

IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

FILED
OCT 24 2013
COLE COUNTY
CIRCUIT COURT

Missouri Funeral Trust, Inc.)
A for profit Missouri Corporation)
in good standing)
1757 Woodclift Drive, Suite 202)
Jefferson City, Missouri 65109)

Cause No.: BACCC00635

Plaintiff,)

v.)

Missouri State Board of Embalmers)
And Funeral Directors)
3605 Missouri Boulevard)
Jefferson City, Missouri 65102)
SERVE:)
Sandy Sebastian, Executive Director)
3605 Missouri Boulevard)
Jefferson City, Missouri 65102-0423)

Defendant.

**PETITION FOR DECLARATORY JUDGMENT, DAMAGES AND
INJUNCTIVE RELIEF**

Comes Now the Missouri Funeral Trust, a Missouri Corporation, and for its cause of action states as follows:

1. Plaintiff is a Missouri for profit Corporation in good standing with its principal place of business located at 1757 Woodclift Drive, Suite 202, Jefferson City, Missouri 65109. Its Registered Agent is: Donald C. Otto, Jr. It is authorized to bring suit. By Corporate Resolution, which is attached as Exhibit A, the Corporate Board of Directors has authorized this lawsuit.

2. Defendant is located in Cole County, Missouri and is a public governmental body as defined in §610.010 RSMo.

3. On July 16, 2013 Plaintiff sent to the Defendant through its Chief Operating Officer (“COO”) a letter requesting certain public records as defined under §610.010 (6) RSMo. 2000. Such letter is attached as Exhibit B.

4. The impetus for such request is a letter that had been sent by the Defendant to various persons who are customers. Purchasers or beneficiaries of preneed services contracted through the Plaintiff Corporation. Such person or persons are being inquired of with regard to certain information. Plaintiff attaches samples of those letters labeled Exhibit C1, C2, C3, C4 and C5.

5. By Exhibit B, Plaintiff made a Sunshine inquiry specifically asking for “copies of all letters sent to Missouri Funeral Trust purchasers or beneficiaries requesting from them information regarding Missouri Funeral Trust contracts that had been sent out in 2013.” By such Sunshine letter Plaintiff requested that fees be waived in order to serve the public interest but made it clear that such documents could be provided by electronic means or if necessary copying costs would be supplied by the Plaintiff.

6. On July 19, 2013 a response was made to such Sunshine request. That response is attached as Exhibit D. Defendant has refused to provide any documents claiming that they are exempt under Chapter 610 RSMo. stating, “The records you request are closed records as they are part of the routine financial examination of the Missouri Funeral Trust that the Board is conducting pursuant to its statutory mandate in §436.470.2 RSMo....”

7. Such records requested are not and should not be considered closed records for several specific reasons:

- a. The information contained in the subject letter sent by Defendant (Exs. C1-C5) contains information that was in fact provided to the Defendant by the Plaintiff. For example, each of the Exhibits C1 through C5 where their information references or makes a request for “provider name (funeral establishment)”; “Contract Number”; “Total amount of contract”; and “Amount paid as of 3/1/13” is information that has already been provided by the Plaintiff to the Defendant.
- b. In each of the exhibits C1 through C5 the Defendant is indicating in some categories that such information is “unknown”. That is an incorrect and false statement. For example, in each of Exhibits C1 through C5 the Defendant has indicated “unknown” for the category of “Amount paid as of 3/1/13”. In each instance the Defendant does have that information with regard to the “Amount Paid” because Plaintiff provided it to them. In the instance of Exhibits C4 and C5 where it indicates that the “Contract Number” is “unknown” that, too, is incorrect in that Plaintiff has supplied such Contract Number.

8. It is the information and belief that in some instances of these letters that the Defendant has included inaccurate information such as the incorrect contract number or the “amount paid”.

9. Of far greater issue and of public concern and public interest is that it is the information and belief of Plaintiff that Defendant has sent these letters to the beneficiaries of such pre-need contracts. Many beneficiaries do not know that someone, like a family member, has purchased such a pre-need contract and named that individual

as the beneficiary. The receipt of such letter has violated the right of privacy, the trust and contract between the purchaser and seller of the pre-need contract (Plaintiff) and in at least one instance, if not multiple instances, has resulted in great embarrassment and consternation where a beneficiary had been contacted by the Defendant sending such a letter. The beneficiary not knowing a family member had made a pre-need funeral arrangement for that beneficiary.

10. It is the information and belief that the Defendant has sent out approximately 16,000 of these letters. Hence, if they contain extensive inaccurate information, as described above, and are being sent to beneficiaries, then there is a great public interest of the subject matter of the Defendant's actions and more specifically of public interest in Plaintiff's inquiry through its Sunshine Letter to the Defendant to disclose the information requested in that Sunshine Letter.

11. It is also the further information and belief that Defendant has sent out such letter with inaccurate information about "amount paid" and as a result has undermined the confidence of the buyer in Plaintiff. For example, if a pre-need contract was for \$10,000 and Defendant sent out a letter indicating that the contract amount was \$2,500, the Plaintiff has had their trust and relationship with the purchaser severely damaged.

12. Defendant cannot contend that providing such information to this Plaintiff will in any way violate any right of privacy or in any way jeopardize the public interest in that such information that the Defendant already has because it would have been provided to the Defendant by the Plaintiff.

13. Such request will disclose to whom the information or this letter was sent, therefore discovering whether other beneficiaries have been contacted improperly by the Defendant, as well as disclose the inaccuracy of information being conveyed in those letters.

14. Plaintiff is ready, willing and able to supply necessary costs for such production of such records. However, based upon the above described factual circumstances such information should be provided at no cost to the Plaintiff.

15. It is the information and belief of the Plaintiff that the Defendant continues to send out these types of letters, similar to Exhibits C1 through C5 which are attached hereto and being send out to not only the customers of Plaintiff and purchasers of pre-need contracts, but as stated above that such letters are being sent to beneficiaries.

COUNT I
DECLARATORY JUDGMENT

16. Plaintiff restates paragraphs 1 through 15 above and incorporates them by reference as if fully restated herein.

17. Plaintiff is an aggrieved person and as such a Corporation authorized to function under Missouri law has a right to seek under Chapter 610 copies of records that should be open public records and by the request that is established by Exhibit B has formally complied with Chapter 610 in making such request and now seeks this Court's determination that it has properly requested those records and those records are subject to Chapter 610 and Plaintiff is entitled to bring this action to enforce provisions of §§610.010 to 610.026.

18. Defendant has its main office in Cole County and as a public entity and an agency of the State of Missouri is subject to the open records or Sunshine Law and the request made by the Plaintiff Corporation.

19. Defendant has asserted that such documents are not subject to production due to an ongoing examination and therefore it would be up to this Court to make a determination in this declaratory action as to whether such documents are covered by the Sunshine Law and if such production has been improperly withheld.

20. As stated above the acts of the Defendant in refusing to comply with Plaintiff's Sunshine Request would be violative of Chapter 610 the Missouri Sunshine Law. Should this Court make a determination that such records are subject to the Sunshine Law and should have been produced based upon the Plaintiff's Sunshine letter request (Exhibit B) then further relief should be granted, including injunctive relief and damages awarded.

21. If the Court should agree with Plaintiff then Plaintiff is entitled to an injunction or mandamus relief directing that the Defendant produce such documents requested. Such injunctive relief is authorized by §610.030 RSMo.

22. The burden of proof is on the Defendant to show and establish under §610.027.2 that these documents should not be produced and are not otherwise subject to Sunshine request and production.

23. Plaintiff is entitled to injunctive relief and declaratory relief under §610.030 with regard to these matters and as a prevailing party should be awarded attorneys' fees under §610.027.3 RSMo. (2000).

WHEREFORE, Plaintiff prays the Court to grant the declaratory relief and determine and order the following:

1. That Plaintiff has made a proper Sunshine request by its letter of July 16, 2013 (Ex. B);
2. That the Defendant received such request;
3. That the documents requested are subject to Chapter 610 and otherwise are required to be produced under Missouri Sunshine Law and that it is in the distinct public interest and concern that such documents be provided and that the request by the Plaintiff is otherwise a proper Sunshine Request;
4. The Defendant has not articulated a legitimate basis or exemption from the production of such documents and has unlawfully refused to produce such documents;
5. That as a result of this Court's determination for the need for injunctive relief including an order directing the Defendant to be in compliance with the Missouri Sunshine Law and specifically directing the Defendant to produce such documents requested.

Further, Plaintiff prays the Court grant to Plaintiff the necessary injunctive and mandatory order causing the Defendant to produce such documents requested and to enjoin them from further violation of such law.

Plaintiff further prays the Court grant to Plaintiff its attorneys' fees and costs for having to bring this cause of action and to assess a Judgment for those attorneys' fees and costs against the Defendant.

COUNT II
DAMAGES

24. Plaintiff restates paragraphs 1 through 23 above and incorporates them by reference as if fully restated herein.

25. Defendant has knowingly refused to produce the documents requested and did not articulate a justifiable reason for failing and refusing to produce such documents after receiving a proper Sunshine document request.

26. Per the Statute the Plaintiff is entitled to damages as more specifically stated and allowed for under the Statute.

27. Because Plaintiff has properly requested the subject documents and Defendant has refused to produce such documents, the Court should now award to Plaintiff a proper amount of damages.

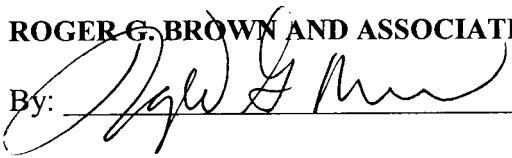
28. Because Plaintiff has properly stated a cause of action and has otherwise properly requested documents that are subject to the Missouri Sunshine Law, Plaintiff is likewise entitled to an award of attorneys' fees.

WHEREFORE, Plaintiff prays Judgment under Count II in its favor and against the Defendant and prays that the Court grant damages to Plaintiff in the amount that is allowable under the Statute and to further grant to Plaintiff its costs and attorneys' fees in bringing this cause of action.

Respectfully Submitted,

ROGER G. BROWN AND ASSOCIATES

By: _____


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