

BEFORE THE WEST VIRGINIA BOARD OF FUNERAL SERVICE EXAMINERS

IN RE: CHAD HARDING
License Nos. FD3701 and CO0065

COMPLAINT NO. 2016-D-002

CONSENT AGREEMENT AND ORDER

The West Virginia Board of Funeral Service Examiners (“hereinafter Board”), pursuant to W. Va. Code § 30-1-8(a), W. Va. Code § 30-6-23, and the applicable regulations set forth in W. Va. Code R. § 6-1 *et seq.*, determined there is probable cause to believe Respondent Chad Harding engaged in dishonesty, gross immorality, fraud, and willfully departed from accepted standards and professional conduct, and therefore violated the West Virginia Funeral Service Examiners Act, relating to his handling of Homesteaders Life Company preneed funeral contracts at the Gates-Harding Funeral Home.

The Board issued a Statement of Charges, which provided the Respondent with written notice of the allegations against him, and the matter was set for public hearing to determine whether disciplinary action should be taken against him.

The parties have reached an agreement as to the disposition of this matter in controversy, and do hereby agree to the following.

BACKGROUND

1. The Board is a State entity created by W. Va. Code § 30-6-1 *et seq.* and is empowered to regulate the practice of funeral directing, embalming, and cremation pursuant to W. Va. Code § 30-6-5.

2. The Board is empowered to suspend, revoke or otherwise discipline a license or licensee for violation of the West Virginia Funeral Service Examiners Act, W. Va. Code § 30-6-1 *et seq.*, and the rules promulgated thereunder.

3. Respondent, at all times relevant hereto, was a licensed funeral director and licensed crematory operator, and was subject to the jurisdiction and authority of the Board and applicable licensing requirements.

4. At all times relevant hereto, Gatens-Harding Funeral Home operated a for-profit funeral services business in southern West Virginia.

5. At all times relevant hereto, Respondent was responsible for handling the corporate affairs of Gatens-Harding Funeral Home and managing the day-to-day operations of its for-profit funeral services business.

6. At all relevant times hereto, Gatens-Harding Funeral Home, by and through its agents and employees, including but not limited to Respondent, was engaged in the sale of funeral services and goods to consumers, including preneed funeral contracts.

7. The Board alleges that at all relevant times hereto, Homesteaders Life Company (HLC), Gatens-Harding Funeral Home, and Respondent entered into agreements whereby agents and employees of Gatens-Harding Funeral Home, including but not limited to Respondent, in connection with sales of preneed funeral contracts to consumers, were charged with enrolling said consumers in HLC group life insurance designed to fund the subject funerals. For each consumer enrolled in HLC group life insurance, the responsible agent or employee of Gatens-Harding Funeral Home would be paid a commission. These agreements were signed by Respondent individually and/or on behalf of Gatens-Harding Funeral Home.

8. The Board alleges that pursuant to the terms of these agreements, Gatens-Harding Funeral Home, by and through its agents and employees, including Respondent, entered into preneed funeral contracts with dozens of consumers, enrolled each consumer in HLC group life insurance, and in consideration of an assignment of the death benefits of said life insurance, agreed to provide funeral services and goods to said consumers upon their death.

9. The Board alleges that as contemplated by the above-described preneed funeral contracts, as well as the above-described agreements, Gatens-Harding Funeral Home, upon the death of a consumer who had purchased a preneed funeral contract and was enrolled in HLC group life insurance, was to submit a death claim to HLC in order to obtain the amount of death benefit available on the assigned policy. Once a death claim was submitted, Gatens-Harding Funeral Home would fill out and sign a bank draft, certifying thereon the date of death of the consumer and that funeral services and goods had been provided. HLC would then authorize the release of funds in the amount of the draft, and Gatens-Harding Funeral Home would present the bank draft to a financial institution for deposit and payment.

10. The Board alleges that beginning in or around September 2012, Respondent, acting on behalf of Gatens-Harding Funeral Home, engaged in a practice of submitting false death claims to HLC, by telephone, and filling out and signing false bank drafts, wherein he fraudulently misrepresented that dozens of consumers had died on certain dates and that the contracted-for funeral services had been provided, when, in fact, said consumers were not deceased and said funeral services had not been provided.

11. The Board, pursuant to W. Va. Code § 30-1-8(a) and W. Va. Code § 30-6-23, has determined there is probable cause to believe Respondent engaged in dishonesty, gross immorality, fraud, and he has willfully departed from accepted standards and professional conduct, and has therefore violated the West Virginia Funeral Service Examiners Act.

12. The Board alleges Respondent engaged in conduct in violation of the West Virginia Funeral Service Examiners Act, W. Va. Code § 30-6 *et seq.*, and the applicable regulations set forth in W. Va. Code R. § 6-1 *et seq.*

13. Respondent has denied the allegations set forth above in paragraphs 7 through 12 through his Answer to the Statement of Charges issued on December 14, 2016.

14. This matter is set for hearing on July 25, 2017.

15. On July 14, 2017, the parties, by and through their respective counsel, engaged in settlement negotiations and agreed to resolve this matter as set forth below.

BOARD'S CONCLUSION OF LAW

1. That the Board has jurisdiction to take disciplinary action against the Respondent.

2. That the Board is mandated by W. Va. Code § 30-6-1 *et seq.* to protect the interest of the public health, safety and welfare.

3. The Board is empowered to suspend, revoke or otherwise discipline a license or licensee for violation of the West Virginia Funeral Service Examiners Act, W. Va. Code § 30-6-1 *et seq.*, and the rules promulgated thereunder.

4. That the actions of the Respondent, Chad Harding, constitute violations of W. Va. Code § 30-6-1 *et seq.* and the rules of the Board and such conduct are grounds for disciplinary action.

CONSENT OF LICENSEE

Respondent, Chad Harding, by affixing his signature hereto, acknowledges the following:

1. Respondent has been given the opportunity to consult with counsel and, in fact, has consulted with counsel of his choice with regard to this matter.

2. Respondent executes this Consent Agreement and Order voluntarily, freely, without compulsion or duress and mindful that it has legal consequences.

3. No person or entity has made any promise or given any inducement whatsoever to encourage Respondent to make this settlement other than as set forth herein.

4. Respondent acknowledges that he is aware that he may pursue this matter through appropriate administrative and/or court proceedings, and is aware of his legal rights regarding this matter, but intelligently, knowingly and voluntarily waive such rights.

5. Respondent waives any defense of laches, statute of limitations, estoppel, lack of jurisdiction, lack of due process, and waiver that he may have otherwise claimed as a condition of this agreement.

6. Without admitting that his actions were unprofessional and a violation of the statutes and administrative regulations of the Board, the Respondent consents to this Consent Agreement and Order; however, this is not an admission by the Respondent to the Board's allegations, findings or Conclusions of Law and shall not be construed as such. Respondent expressly denies the allegations, findings and conclusions.

7. This Consent Agreement and Order shall not compromise or affect in any manner any claim or cause of action that an individual may have against Respondent, nor does it constitute evidence of any wrongdoing by Respondent or a waiver of any defenses Respondent may have in this or any other proceeding.

8. Upon completion of the suspension and probation periods set forth below, all matters set forth in the Statement of Charges shall be fully resolved and settled and the Board shall not take any further or future disciplinary action against Respondent's funeral director license (License No. FD3701), crematory operator license (License No. CO0065) or embalmer license (License No. 4201) based upon the allegations set forth in the Statement of Charges.

9. The Respondent, by affixing his signature hereon, consents and agrees to the following terms and conditions:

ORDER

On the basis of the foregoing, the Board does hereby **ORDER** and **DECREE**:

1. That Respondent's funeral director license (License No. FD3701) and crematory operator license (License No. CO0065) shall be suspended for a period of six (6) months commencing August 7, 2017 and concluding February 7, 2018;

2. During the suspension period, Respondent shall not engage in "funeral directing" services as that term is defined in West Virginia Code § 30-6-3(o);

3. During the suspension period, Respondent shall not engage in "cremation" services as the term is defined in West Virginia Code § 30-6-3(g);

4. Thereafter, Respondent shall be placed on probation for a period of six (6) months commencing February 8, 2018 and concluding August 6, 2018 as to his funeral director license (License No. FD3701) and crematory operator license (License No. CO0065);

5. During the probationary period, Respondent may engage in "funeral directing" services as that term is defined in West Virginia Code § 30-6-3(o) under the direct supervision of a licensed West Virginia Funeral Director;¹

¹ Dennis Nunley, a duly licensed funeral director and crematory operator, has agreed to supervise Respondent during his probationary period with regard to his work at the Gatens-Harding Funeral Home, Inc. and Richard Bishoff, a

6. During the probationary period, Respondent may engage in "cremation" services as that term is defined in West Virginia Code § 30-6-3(g) under the direct supervision of a licensed West Virginia Crematory Operator;

7. On or before July 6, 2018, the supervising licensees shall submit a written report to the Board attesting to their supervision of Respondent;

8. Respondent's embalmer license (License No. 4201) shall not be affected by this Consent Agreement and Order;

9. Respondent shall reimburse the Board for administrative and legal expenses incurred by the Board in the investigation and disposition of this case in the amount of \$25,000.00 within sixty (60) days of the execution and entry of this Consent Agreement and Order;

10. Respondent shall CEASE acting as the Licensee in Charge of Gatens-Harding Funeral Home, Inc. and Harding Funerals and Cremations on or before August 7, 2017;

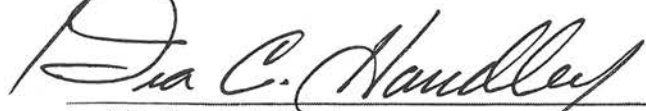
11. Respondent, as President of Gatens-Harding Funeral Home, Inc. and Harding Funerals and Cremations, shall ensure that a licensed funeral director serves as the Licensee in Charge of each establishment during his probationary period who shall manage the funeral establishment. The Licensee in Charge shall be responsible for all business conducted and services performed therein as provided in West Virginia Code § 30-6-18(a)(6) and § 30-6-19(a). The Board will monitor the activities of the funeral home to ascertain that the named Licensee in Charge is actually employed at and performing the duties of his/her position.

duly licenses funeral director and crematory operator, has agreed to supervise Respondent during his probationary period with regard to his work at Harding Funerals and Cremations.

12. Respondent's failure to comply with the terms and conditions of this Consent Agreement and Order hereby imposed shall be deemed a violation of this Consent Agreement and Order, and should the Respondent violates any of the terms of this Consent Agreement and Order, the Board may take further disciplinary action against the Respondent's licenses.

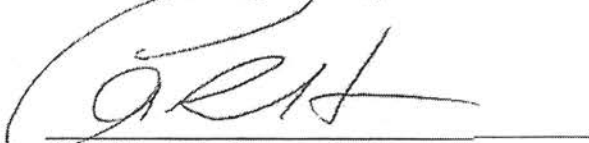
13. This document is a public record as defined in W. Va. Code § 29B-1-2(4).

Entered this 19th day of July, 2017.

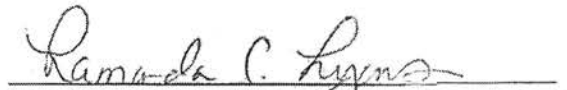


Ira Handley, President
West Virginia Board of Funeral Service Examiners

Reviewed and Agreed to by:


Chad Harding, Respondent

7/19/17
Date


Legal Counsel or Witness for the Respondent

7/19/17
Date