been redacted per Section 436.525, RSMo.

46. By letter dated January 24, 2012, Kevin Simpson, on behalf of Phillips Funeral, responded to the Board's December 29, 2011 letter, with a carbon copy to Mr. Don Otto, Jr., with a letter explaining that Phillips Funeral believed that the statutes required no preneed contract for the consumers cited in the Examination Report.

47. By letter dated February 10, 2012, the Board requested response within thirty days regarding four consumers for whom Phillips Funeral was listed as the owner of insurance policies and in violation of Section 435.450.7, RSMo.

48. By letter dated March 8, 2012, Kevin Simpson, on behalf of Phillips Funeral, responded to the Board with documentation showing that Phillips Funeral was no longer the owner of the insurance policies listed in the February 10, 2012 letter to Phillips Funeral.

49. A preneed contract is sold when a seller accepts an insurance assignment or is named as owner (prior to August 28, 2009) or beneficiary of a life insurance policy pursuant to an arrangement between the seller and the consumer to ensure payment for the final disposition of the consumer's dead human body and for funeral or burial services, facilities or merchandise upon the death of the consumer.

50. Phillips Funeral sold and entered into preneed contracts with those consumers specified in Exhibit A when Phillips Funeral accepted insurance assignment or was named as beneficiary on an insurance policy when the consumer made such assignment or designation with the intent of paying Phillips Funeral for the costs of his or her own final disposition.

51. Phillips Funeral did not report the insurance funded preneed arrangements listed in Exhibit A on its seller annual reports.

*Causes for Discipline*

52. There is cause for discipline under Section 333.330.2(14), RSMo, in that Phillips Funeral violated the professional trust and confidence of its consumers by not memorializing with a written preneed contract to document the contractual obligation for Phillips Funeral to use the proceeds from the consumer's life insurance policies to pay for the final expenses of each consumer listed in Exhibit A.

53. There is cause for discipline under Section 333.330.2 (15), RSMo, in that Phillips did not accurately report on its seller annual reports the accurate number of preneed contracts sold in the prior year because it did not report the preneed arrangements made upon the receipt of insurance policy assignments or when Phillips knew that consumers named Phillips Funeral as owner or beneficiary of life insurance policies for the purpose of providing funds for funeral goods and services at the time of the death of the consumer.

54. There is cause for discipline pursuant to Section 333.330.2 (19), RSMo in that Phillips Funeral violated provisions of Chapters 333 and 436, RSMo, and its accompanying regulations, as follows:

- a. After August 28, 2009, Phillips Funeral accepted life insurance assignments in an arrangement with consumers for Phillips Funeral to provide for the final disposition of the consumers' dead human bodies when such disposition was not immediately required, but did not memorialize that arrangement with a written preneed contract as required by the provisions of Sections 436.425 and 436.450, RSMo.
- b. Before August 28, 2009, Phillips Funeral accepted life insurance assignments in an arrangement with consumers to provide for the final disposition of the

consumers' dead human bodies when such disposition was not immediately required, but did not memorialize that arrangement with a written preneed contract as required by the provisions of Section 436.007.1, RSMo (2000) (repealed as of August 28, 2009, but still applicable per Section 436.412, RSMo.)

- c. Phillips Funeral did not accurately report the number of preneed contracts on its seller annual reports in that it did not include arrangements where the consumer assigned life insurance policies or named Phillips Funeral as assignee or beneficiary of life insurance policies for the purpose of providing funds for funeral goods and services at the time of death of the consumer in violation of Section 436.460, RSMo, and Section 436.021, RSMo (2000) when Phillips was aware of this arrangement for final disposition.
- d. Phillips Funeral failed to pay the state board the proper per contract fee in that it did not include, in its numbers of preneed contracts sold, the preneed contracts entered into with consumers who assigned or named Phillips Funeral as beneficiary or owner of life insurance policies in violation of 20 CSR 2120-2.100 and Section 436.069, RSMo (2000).
- e. Phillips violated Section 436.415, RSMo, in that it failed to meet its statutory duties as a seller.

WHEREFORE, based on the foregoing, Petitioner prays this Commission to conduct a hearing pursuant to Chapter 621, RSMo, and thereafter issue its findings of fact and conclusions of law on all counts of this Complaint determining that cause exists for Petitioner to take

disciplinary action against the funeral establishment licenses held by Phillips Funeral as authorized by Section 333.330,RSMo.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Sharon K. Euler", with a long horizontal flourish extending to the right.

Sharon K. Euler #42950  
Fletcher Daniels State Office Building  
Suite 510  
615 E. 13<sup>th</sup> Street  
Kansas City, Missouri 64106  
Telephone: 816-889-3687  
Telefax: 816-889-2345  
E-mail: [sharon.euler@pr.mo.gov](mailto:sharon.euler@pr.mo.gov)

**State Board of Embalmers and Funeral Directors  
Financial Examination Report**

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**Audit #:** 12-2009039238R  
**Examiner(s):** Lisa Wildhaber  
**License #:** 2009039238  
**Preneed Seller Name:** Phillips Funeral Home Inc.  
**Date(s) of Examination:** 10/17/11-10/18/11  
**Date Report Submitted:** 11/17/11

**Summary of Examination Results**

Phillips Funeral Home Inc. (PFH), d/b/a Phillips Funeral Home, holds seller license number 2009039238. The license is current and active.

On 10/17/11-10/18/11, I made an on-site visit to PFH located at 5 South Oak Street, Eldon, MO 65026 to review all preneed files. Mr. Gary Schofield and Mr. Kevin Simpson met with me and showed me where the preneed files were located and allowed me access to preneed files.

PFH primarily utilizes a third party seller and insurance policies to fund preneed contracts. The examination also showed that PFH previously used a trust company.

After review of active preneed contracts provided and funding sources, there appear to be sufficient assets in place that are equal to or greater than amounts paid by consumers. The preneed contracts and records reviewed appear to meet the statutory requirements, except as summarized below and on Exhibit 1.

The seller signed an attestation stating that they had provided access to all records and that they had not used preneed funds as loan collateral. The attestation is attached as Exhibit 2.

**Exceptions**

- 1) Forty-four insurance policies for consumers lacked preneed contracts.

**Fund Management**

Seller appears to have procedures in place to ensure that consumer funds relating to active preneed contracts are properly safeguarded.

**Record Keeping**

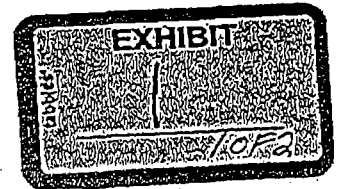
Overall record keeping relating to active preneed contracts appears to be in good order. We completed our examination based on the records provided.





Seller name: Phillips Funeral Home Inc		Examination Date: 10/17/11-10/18/11	
Examinaton Number: 12-2009039238R			
Contract Number	Contract Date	Consumer Name	Comments
none	none	B████, M████	no preneed contract for insurance assignment
none	none	B████, D████	no preneed contract for insurance assignment
none	none	B████, B████	no preneed contract for insurance assignment
none	none	B████, M████	no preneed contract for insurance assignment
none	none	B████, P████	no preneed contract for insurance assignment
none	none	B████, M████	no preneed contract for insurance assignment
none	none	C████, J████	no preneed contract for insurance assignment
none	none	C████, O████	no preneed contract for insurance assignment
none	none	C████, W████	no preneed contract for insurance assignment
none	none	C████, D████	no preneed contract for insurance assignment
none	none	C████, A████	no preneed contract for insurance assignment
none	none	D████, H████	no preneed contract for insurance assignment
none	none	D████████, A████	no preneed contract for insurance assignment
none	none	E████, M████, A████	no preneed contract for insurance assignment
none	none	E████, A████	no preneed contract for insurance assignment
none	none	F████, G████	no preneed contract for insurance assignment
none	none	F████, R████	no preneed contract for insurance assignment
none	none	F████, B████	no preneed contract for insurance assignment
none	none	H████, M████	no preneed contract for insurance assignment
none	none	H████, E████	no preneed contract for insurance assignment
none	none	H████, N████	no preneed contract for insurance assignment
none	none	H████, H████	no preneed contract for insurance assignment
none	none	H████, H████	no preneed contract for insurance assignment
none	none	H████, U████	no preneed contract for insurance assignment
none	none	H████, I████	no preneed contract for insurance assignment
none	none	H████, I████	no preneed contract for insurance assignment
none	none	J████, C████	no preneed contract for insurance assignment
none	none	K████, E████	no preneed contract for insurance assignment
none	none	L████, V████	no preneed contract for insurance assignment
none	none	M████, D████	no preneed contract for insurance assignment
none	none	M████, G████	no preneed contract for insurance assignment
none	none	P████, M████	no preneed contract for insurance assignment

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Seller name: Phillips Funeral Home Inc			Examination Date: 10/17/11-10/18/11
Examinaton Number: 12-2009039238R			
none	none	R [REDACTED] P [REDACTED]	no preneed contract for insurance assignment
none	none	R [REDACTED] E [REDACTED]	no preneed contract for insurance assignment
none	none	R [REDACTED] J [REDACTED]	no preneed contract for insurance assignment
none	none	S [REDACTED] A [REDACTED]	no preneed contract for insurance assignment
none	none	S [REDACTED] R [REDACTED]	no preneed contract for insurance assignment
none	none	S [REDACTED] T [REDACTED]	no preneed contract for insurance assignment
none	none	S [REDACTED] B [REDACTED]	no preneed contract for insurance assignment
none	none	T [REDACTED] J [REDACTED]	no preneed contract for insurance assignment
none	none	W [REDACTED] H [REDACTED]	no preneed contract for insurance assignment
none	none	W [REDACTED] F [REDACTED]	no preneed contract for insurance assignment
none	none	W [REDACTED] T [REDACTED]	no preneed contract for insurance assignment
none	none	W [REDACTED] M [REDACTED]	no preneed contract for insurance assignment

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STATE OF MISSOURI  
DIVISION OF PROFESSIONAL REGISTRATION  
FINANCIAL EXAMINATION ATTESTATION

STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS  
3806 MISSOURI BOULEVARD  
P.O. BOX 423  
JEFFERSON CITY, MO 65102  
TELEPHONE (573) 751-0813  
TTY (800) 736-2988 • FAX (573) 751-1155

**I. INSTRUCTIONS**

Please read the below statements and page 2 of this attestation prior to signing the form.

**II. GENERAL INFORMATION**

SELLER NAME (PRINT FULL NAME) <b>PHILLIPS FUNERAL HOME, INC</b>	
SELLER ADDRESS (CITY, STATE, ZIP) <b>ELDON, MO 65026</b>	SELLER LICENSE NUMBER (REQUIRED) <b>2009039238</b>

**III. LOAN COLLATERAL AFFIDAVIT (STATUTORY REFERENCES ARE AVAILABLE ON THE REVERSE SIDE OF THIS FORM)**

As a preneed seller, I attest to the following:

As of August 29, 2009, this seller has not used any preneed contracts as collateral or security pledged for a loan, nor have we taken any preneed funds of any existing preneed contract as a loan for any purposes. Further, we have not procured or accepted a loan against any investment, joint account, or insurance contract used to fund a preneed contract.

SIGNATURE OF SELLER REPRESENTATIVE 	DATE <b>10/17/11</b>
PRINTED NAME AND TITLE OF PERSON SIGNING ON BEHALF OF SELLER <b>KEVIN D. SIMPSON, PRESIDENT</b>	

**IV. RECORD ACCESS AFFIDAVIT (STATUTORY REFERENCES ARE AVAILABLE ON THE REVERSE SIDE OF THIS FORM)**

As a preneed seller, I attest to the following:

to the best of my knowledge, I have provided the State Board of Embalmers and Funeral Directors full and complete access to all records necessary for the board to conduct a financial examination of the books and records of this seller.

SIGNATURE OF SELLER REPRESENTATIVE 	DATE <b>10/17/11</b>
PRINTED NAME AND TITLE OF PERSON SIGNING ON BEHALF OF SELLER <b>KEVIN D. SIMPSON, PRESIDENT</b>	

