

BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

FILED

JAN 19 2017

ADMINISTRATIVE HEARING
COMMISSION

STATE BOARD OF EMBALMERS)
AND FUNERAL DIRECTORS,)
)
Petitioner,)
)
v.)
)
MISSOURI FUNERAL TRUST, INC.)
)
Respondent.)

Case No. 16-3710

PETITIONER'S MOTION FOR LEAVE TO FILE
FIRST AMENDED COMPLAINT

COMES NOW Petitioner State Board of Embalmers and Funeral Directors ("Petitioner"), by and through counsel, pursuant to 1 CSR 15-3.350(4), and for its Motion for Leave to File First Amended Complaint against Missouri Funeral Trust, Inc. ("Respondent") states:

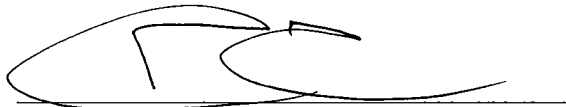
1. Petitioner filed its Complaint in this case on November 2, 2016.
2. Respondent filed its Answer on November 29, 2016.
3. The hearing in this case is currently set for April 10, 2017.
4. Neither party has exchanged any discovery requests.
5. Petitioner has further reviewed the available information in this case, and an amended complaint is necessary to further elaborate on and clarify the bases for seeking discipline.
6. The filing of a First Amended Complaint will not prejudice Respondent.
7. This request is not being made for the purpose of delay, harassment, or for any other improper purpose.
8. Petitioner's proposed First Amended Complaint is attached hereto as Exhibit A and is incorporated herein by reference.

WHEREFORE, Petitioner respectfully requests that this Commission grant it leave to file its First Amended Complaint and accept and deem filed the First Amended Complaint attached to and filed with this motion. Petitioner requests such other and further relief this Commission deems just and proper under the circumstances.

Respectfully Submitted,

BRYDON, SWEARENGEN & ENGLAND, PC

By:



Scott A. Hamblin #48704
312 East Capitol Avenue
P. O. Box 456
Jefferson City, MO 65102-0456
(573) 635-7166
Fax: (573) 635-0427
scotthamblin@brydonlaw.com
ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was mailed via U.S. Mail and sent via electronic mail on this 19th day of January, 2017 to:

Harvey Tettlebaum
P.O. Box 1251
Jefferson City, Missouri 65102
Harvey.tettlebaum@huschblackwell.com



Attorneys for Petitioner

BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

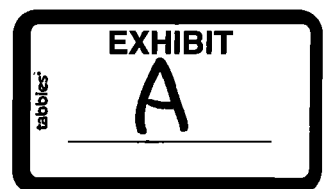
STATE BOARD OF EMBALMERS)	
AND FUNERAL DIRECTORS,)	
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Petitioner,)	
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v.)	Case No. 16-3710
)	
MISSOURI FUNERAL TRUST, INC.)	
)	
Respondent.)	

FIRST AMENDED COMPLAINT

COMES NOW Petitioner State Board of Embalmers and Funeral Directors (“Petitioner” or “Board”), by and through counsel, and for its First Amended Complaint against Missouri Funeral Trust, Inc. (“Respondent” or “MFT”) states:

Summary

The Board has cause to discipline MFT for violations revealed during a mandatory financial examination. The Board provided MFT extended opportunity to resolve outstanding issues with the financial examination and MFT failed to take the necessary action to provide the Board with information required to complete its financial examination. The Board has cause to discipline MFT for 1) Failure to maintain adequate records of its preneed contracts and agreements; 2) Failure to refund cancelled contracts or provide documentation to the Board sufficient to explain the presence of funds in the preneed trust; 3) Failure to provide the Board with preneed contracts and agreements when lawfully requested; 4) Holding funds in its preneed trust without proper agreements and authority; 5) Failure to exercise its statutory duties as a seller; 6) Failure to properly trust consumer payments on preneed contracts and



7) Misrepresenting to other sellers, providers and consumers its role with regard to preneed contracts it calls “rollovers.”

The Parties

1. The Board is an agency of the State of Missouri created and established by Section 333.151, RSMo, for the purposes of executing and enforcing the provisions of Chapter 333, RSMo, and portions of Chapter 436, RSMo, related to preneed funeral contracts.
2. The Board has statutory authority to conduct financial examinations, investigations, inspections and audits. Section 436.470.2, RSMo.
3. Missouri Funeral Trust, Inc. (“MFT”) is a Missouri for profit corporation, in good standing. MFT has registered its address with the Board as 1757 Woodclift Drive, Suite 202, Jefferson City, Missouri 65109. MFT is wholly owned by Missouri Funeral Directors Association, a Missouri nonprofit corporation.
4. MFT holds seller license number 2009037497 that is and has been current and active at all times relevant to this Complaint.
5. MFT has registered Donald C. Otto, Jr. as its agent with the Missouri Secretary of State.
6. At all times relevant to this Complaint, MFT has been licensed as a seller of preneed contracts under the provisions of Chapters 333 and 436, RSMo.

Jurisdiction and Venue

7. Jurisdiction and venue are proper before this Commission pursuant to Chapter 621, RSMo, and Section 333.330, RSMo.

Procedural Background

8. Section 436.470, RSMo, authorizes the Board to conduct inspections, investigations and financial examinations of the books and records of providers, sellers, preneed agents, and

trust accounts to determine compliance with sections 436.400 to 436.520, RSMo and mandates that these financial examinations be done at least once every five years

9. Section 436.470.9, RSMo, states:

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. The Board notified MFT that it planned to conduct an inspection and financial examination.
11. On or about January 3, 2014, the Board sent a copy of the first examination report (hereinafter called "Report") to MFT for response and comment and to allow MFT to provide any information to clarify or correct any portion of the first examination report. The Report noted approximately 17 exceptions to be resolved by MFT.
12. Thereafter, the Board continued to request information from MFT to resolve the exceptions in the Report.
13. MFT met with the Board on May 29, 2014 to resolve the exceptions to the Report based upon MFT's failure to maintain adequate records, of and for pre-need contracts, and related agreements. MFT failed to resolve the exceptions during that meeting.
14. By letter dated September 23, 2014, the Board requested additional information from MFT and provided it the opportunity to resolve the remaining exceptions on the MFT Examination Report, and in this letter, requested updates to the Board by October 3, November 23 and December 23, 2014.
15. MFT responded to the September 23, 2014 letter requesting additional time to respond. The Board allowed an additional 30 days for response.
16. MFT provided a response by letter dated November 24, 2014.

17. MFT provided no further updates after November 24, 2014.
18. MFT resolved some, but not all of the exceptions noted in the Report.
19. Section 333.330.2, RSMo, authorizes the Board to file a complaint with the Commission and states 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. . .

(4) Obtaining or attempting to obtain any fee, charge, tuition, or other compensation by fraud, deception, or misrepresentation;

(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;

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant thereto...

(11) Assisting or enabling any person to practice or offer to practice any profession licensed or regulated by this chapter regulating preneed who is not licensed or registered and currently eligible to practice thereunder...

(14) Violation of any professional trust or confidence...

(19) Violation of any of the provisions of chapter 193, 194, 407, or 436[.]

Conduct Providing Cause for Discipline

Failure to Maintain Adequate Records

20. Section 436.465, RSMo, imposes a duty on MFT as a seller of preneed contracts to maintain adequate records and states:

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.

21. Section 436.021.2, RSMo (2000) (Old Law), required each seller to

(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.

22. No regulation or statute defines the term “adequate records.”

23. MFT signed a “Financial Examination Attestation” (hereinafter called “Attestation”) in which it stated that it provided to the Board all records requested to complete the financial examination as follows:

“As a preneed seller, I attest to the following: To the best of my knowledge, I have provided to 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.”

24. MFT maintains no records of its activities as a seller. The MFT Trustee maintains records of the preneed trust but it is unclear whether those records are held by the MFT Trustee as part of their duties as trustee or if those records are held by the MFT Trustee so that the MFT Trustee can perform all acts of a preneed seller, per the provisions of Chapters 333 and 436, RSMo.

25. The Board was unable to complete its financial examination as required by Section 436.470.2, RSMo, because MFT fails to maintain adequate records.

26. MFT on its own and/or through the MFT Trustee fails to maintain the following records of preneed contracts for preneed contracts on which MFT is listed as the seller:

- a. Documentation of the amounts paid by consumers on their preneed contracts so that the examination could confirm that the proper amounts were held in trust (noted in Exception 7 of the Report);

- b. Records that explain why the principle held in trust exceeds the face value of the preneed contract associated with that account (noted in Exceptions 6, 9, 12, and 17 of the Report);and
- c. Records regarding the insurance policies for insurance funded preneed contracts (noted in Exceptions 13, 15 and 16).

Exception 1 of the Report – Cancelled Contracts

- 27. MFT's records, as noted in exception number 1 of the Report, show active contracts that have been cancelled or in which the beneficiaries are deceased, but yet MFT still has money in trust.
- 28. MFT failed to provide documentation to account for funds it holds for preneed contracts that have either been cancelled or the preneed beneficiaries have died, as detailed in Exception 1 of the MFT Examination Report.
- 29. MFT should have documentation that a purchaser cancelled a contract because Section 436.456(3), RSMo, requires written notice from the purchaser to both the seller and the trustee as a condition precedent to cancelling a contract and obtaining a refund. In addition, if a contract has been cancelled the funds should have been paid out, according to statute and the direction of the purchaser of the preneed contract. Failure to pay out on a cancelled contract violates the provisions of Section 436.456, RSMo.
- 30. Section 436.035.1 (2000) (Old Law) has similar notice provisions which provide:

At any time before the final disposition of the dead body, or before funeral services, facilities, or merchandise described in a preneed contract are provided by the provider designated in the preneed contract, the purchaser may cancel the contract without cause by

delivering written notice thereof to the seller and the provider. Within fifteen days after its receipt of such notice, the seller shall pay to the purchaser a net amount equal to all payments made into trust under the contract. Upon delivery of the purchaser's receipt for such payment to the trustee, the trustee shall distribute to the seller from the trust an amount equal to all deposits made into the trust for the contract.

31. No money should remain in trust for a cancelled contract.
32. If the preneed beneficiary has died and MFT has knowledge of this death, then MFT should be able to notify the Board that it has not received a certificate of performance to authorize the funds to be paid out to the provider, or that MFT has received a certificate of performance and the MFT Trustee has refused to pay the funds out and why, or after the statutory time has lapsed, those funds should be treated as other unclaimed property in Missouri or funds held on behalf of another.
33. Upon information and belief, MFT unlawfully holds preneed funds in the MFT Trust that should have been paid out to either the preneed contract purchasers or the providers that provided the funeral services for the preneed contract beneficiaries.
34. MFT has failed to provide the Board, as part of the financial examination, with documents to explain why money continues to remain in trust for cancelled contracts or contracts for which a provider has performed services on behalf of the purchasers all of which violate section 436.465, RSMo, and section 436.021.2, RSMo (2000) (Old Law) and show failure to comply with the provisions of Section 436.470.7, RSMo.

Exception 11 of the Report – Failure to Provide Contracts and Agreements

35. MFT failed to provide the Board with copies of original preneed contracts when lawfully requested, as noted in Exception 11 of the Report, which include, but are not limited to the following:

- (a) MFT has a document titled "Contract Amendment" for J. A., contract number MC51119, signed by the purchaser and signed by the agent of the funeral home purportedly amending a preneed contract but fails to: (1) maintain the original or a copy of the original preneed contract and (2) fails to have a signature by the Seller, as required by section 436.007.1(2) RSMo (2000) (Old Law) and section 436.425.1(12), RSMo.
- (b) MFT has a document titled "Contract Amendment" for V.A., contract number MC51120, signed by the purchaser and the agent of the funeral home purportedly amending a preneed contract but fails to: (1) maintain either the original or a copy of the original preneed contract and (2) fails to have a signature by the Seller, as required by section 436.007.1(2) RSMo (2000) (Old Law) and section 436.425.1(12), RSMo.
- (c) MFT has a document titled "Contract Amendment" for L.M.B., contract number MC51238, signed by the purchaser, agent of the funeral home, and seller amending the preneed contract, but fails to maintain either the original or a copy of the original preneed contract.
- (d) MFT has a document titled "Contract Amendment" for S.S., contract number MC51156, signed by the purchaser, agent of the funeral home and seller amending a preneed contract but fails to maintain the original or a copy of the original preneed contract.
- (e) MFT has a document titled "Contract Amendment" for F.D., contract number 1R-10837 and 96-1010, signed by the purchaser, agent of the funeral home and seller

amending a preneed contract but fails to maintain a copy of the original or a copy of the original preneed contract.

(f) MFT has a document titled "Contract Amendment" for P.M., contract number MC50885, signed by the purchaser, agent of the funeral home and seller amending a preneed contract but fails to maintain a copy of the original or a copy of the original preneed contract.

(g) MFT has a document titled "Contract Amendment" for S.M., contract number 01998, signed by the purchaser, agent of the funeral home, and seller amending a preneed contract but fails to maintain either the original or a copy of the original preneed contract.

(h) MFT has a document titled "Contract Amendment" for D.P., contract number 6911, signed by the purchaser, the agent of the funeral home and seller amending a preneed contract but fails to maintain either the original or a copy of the original preneed contract.

(i) MFT has a document titled "Contract Amendment" for J.R., contract number 50321, signed by the purchaser, the agent of the funeral home and seller amending a preneed contract but fails to maintain the original or a copy of the original preneed contract.

(j) MFT has a document titled "Contract Amendment" for O.R., contract number 50989, signed by the purchaser, the agent of the funeral home and the seller amending a preneed contract but fails to maintain the original or a copy of the original preneed contract.

(k) MFT has a document titled "Contract Amendment" for P.S., contract number MC51233, signed by the purchaser, the agent of the funeral home and seller

amending a preneed contract but fails to maintain the original or a copy of the original preneed contract.

(l) MFT has a document titled "Contract Amendment" for R.S., contract number 891007, signed by the purchaser, the agent of the funeral home and seller amending a preneed contract but fails to maintain the original or a copy of the original preneed contract.

(m) MFT has a document titled "Contract Amendment" for E.W., contract number 890327, signed by the purchaser, the agent of the funeral home and seller amending a preneed contract but fails to maintain the original or a copy of the original preneed contract.

(n) MFT has a document titled "Contract Amendment" for J.W., contract number 50900, signed by the purchaser and the agent of the funeral home purportedly amending a preneed contract but fails to: (1) maintain a copy of the original or a copy of the original preneed contract and (2) fails to have a signature by the Seller, as required by section 436.007.1(2) RSMo (2000) (Old Law) and section 436.425.1(12), RSMo.

36. Section 436.420.4, RSMo, states: "Upon request of the board, a seller, provider, or preneed agent shall provide a copy of any preneed contract or any contract or agreement with a seller or provider to the Board.

37. MFT has asserted that it was not the seller of the preneed contracts and therefore, has no duty to maintain the original contracts. However, the funds for the preneed contract are held in the MFT Preneed Trust and MFT has exercised the duties of a seller for these contracts and must have the ability to access the original preneed contract because if they do not, they would have no way to know who to pay at the time of need or how much to

pay. Section 436.420.4, RSMo, requires MFT to provide a copy of these preneed contracts to the Board and MFT refused to do so.

38. For the contracts noted in Exception 11, MFT provided the Board no contract or agreement with the seller or provider for these Exception 11 contracts that would authorize those funds to be held in the MFT Trust or for MFT to have copies of the amendments to the contracts if they were not the seller for the Exception 11 contracts.

Exceptions 5 and 14 of the Report – “Rollovers”

39. MFT has money held in its trust account in connection with approximately 3,910 files of preneed contracts for which MFT has asserted that it is not the seller of the preneed contracts (what MFT refers to as “rollovers” although that term has no legal definition) which constitutes a violation of section 436.021 RSMo, (2000) (Old Law), section 436.031, RSMo (2000) (Old Law), and section 333.320.2, RSMo. This violation is noted in Exceptions 5 and 14 of the Report.

40. Section 333.320.2 RSMo provides as follows:

2. An applicant for a preneed seller license shall . . .

(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;

41. Section 436.021.1, RSMo (2000) (Old Law), provided as follows:

No person, including without limitation a person who is a provider under one or more preneed contracts, 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 that sale, performance, agreement, or designation, that person shall: . . . (2) Have established, as grantor, a preneed trust or trusts with terms consistent with sections 436.005 to 436.071[.]

42. Section 436.021.2, RSMo (2000) (Old Law), provided:

Each seller under one or more preneed contracts 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[.]

43. Section 436.031, RSMo (2000) (Old Law), provided “[p]ayments regarding two or more preneed contracts may be deposited into and commingled in the same preneed trust, so long as the trust's grantor is the seller of all such preneed contracts and the trustee maintains adequate records of all payments received.”
44. In order for MFT to hold money from another preneed seller in its trust account, the preneed seller of the contract, as grantor, must establish a preneed trust or an agreement to utilize a preneed trust consistent with the provisions of Chapter 436, RSMo. §333.320.2, RSMo.
45. Section 333.320.2, RSMo, does not merely allow MFT to hold money of another preneed seller in its trust..
46. MFT has no agreements from preneed sellers authorizing MFT or the MFT Trustee to hold money in the MFT trust in compliance with Section 333.320.2, RSMo.
47. With respect to those preneed contracts which MFT has termed “rollover” contracts, MFT has failed to provide the Board with any authority by which it may hold those funds in its trust account.
48. With regard to these “rollover” funds, the MFT Trustee treats the funds in the same way as the MFT funds are treated, and the MFT Trustee provides all services of a seller for these funds including holding preneed funds in the MFT Preneed Trust, authorizing the investment of those preneed funds, allowing the MFT Trustee to receive certificates of performance for the fulfillment of preneed contracts, allowing the MFT Trustee to determine amounts to be paid to the licensed provider who fulfills the preneed contracts

payments to the licensed providers upon the fulfillment of the preneed contracts and not to the original licensed sellers who should been entitled to receive funds who then have the duty to pay the provider, if they are indeed still the seller on the preneed contracts.

49. MFT either unlawfully holds funds belonging to other sellers in the MFT Trust, or in the alternative, is in fact the new seller on the rollover preneed contracts who has failed to produce contracts and to cooperate with the Board in the conduct of the financial examination. Section 333.320.2, RSMo, and Section 436.031, RSMo (2000) (Old Law). Section 436.420.4, RSMo. and Section 436.470.7, RSMo.
50. If MFT is not the seller on the rollover contracts then MFT has violated and enabled others to violate the provisions of Chapter 333 and 436, RSMo, by allowing sellers to deposit money into its trust account knowing, as a licensed seller of preneed contracts, that Section 333.320.2, RSMo, requires a seller, as grantor, to either: (1) establish a preneed trust, or (2) have an agreement to utilize a preneed trust, and neither exist.
51. For all the trust accounts in which MFT has failed to obtain an agreement with a preneed seller before allowing a preneed seller to utilize its trust account, MFT has engaged in fraud, misrepresentation, and dishonesty, and violated a professional trust and confidence.
52. While MFT maintains that it is not the seller on the termed “rollover” contracts for which it is holding the funds in its trust account, if MFT is in fact the seller with respect to those contracts, MFT and its trustee have failed to maintain the adequate records required by section 436.465, RSMo, section 436.021.2, RSMo (2000) (Old Law) and section 436.031, RSMo (2000) (Old Law) and have failed to produce copies of those contracts and agreements as required by Sections 436.420 and 436.470.7, RSMo

Failure to Exercise Duties as a Seller

53. Only a licensed seller may “sell, perform, or agree to perform the seller’s obligations... of any preneed contract. Section 333.320.1, RSMo.
54. A seller has the obligation “to collect and properly deposit and disburse all payments made by, or on behalf of, a purchaser of a preneed contract.” 20 CSR 2120-3.200(1)(A).
55. “A seller shall designate an individual to serve as the manager in charge of the seller’s business.” 20 CSR 2120-3.200(1)(A).
56. There are approximately 350 licensed preneed providers who have a registered relationship with MFT as reflected in the Board’s records.
57. MFT represents that it has Provider Agreements with these licensed preneed providers.
58. The Provider Agreements authorize and require that the MFT Providers¹ perform the statutory duties of a seller and receive the compensation that is within the statutory authorities of a seller, namely:
 - a. To sell preneed contracts (Section 333.320.1, RSMo);
 - b. To collect monies from purchasers and forward to the trust for deposit (Sections 436.415.2 and 436.430.2, RSMo);
 - c. Receive a portion of the funds paid on the preneed contract to compensate the seller for administrative expenses, at the seller’s option (Section 436.430.3 and .4, RSMo and Section 436.027, RSMo (2000) (Old Law); and
 - d. To receive all funds due to a seller upon the death of the preneed beneficiary (Section 436.430.10, RSMo).

¹ MFT Providers is the term MFT uses for the funeral homes it contracts with as licensed preneed providers. The term “MFT Providers refers to those in contract with MFT whereas the term “licensed preneed provider” refers to those funeral homes who hold licenses issued by the Board as preneed providers. MFT Providers are not the same as licensed preneed providers even though all MFT Providers should also be licensed providers.

59. The MFT Provider Agreement explicitly states that the MFT Providers are not the agents of MFT.
60. The MFT Provider Agreement purports to authorize the MFT Providers to sell preneed contracts. Only licensed sellers may sell preneed contracts through registered preneed sellers.
61. When the Board requested information from MFT regarding records of consumer payments, MFT responded that the MFT Providers were responsible for maintaining those records and that MFT maintained no such records.
62. MFT maintains no records related to any of its activities as a preneed seller.
63. MFT makes no payments to any seller, provider, consumer or preneed agent.
64. MFT has delegated all of its duties as seller to the MFT Trustee in violation of Section 436.430.6, RSMo.
65. The MFT Trustee executes all preneed contracts on behalf of MFT, as seller.
66. The MFT Trustee maintains all records on behalf of MFT.
67. The MFT Trustee makes all decisions as to who shall be paid and how much shall be paid as distributions from the Trust.
68. All payments that the statutes provide to be made either to the seller or by the seller are made by the MFT Trustee.
69. MFT misrepresents to their customers that MFT is the seller on the contract and the MFT Provider's only role is that of provider for the preneed contract even though the MFT Providers provide some of the statutory duties and receive the statutory payments as sellers for MFT contracts. MFT designated with the Board Donald C. Otto, Jr. as its manager in charge of the MFT Seller's license per 20 CSR 2120-3.200, but, upon

information and belief, Donald C. Otto, Jr. appears to have no duties related to managing the business of a seller.

70. MFT has violated the professional trust and confidence expected of it by its customers and MFT Providers by delegating its authority to act to the MFT Trustee, even authorizing the MFT Trustee to execute contracts on its behalf by signing the name of Don Otto, Jr. to each preneed contract.
71. MFT has failed to exercise its duties as a seller.

Exceptions 6 and 17 of the Report – Underfunded Contracts

72. Files for approximately 167 consumers, as noted in exception number 17, appear to be underfunded by approximately \$229,465.31.
73. Section 436.415.2, RSMo, imposes certain financial duties upon a seller of a preneed contract as follows, “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.”
74. MFT failed to provide records showing deposits appropriately made on its contracts.
75. MFT maintains that it is not the seller of the preneed contracts, and therefore suggests that it has no obligation to explain why so many hundreds of preneed contracts are underfunded.
76. The Board obtained responses from certain providers of preneed contracts that were contacted as part of the examination and compared those responses to the information obtained from MFT’s records which revealed the underfunding problem.

77. Preneed contracts for which MFT failed to provide records to determine appropriate funding, per the provider, include, but are not limited to, the following:
- (a) M.Z. has a contract with a face value of \$1,500.00, payment of \$6,530.00, and a trust account balance of \$223.71.
 - (b) O.N. has a contract, contract number 21415, with a face value of \$9,776.00, payments of \$5,236.00, but no money in trust.
 - (c) M.S. has a contract, contract number 876, with a face value of \$2,395.00, payments of \$2,395.00, but no money in trust.
 - (d) R.B. has a contract, contract number 51965, with a face amount of \$5,948.36, payments of \$4,758.69, but no money in trust.
 - (e) F.B. has a contract, contract number 52139, with a face amount of \$2,990.00, payments of \$500.00, but no money in trust.
 - (f) E.G. has a contract, contract number 51979, with a face amount of \$925.00, payments of \$740.00, but no money in trust.
 - (g) C.R. has a contract, with a face value of \$1,000.00, payments of \$800.00 but no money in trust.
 - (h) L.C. has a contract, contract number 52016, with a face value of \$1,475.00, payments of \$1,180.00, but no money in trust.
 - (i) D.L. has a contract, contract number 2800, with a face value of \$2,100.00, payments of \$1,680.00 but no money in trust.
 - (j) L.B. has a contract, contract number 51939, with a face value of \$3,688.27, payments of \$2,950.61, but no money in trust.

78. MFT has collected money in excess of the terms of the preneed contract and failed to distribute the excess money to the purchaser of the preneed contract as follows:
- (a) MFT collected an additional \$50.00 in excess of the price of the preneed contract from or on behalf of V.A., contract number 0032607, and failed to disburse the money to V.A. MFT contends it attempted to contact "Family" to advise of the overage in the account. MFT subsequently entered into an amended agreement to increase the price of the preneed contract by the \$50.00 with no explanation as to the reason for the price increase and without stating the additional services to be offered to justify the price increase.
 - (b) MFT has identified approximately \$4,529.61 in trust for R.B.B. when arguably the principal amount of the preneed contracts are \$1,202.00 and \$1,520.00 respectively for a total of \$2,722.00.
 - (c) MFT has identified approximately \$10,051.83 in trust for J.C. when arguably the principal amount of the preneed contract was \$8,703.69.
 - (d) MFT has identified approximately \$2,754.84 in trust for C.D. when the principal amount of the preneed contract was \$1,500.00.
 - (e) MFT has identified approximately \$4,836.80 in trust as of 2013 for M.F. when the principal amount of the preneed contract was \$3,489.71.
 - (f) B.H. has a contract, contract number 16641, with a face value of \$700.00, payments of \$2,217.72, but the amount in trust is \$702.79.

MFT Rollover Contracts

79. The Board's financial examination revealed that the MFT Trust holds and the MFT Trustee administers contracts that MFT calls the "rollovers" (the "MFT Rollover Contracts").
80. No statute has ever authorized "rollovers" or created any special statutory structure for how rollovers are to be treated and thus, normal rules of contract law apply.
81. For the MFT Rollover Contracts, MFT accepted the funds for the preneed contract from the seller designated on the preneed contract (or, as the preneed contract had been assigned) (the "original seller") and from that point forward, MFT has held the funds for the Rollover Contracts in the MFT Preneed Trust commingled with all other MFT preneed contract funds.
82. In its response to the Report, MFT asserted, for the first time to the Board, that it was not the seller for the MFT Rollover Contracts.
83. The MFT Trustee has performed all duties of a seller for the MFT Rollover Contracts just as the MFT Trustee performs seller duties on the MFT contracts including, but limited to, reporting the MFT Rollover Contracts on the MFT annual reports required by statute, authorizing investment of the funds for the MFT Rollover Contracts, receiving written certificates of performance, determining who and how much to pay for performance of the preneed contracts and making the payments to providers for fulfillment of preneed contracts.
84. When the MFT Providers (as per the MFT contracts – not licensed preneed providers) "rolled over" their preneed contracts to MFT, the MFT Providers, who at the time of the rollovers were licensed or registered sellers, ceased performing any seller duties for the

MFT Rollover Contracts. In fact, some of the MFT Providers ceased their own seller registration/licenses at the time of the rollovers because MFT was now to be the seller.

85. MFT includes the MFT Rollover Contracts on their “provider reports” along with the MFT contracts.
86. Not until the Board requested copies of the preneed contracts for the MFT Rollover Contracts, did MFT assert that they were not the assigned seller on the MFT Rollover Contracts.
87. Upon information and belief, MFT has no written agreement with the sellers of the MFT Rollover Contracts that states who the legal seller is on the MFT Rollover Contracts.
88. The “Provider Agreements” that MFT enters into with its “providers” authorizes MFT to enter into an agreement with the “provider”, however, although requested, MFT never provided the Board with any agreement with the MFT Providers.
89. MFT is the seller on the MFT Rollover Contracts, or, in the alternative, if MFT is not the seller on these contracts then MFT has engaged in fraud, dishonesty and misrepresentation.
90. MFT led the original sellers to believe that it has accepted, assumed and performed the seller’s duties and obligations on the “rollover” contracts, including record keeping and responding to Board inquiries and fulfilling the annual reporting requirements.
91. Sellers on the “rollover” contracts have reported to the Board that MFT has assumed the duties and obligations under those contracts.
92. In response to audits and inquiries by the Board directed to sellers, MFT has provided to the Board documents and information regarding these sellers and their contracts.

- 93. In response to inquiries by the Board, MFT has been unable to provide complete records for many “rollover” contracts.
- 94. MFT has led sellers to believe that MFT is the seller and that it has and will fulfill the duties and obligations of the seller under the contracts, including the required record keeping.
- 95. MFT’s actions constitute fraud, misrepresentation, and/or dishonesty in connection with its dealings with these sellers, the purchasers and the Board.

Disciplinary Provisions

- 96. MFT’s conduct, as set forth in this Complaint, constitutes obtaining and/or attempting to obtain a fee, charge, or other compensation by fraud, deception and/or misrepresentation for which the Board has cause to take disciplinary action against its preneed seller license pursuant to Section 333.330.2(4), RSMo.
- 97. MFT’s conduct, as set forth in this Complaint, constitutes misconduct, fraud, misrepresentation and/or dishonesty in the performance of the functions and/or duties of a preneed seller for which the Board has cause to take disciplinary action against its preneed seller license pursuant to Section 333.330.2(5), RSMo.
- 98. MFT’s conduct, as set forth in this Complaint, constitutes a violation of and/or assisting and/or enabling another to violate Chapter 333, RSMo, including, but not limited to, Sections 333.320, RSMo, for which the Board has cause to take disciplinary action against its preneed seller license pursuant to Section 333.330.2(6), RSMo.
- 99. MFT’s conduct, as set forth in this Complaint, constitutes a violation of a professional trust and/or confidence for which the Board has cause to take disciplinary action against its preneed seller license pursuant to Section 333.330.2(14), RSMo.

100. MFT's conduct, as set forth in this Complaint, constitutes a violation of Chapter 436, RSMo, including, but not limited to, Sections 436.470.9, 436.465, 436.456, 436.415, 436.420 and 436.425, RSMo, for which the Board has cause to take disciplinary action against its preneed seller license pursuant to Section 333.330.2(19), RSMo.
101. The Board has cause to discipline MFT's preneed seller license pursuant to Section 333.330.2(4), (5), (6), (14), and (19), RSMo.

WHEREFORE, Petitioner respectfully requests that this Commission conduct a hearing in this matter, and thereafter, issue its findings of fact and conclusions of law determining that Petitioner may take disciplinary action against Respondent's preneed seller license pursuant to Chapter 333, RSMo, and for such other and further relief this Commission deems just and proper under the circumstances.

Respectfully Submitted,

BRYDON, SWEARENGEN & ENGLAND, PC

By:



Gregory C. Mitchell #36634

Scott A. Hamblin #48704

Jamie J. Cox #52777

312 East Capitol Avenue

P. O. Box 456

Jefferson City, MO 65102-0456

(573) 635-7166

Fax: (573) 635-0427

scotthamblin@brydonlaw.com

ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was mailed via U.S. Mail and sent via electronic mail on this 19th day of January, 2017 to:

Harvey Tettlebaum
P.O. Box 1251
Jefferson City, Missouri 65102
Harvey.tettlebaum@huschblackwell.com

A handwritten signature in black ink, consisting of a large, stylized 'R' followed by a horizontal line and a small flourish.

Attorneys for Petitioner