



COMMONWEALTH of VIRGINIA

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Director

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October 12, 2004

Dear Licensee:

The Federal Trade Commission has ordered the Virginia Board of Funeral Directors and Embalmers ("the Board") to cease and desist the enforcement of any rule or regulation restricting the use of truthful and non-misleading advertising of prices and discounts by licensees. A copy of the Commission's Decision and Order is enclosed.

In order that you may readily understand the terms of the Order, we have set forth its essential provisions, although you must realize that the Order itself is controlling, rather than the following explanation of its provisions:

(1) The Board must cease and desist from enforcement of any regulation or restriction on Board licensees, including the Board regulation at 18 Virginia Administrative Code §65-30-50 (C) (West 2003), that might prevent licensees from using truthful and non-misleading advertisements to notify consumer of prices, and discounts from ordinary prices, for at-need or preneed funeral products, goods, or services.

(2) The Board amended its rules on July 28, 2004 to eliminate any regulation or restriction, including the Board regulation at 18 Virginia Administrative Code §65-30-50 (C) (West 2003), that may have prevented the Board Licensees from using truthful and non-misleading advertisements to notify consumers of prices, and discounts from ordinary prices, for at-need or preneed funeral products, goods or services.

Sincerely yours,

A handwritten signature in cursive script that reads "J. Michael Williams".

J. Michael Williams, President
Virginia Board of Funeral Directors
And Embalmers

JWM/ey
Enclosures

RESPONDENT AND ITS MEMBERS

1. The Board is organized, exists, and transacts business under and by virtue of the laws of the Commonwealth of Virginia, with its principal office and place of business located at 6603 West Broad St., 5th Fl. Richmond, VA 23230-1712.
2. The Board was created by the legislature of the Commonwealth of Virginia to supervise the provision of funeral products and services and the preneed provision of funeral products and services.
3. By statute, the Board is composed of nine members, seven of whom must be funeral service licensees of the Board with at least five consecutive years of funeral service practice in the Commonwealth immediately prior to appointment. The Board is further composed of two "citizen members." Members of the Board are appointed by the Governor.
4. While serving their membership terms, funeral director members of the Board may, and do, continue to engage in the business of providing funeral products and services and preneed funeral products and services for a fee. Compensation for being on the Board is limited to expenses plus \$50 per day of work done for the Board.
5. Except to the extent that competition has been restrained as alleged below, and depending on their geographic location, licensed funeral directors in Virginia compete with each other and with funeral director members of the Board.
6. The Board promulgates regulations, including the regulation at issue in this Complaint by majority vote of the members of the Board.
7. The Board is the sole licensing authority for the provision of funeral directing services in Virginia. It is unlawful for an individual to practice or to offer to practice funeral directing in Virginia unless he or she holds a current license to practice from the Board.
8. The Board is authorized by Virginia law to take disciplinary action against any licensee who violates any rule or regulation promulgated by the Board. Disciplinary action by the Board may include the suspension or revocation of a license, or other limitations or restrictions on a licensee.

JURISDICTION

9. The Board is a state regulatory body and is a "person" within the meaning of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

10. The acts and practices of the Board, including the acts and practices alleged herein, have been or are in or affecting “commerce” within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44. In particular, funeral directors perform funerals for residents of other states, receive substantial sums of money that cross state lines in payment for those services and as payment for otherwise in-state funeral products and services from preneed funeral arrangements, and purchase and use supplies and equipment that are shipped across state lines. Furthermore, the regulation at issue prevents the flow of price information across state lines, and affects interstate commerce in funeral supplies and services in neighboring states.

STATE REGULATION OF ADVERTISING FOR FUNERAL SERVICES

11. With the exception of the requirement that no direct initial solicitation of any consumer be in person, the requirement that no direct initial solicitation for at-need funeral products and services be done by any means, and the requirement that all advertising be truthful and not misleading, Virginia statutes do not restrict advertising or solicitation relating to the ordinary prices of funeral products and services or discounts off of ordinary prices of funeral products and services.

BOARD CONDUCT

12. For many years and continuing up to and including the date of the filing of this Complaint, the Board has restrained competition in the provision of funeral and preneed funeral products and services in Virginia by combining and agreeing with its members or others, or by acting as a combination of its members or others, to restrict access to price information relating to funeral products and services and preneed funeral products and services by prohibiting truthful and non-misleading advertising of members’ prices, and discounts from their usual prices.
13. For many years and continuing up to July 28, 2004, the Board had engaged in various acts or practices in furtherance of this combination, including, among other things, the following:
 - A. The Board promulgated and implemented a regulation that prohibits funeral licensees from advertising the prices of the products and services they sell for preneed funeral services;
 - B. The Board actively disseminated its rules, including the prohibition on advertising prices or discounts, by, among other means: mailing the rules to licensees, making speeches to local associations of funeral licensees, and publishing newsletters regarding its rules.

EFFECTS

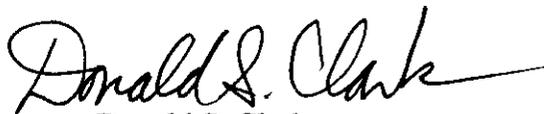
14. The effects of the combination and acts or practices described above have been to restrain competition unreasonably and injure consumers in the following ways, among others:
- A. Consumers were deprived of truthful information about prices for funeral products and services;
 - B. Funeral licensees were prevented from disseminating truthful information about their prices for funeral products and services;
 - C. Consumers were deprived of the benefits of vigorous price competition among Board licensees; and
 - D. Some consumers paid higher prices for funeral products and services than they would have paid in the absence of the combination, acts, and practices alleged in this Complaint.

VIOLATION

15. The combination, acts, and practices described above constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45. Such combination, acts, and practices, or the effects thereof, may continue or recur in the absence of the relief herein requested.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this first day of October, 2004, issues its Complaint against Respondent Virginia Board of Funeral Directors and Embalmers.

By the Commission, Commissioner Leibowitz not participating.



Donald S. Clark
Secretary

SEAL

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Deborah Platt Majoras, Chairman
 Orson Swindle
 Thomas B. Leary
 Pamela Jones Harbour
 Jon Leibowitz

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In the Matter of)	
)	
VIRGINIA BOARD OF FUNERAL DIRECTORS)	Docket No. C-4124
AND EMBALMERS.)	
)	
)	

DECISION AND ORDER

The Federal Trade Commission ("Commission") having initiated an investigation of certain acts and practices of the Virginia Board of Funeral Directors and Embalmers (the "Board"), hereinafter sometimes referred to as "Respondent," and Respondent having been furnished thereafter with a copy of the draft of the Complaint that the Bureau of Competition presented to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order ("Consent Agreement"), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of the Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that Respondent has violated the said Act, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered the comments received from an interested person pursuant to section 2.34 of the Rules, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34 (2004), the

Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Proposed Respondent, the Virginia Board of Funeral Directors and Embalmers, is an industry regulatory board established by the Commonwealth of Virginia with its principal office and place of business located at 6603 West Broad St., 5th Fl. Richmond, VA 23230-1712.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondent, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED, that for the purposes of this Order, the following definitions shall apply:

- A. “Respondent” or “Board” means the Virginia Board of Funeral Directors and Embalmers, its officers, members, committees, subcommittees, representatives, agents, employees, successors and assigns.
- B. “At-need or preneed funeral products, goods, or services” means any product, good, or service that the Board is authorized to regulate under Title 54.1 of the Virginia Code, Va. Code Ann. §§ 54.1-100 to 116, 54.1-200 to 204, 54.1-2800 to 2825 (Michie 2003). For the purposes of this Order, at-need or preneed funeral products, goods, or services includes any products, goods or services that are advertised, offered for sale, or sold to be used in a funeral service at the time of death, while death is imminent, or at any other time.
- C. “Board licensee” or “licensee” means any person or corporation that is entitled under the rules of the Board to provide at-need or preneed funeral products, goods, or services to consumers.
- D. “Discounts from ordinary prices” means any reduction of the price ordinarily charged by a Board licensee in exchange for at-need or preneed funeral products, goods, or services.
- E. “Enforcing” a restriction or a regulation means any manner in which Respondent requires compliance with any of its regulations, including, but not limited to, investigations or hearings of purported violations of the regulation, dissemination of the terms or Board interpretations of the regulation in any manner to Board licensees, and assignments of penalties for any violation of the regulation.

- F. "Person" means both natural persons and artificial persons, including, but not limited to, corporations, unincorporated entities, and governments.
- G. "Prices" means any consideration proposed in exchange for at-need or preneed funeral products, goods, or services.
- H. "Truthful and non-misleading advertisements" means any advertisements that would not subject a Board licensee to disciplinary action under 18 Va. Admin. Code § 65-20-500(3) (West 2003) or Va. Code Ann. § 54.1-2806 (Michie 2003). For the purposes of this Order, truthful and non-misleading advertisements of prices or discounts from ordinary prices, includes advertisements that do not contain any promise, assertion, representation, or statement of fact which is untrue, deceptive, or misleading; contain inaccurate statements; or create an impression of things not likely to be true.
- I. 18 Va. Admin. Code § 65-30-50(C) (West 2003) means the Virginia regulation corresponding to that citation in place on June 28, 2004.

II.

IT IS FURTHER ORDERED that Respondent, in or in connection with its activities in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, shall forthwith cease and desist from, directly or indirectly, or through any rule, regulation, policy, or other conduct:

A. Prohibiting, restricting, impeding, or discouraging any person from engaging in truthful and non-misleading price advertising, including advertising prices, and discounts from ordinary prices, of at-need or preneed funeral products, goods, or services;

B. Enforcing any regulation or restriction on Board licensees, including the Board regulation at 18 Va. Admin. Code § 65-30-50(C) (West 2003), that might prevent licensees from using truthful and non-misleading advertisements to notify consumers of prices, and discounts from ordinary prices, for at-need or preneed funeral products, goods, or services.

Provided, however, that nothing contained herein shall prohibit the Respondent from adopting and enforcing reasonable rules, regulations or policies, or taking any other action, to prevent or prohibit advertising that the Board reasonably believes to be both materially fraudulent, false, deceptive or misleading and in violation of 18 Va. Admin. Code § 65-20-500(3) (West 2003) or Va. Code Ann. § 54.1-2806 (Michie 2003), or any future recodifications thereof.

III.

IT IS FURTHER ORDERED that Respondent shall, within one hundred and eighty (180) days after the date this Order becomes final, amend its rules to eliminate any regulation or restriction,

including the Board regulation at 18 Va. Admin. Code § 65-30-50(C) (West 2003), that might prevent Board licensees from using truthful and non-misleading advertisements to notify consumers of prices, and discounts from ordinary prices, for at-need or preneed funeral products, goods, or services.

IV.

IT IS FURTHER ORDERED that, within ninety (90) days after the date this Order becomes final, Respondent shall prominently publish this Order, and the letter attached hereto as "Appendix," in the Newsletter for the Board of Funeral Directors and Embalmers.

V.

IT IS FURTHER ORDERED that, within thirty (30) days after the date this Order becomes final, Respondent shall mail or deliver a copy of this Order, under cover of the letter attached hereto as "Appendix," to each current licensee of Respondent, and for a period of three (3) years from the date of service of this Order, and Respondent shall mail or deliver a copy of this Order to each new licensee of Respondent within thirty (30) days of each such licensee's acceptance by Respondent as a Board licensee.

VI.

IT IS FURTHER ORDERED that, within sixty (60) days after the date this Order becomes final, and for a period of sixty (60) days thereafter, Respondent shall publish this Order on its World Wide Web site. Notice of such publication shall be made in a manner calculated to be viewed by all of Respondent's licensees and customers of Respondent's licensees. For purposes of this provision, notice will be deemed satisfactory if it is made by providing a direct link to the Order from a notice in the following language: "The FTC and the Board Settle Antitrust Charges Regarding Price Advertising Rules" posted as the first link under the "Important Announcements" section of the main Board web page (<http://www.dhp.state.va.us/fun/default.htm>). In the event that the Board changes its site structure, a notice, equivalent in terms of ease of access and conspicuousness, must be provided. After such sixty (60) day period, Respondent shall maintain a link from the "Laws and Regulations Governing Funeral Directors and Embalmers" page (http://www.dhp.state.va.us/fun/fun_laws_regs.htm), or its equivalent, to the Order in a manner that provides reasonable notice to interested parties. Respondent shall maintain its World Wide Web site in compliance with this Paragraph for five (5) years from the date this Order becomes final.

VII.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in Respondent or its regulations that may affect compliance obligations arising out of the Order.

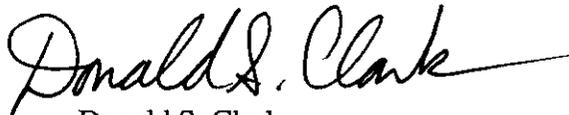
VIII.

IT IS FURTHER ORDERED that Respondent shall file a written report within six (6) months of the date this Order becomes final, and annually on the anniversary date of the original report for each of the five (5) years thereafter, and at such other times as the Commission may require by written notice to Respondent, setting forth in detail the manner and form in which it has complied with this Order.

IX.

IT IS FURTHER ORDERED that this Order shall terminate on October 1, 2024.

By the Commission, Commissioner Leibowitz not participating.



Donald S. Clark
Secretary

SEAL

ISSUED: October 1, 2004

APPENDIX

(Letterhead of the Virginia Board of Funeral Directors and Embalmers)

Dear Licensee:

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Sincerely yours,

[appropriate Board member or officer]

Enclosure