

**OFFICE OF THE MISSISSIPPI SECRETARY OF STATE
REGULATION AND ENFORCEMENT**

IN THE MATTER OF:

**AUTUMN WOODS MEMORIAL
GARDENS, INC.
400 WEST NORTHSIDE DRIVE
JACKSON, MS 39209**

) **ADMINISTRATIVE**
) **PROCEEDING NUMBER:**
) **LPC-13-0846**

Respondent

FINAL ORDER

This cause came before the hearing officer for a hearing on the merits of the Division's claims on March 5, 2014. On April 1, 2014, the hearing officer issued his recommendations to the Undersigned in the form of Findings of Fact and Conclusions of Law which are attached to this Final Order as Exhibit A. Pursuant to Preneed Regulation 4.4, the Respondent and the Division were afforded fourteen (14) days to respond to the hearing officer's findings prior to the issuance of this Final Order. Respondent, Autumn Woods Memorial Gardens, Inc. (Autumn Woods), submitted a response on or about April 22, 2014, which is attached to this Final Order and identified for reference purposes as Exhibit B.

As such, the above styled cause stands ready for final adjudication via this Final Order. Following consideration of the hearing officer's recommendations and the response submitted by the Respondent, the Undersigned finds as follows:

1. The Secretary of State is vested with the regulation of businesses that sell preneed merchandise and/or services in the State of Mississippi, pursuant to the Mississippi Preneed Cemetery and Funeral Registration Act, Mississippi Code Annotated

Sections 75-63-51 to 75-63-75 (“Preneed Act”) and also businesses that own and operate perpetual care cemeteries in the State of Mississippi, pursuant to the Mississippi Cemetery Law, Mississippi Code Annotated Section 41-43-31 to 41-43-57 (“Cemetery Law”).

2. Autumn Woods, at all relevant times contained in the Division’s Notice of Hearing, was a preneed contract provider as defined by Mississippi Code Annotated Section 75-63-53(e), and the owner and operator of a perpetual care cemetery as contemplated by Mississippi Code Annotated Section 41-43-33.

3. The Secretary of State has jurisdiction of the parties and subject matter.

4. Autumn Woods was not registered for the sale of preneed merchandise and/or services with the Secretary of State as required by Mississippi Code Annotated Section 75-63-65. Further, despite not being registered, Autumn Woods sold in excess of twenty (20) preneed contracts¹, all in violation of Mississippi Code Annotated Section 75-63-65. (Hearing Exhibit S2).

5. Pursuant to Mississippi Code Annotated Section 75-63-55(3), “All preneed contracts sold should be funded by trust or insurance . . . or evidenced by a warehouse receipt”; however, Autumn Woods sold in excess of twenty (20) preneed contracts which were not funded by trust or insurance or evidenced by a warehouse receipt, all in violation of Mississippi Code Annotated Section 75-63-53(3).

6. As required by Mississippi Code Annotated Section 75-63-59(3), at least eighty-five percent (85%) of the funds received from the sale of preneed contracts must be placed in trust. Of the twenty (20) preneed contracts sold by Autumn Woods covering

¹ While Autumn Woods sold over twenty (20) preneed contracts for cemetery goods and services (primarily grave openings and closings), the twenty (20) contracts covered over forty (40) people with several family members placed on the same contract. (Hearing Exhibit S2).

forty (40) consumers, seven (7) individuals have passed away and were serviced by Autumn Woods. For the remaining un-serviced contracts and the consumers covered by those contracts, for Autumn Woods to be in compliance with Mississippi Code Annotated Section 75-63-55(3), and Section 75-63-59(3), the sum of \$20,804.25 must be funded by trust or insurance.

7. In a failed attempt to comply with Mississippi Code Annotated Section 75-63-55(3), Autumn Woods purchased a Certificate of Deposit with Trustmark Bank on December 3, 2013. On the date of the Administrative Hearing, March 5, 2014, the balance of said Certificate of Deposit was \$20,001.86. (Hearing Exhibit R. 10). However, an unrestricted C.D. that is not governed by a trust agreement with terms and conditions approved by the Secretary of State's Office does not meet the requirements of Mississippi Code Annotated Section 75-63-55(3) and is in violation of the Act, which states that: "all preneed contracts sold shall be funded by trust or insurance . . . or evidenced by a warehouse receipt." Ownership of the C.D. by Autumn Woods is subject to change of ownership or surrender of the C.D. for cash. It meets no statutory criteria.

8. Pursuant to Mississippi Code Annotated Section 41-43-37(1), "the owner of every cemetery . . . shall provide for the creation and establishment of an irrevocable perpetual care trust fund, the principal of which shall permanently remain intact . . . and only the income thereof shall be devoted to the perpetual care of the cemetery." The Hearing Officer determined that Autumn Woods did not create a perpetual care trust fund, nor did Autumn Woods set aside fifteen percent (15%) of ground interment sales as required by Mississippi Code Annotated Section 41-43-37(1)(a), all in violation of the Cemetery Law.

9. Autumn Woods delivered approximately fifty (50) contracts to the Secretary of State's office in response to a request for the cemetery to provide copies of all contracts for the sale of burial rights. (Hearing Exhibit S8). No plat or map of the cemetery reflecting interments sold, spaces reserved, or available spaces for sale was provided to the Secretary of State's examiners. On May 17, 2013, the Secretary of State's Office was provided with a three ring binder, titled, "Plot Index Autumn Woods Memorial Gardens" (Hearing Exhibit S3). The May 17, 2013, document reflected that Autumn Woods had made approximately 1,500 sales of burial spaces at the cemetery—not fifty (50). Subsequently, a second three ring binder, titled "Plot Index Autumn Woods Memorial Gardens" was submitted by Autumn Woods to the Secretary of State's Office on June 10, 2013. The June 10, 2013 submission by Autumn Woods reflected that the cemetery had made approximately 1900 sales of burial spaces at Autumn Woods—not fifty (50) or 1500. (Hearing Exhibit S4). Despite the various submissions made by Autumn Woods described herein, the Hearing Officer found that there were over 3,100 purchases of burial spaces in Autumn Woods since inception in 1999. (See Hearing Exhibit S5)

10. The Hearing Officer found that the Secretary of State staff submitted clear and convincing evidence that over 3,100 graves have been sold by Autumn Woods. Secretary of State staff employed a number of tools and resources to determine the number of graves sold by Autumn Woods. Specifically, the Secretary of State's staff used the following resources to determine the number of graves sold by Autumn Woods:

a. Staff made a visual inspection of the grounds and photographed **all** graves that existed as of June 12, 2013. From this work, an inventory was made of occupied graves and graves claimed for interment by installed memorial markers;

b. Staff included contracts obtained from Autumn Woods itself and added non-duplicative contracts obtained from Lakeover Funeral Home and Peoples Funeral Home where Autumn Woods contracts for the sale of graves spaces were included in the client files both respective funeral homes;

c. Staff utilized public record information available on public websites such as www.findagrave.com for interments listed in Autumn Woods;

d. Finally, staff used published obituaries from area funeral homes where such obituaries clearly indicated interments at Autumn Woods Cemetery.

In determining that over 3100 grave sales have been made at Autumn Woods since 1999, staff was careful not to include any sales twice in the count, thereby eliminating duplicative sales from the various sources it used. As noted above in paragraph 9, Autumn Woods first provided some documentation of only 1500 sales that it later revised up to 1900 grave sales during the course of the examination.

11. To calculate the amount due to perpetual care trust for Autumn Woods, Secretary of State Staff collected all written documentation that could be obtained where the price paid for a grave space at Autumn Woods was recorded. Primarily, the source documentation came from various funeral homes in the Jackson, Mississippi area where contracts from Autumn Woods were contained in the client files of these funeral homes. (Hearing Exhibit S6). Hearing Exhibit S6 is a collection of eighty-one (81) contracts for the sale of 143 burial spaces, which reflected an average price of each burial space at

\$356.73 per grave. Given the absence of business records maintained by Autumn Woods that the cemetery either would not or was not able to provide to the Secretary of State examiner, the examiner's approach to determine an average sale price for a grave space at the cemetery was reasonable and sound.

12. Likewise, given the absence of documentation maintained and/or provided by Autumn Woods, the Hearing Officer concluded that the use of documented prices for burial sales to determine an average price of a burial grave at Autumn Woods was sound and reasonable. The Secretary of State's Office calculated that total collections were \$1,182,943.75 from the sale of graves at Autumn Woods. (Hearing Exhibit S5). Fifteen percent (15%) of total sales due to trust as required by Mississippi Code Annotated Section 41-43-37(1)(a) is \$177,441.56, which is fifteen percent (15%) of \$1,182,943.75.

13. In their Response to the Hearing Officer's findings (Exhibit B to this Final Order), Autumn Woods asserts that it sold 2660 grave spaces since 1999 at an average price of \$270.35 per grave, not \$356.73 per grave as calculated by the Secretary of State staff. As such, Autumn Woods argues that their total sales were \$719,125.00, of which \$107,868.75 is due to trust, not \$177,441.56 as calculated by the Secretary of State's examiner. Hearing Exhibit R8 is a two page document that Autumn Woods presented at the hearing to support their claim that the staff's calculation of trust deficiency is too high. A copy of Hearing Exhibit R8 is attached to this Final Order.

14. The Undersigned rejects the assertion by Autumn Woods that the Secretary's staff has calculated a perpetual care trust deficiency that is too high. To support its claim that the deficiency is \$107,868.75, rather than \$177,441.56, Autumn Woods presents a spreadsheet that purports to recap all grave sales at the cemetery since

1999, by year, and the amount of the sale per grave. (Hearing Exhibit R8). Autumn Woods, however, **presents no source documents whatsoever** either at the hearing or post-hearing to support its claim that the staff's calculated deficiency is too high. Moreover, the greater weight of evidence suggests Autumn Woods has no records that accurately or comprehensively record burial sales or interments. First, when the Secretary of State's staff asked Autumn Woods for a copy of contracts for the sale of graves, Autumn Woods produced a sparse quantity of approximately fifty (50) contracts. (Hearing Exhibit S8). Additionally, on two (2) separate occasions, May 17, 2013, and June 10, 2013, Autumn Woods supplied burial plot indexes, first purporting to show 1500 sales and later, approximately 1900 sales of graves. Everything before the Undersigned suggests that Autumn Woods has no reliable source documents to calculate any deficiencies and that the staff's approach to photograph and count every grave was entirely reasonable and a reliable reference for its calculations.

15. Therefore, Autumn Woods should have a perpetual care trust balance in the principal amount (excluding interest and earnings) of \$177,441.56. However, Autumn Woods does not have a perpetual care trust at all. At the hearing held on March 5, 2014, Autumn Woods presented and introduced a paper record that allegedly represented a CD with a balance of \$72,629.74 (Hearing Exhibit R11). In addition to this amount being deficient by over \$100,000.00, an unrestricted CD is not a proper trust and does not qualify as an irrevocable perpetual care trust fund under the requirements of Mississippi Code Annotated Section 41-43-37.

16. Pursuant to Mississippi Code Section 41-43-40, "every perpetual care cemetery shall maintain continuously and at all times an up-to-date records of the persons

buried in the cemetery or entombed with a mausoleum or columbarium, the date of burial or entombment, a map of the designated lot for burial or entombment as well as a map of lots, burial spaces, mausoleum crypts or columbarium niches that have been sold. The map or plat shall also contain up-to-date designations indicating committed or planned designations of burial lots, crypt, niche or mausoleum spaces for future use.” The Hearing Officer found that Autumn Woods has not kept or maintained an up-to-date record of persons buried in the cemetery, nor has Autumn Woods kept a map or plat of the cemetery showing burials or sales of burial spaces, all in violation of Mississippi Code Annotated Section 41-43-40.

CONCLUSIONS OF LAW

17. An Order of **Cease and Desist** issued by the Hearing Officer at the conclusion of the administrative hearing on March 5, 2014, is hereby continued and extended until modified or lifted by a proper order issued by the Office of the Secretary of State. Autumn Woods and/or the employees or the agents of Autumn Woods, wherever such employees or agents may exist from any location, shall **Cease and Desist** from selling any preneed merchandise and/or services, or making any further illegal, unfunded preneed sales to the public. Such **Cease and Desist** shall continue until the preneed trust deficiencies described herein are cured, documentation of such cure is presented to staff to their satisfaction, and a proper order is issued by the Secretary of State modifying or lifting such Cease and Desist with appropriate instructions for registering Autumn Woods to sell preneed goods and services.

18. Autumn Woods sold in excess of twenty (20) preneed contracts without Autumn Woods being registered with the Secretary of State, and each sale of a contract represents over twenty (20) separate violations of Mississippi Code Annotated Section 75-63-65.

19. Thirty-seven (37) individuals are covered by the preneed contracts described above and are owed cemetery merchandise and/or services for which they have paid. Yet, Autumn Woods has no trust or insurance coverage for any of the thirty-seven (37) persons who are owed services in the future, all in violation of Mississippi Code Annotated Section 75-63-55(3).

20. For Autumn Woods to be in compliance with Mississippi Code Annotated Section 75-63-55(3), and Section 75-63-59(3), the sum of \$20,804.25 must immediately be placed by Autumn Woods in a proper irrevocable trust approved by the Secretary of State's Office, or Autumn Woods must procure insurance coverage for the retail sales of these goods and services.

21. For the preneed violations described above, an administrative penalty in the amount of \$10,000.00 is hereby imposed upon Autumn Woods for all of the said violations. The penalty in the amount of \$10,000.00 is the maximum monetary fine authorized by Mississippi Code Annotated Section 75-63-69(1). This amount shall be paid by Autumn Woods to the Secretary of State for the aforesaid violations no later than thirty (30) days from the date of this Final Order.

22. Autumn Woods did not create a perpetual care trust fund, as required by Mississippi Code Annotated Section 41-43-37(1), nor did Autumn Woods set aside

fifteen percent (15%) of sales for burial spaces, as required by Mississippi Code Annotated Section 41-43-37(1)(a).

23. Autumn Woods has not maintained up-to-date records of persons interred in the cemetery, nor has Autumn Woods kept a map or plat of the cemetery showing burials or sales of burial spaces, all in violation of Mississippi Code Annotated Section 41-43-40.

24. Autumn Woods has sold over 3,100 burial spaces at an average price of \$356.73 per grave, yielding total gross sales since inception in 1999 in the amount of \$1,182,943.75. In order for Autumn Woods to be in compliance with Mississippi Code Annotated Section 41-43-37(1), the sum of \$177,441.56 must immediately be placed in a perpetual care trust fund by Autumn Woods. Documentation of the establishment of a perpetual care trust, the funding of such trust in the required amount, and a copy of the perpetual care trust agreement with a trustee authorized by statute must be presented to Secretary of State Staff for review and approval within thirty (30) days of the date of this Final Order.

25. Every sale of a burial space by Autumn Woods without a perpetual care trust fund, and also without placing fifteen percent (15%) of the sale into a perpetual care trust fund, is a separate violation of the Cemetery Law. Consequently, an additional administrative penalty in the sum of \$31,000.00, authorized by Mississippi Code Annotated Section 41-43-7 is hereby imposed upon Autumn Woods for the aforementioned violations. Said sum shall be paid by Autumn Woods to the Secretary of State for the above described violations within thirty (30) days from the date of this Final Order.

SO ORDERED and ADJUDGED.

This, the 18 day of June, 2014.

C. Delbert Hosemann, Jr.

C. DELBERT HOSEMANN, JR.
Secretary of State
State of Mississippi

OFFICE OF THE MISSISSIPPI SECRETARY OF STATE
REGULATION AND ENFORCEMENT

IN THE MATTER OF:)	ADMINISTRATIVE
AUTUMN WOODS MEMORIAL GARDENS)	PROCEEDING NUMBER:
400 WEST NORTHSIDE DRIVE)	LPC-13-0846
JACKSON, MS 39209)	
)	
<i>Respondent</i>)	

FINDINGS OF FACTS

CAME ON FOR HEARING on March 5, 2014, the Request of the Secretary of State of Mississippi to issue a Cease and Desist and For Consideration of Administrative Penalties against Autumn Woods Memorial Gardens, hereinafter "Autumn Woods", and at said Administrative proceeding, the Hearing Officer having considered the testimony of the witnesses, the evidence submitted, and the law applicable thereto, now enters the following Findings of Facts and Conclusions of Law:

1. That the Secretary of State is vested with the regulation of establishments that sell preneed merchandise and/or services in the State of Mississippi, pursuant to the Mississippi Preneed Cemetery and Funeral Registration Act, Mississippi Code Annotated Sections 75-63-51 to 75-63-75 ("Preneed Cemetery Act") and also establishments that operate perpetual care cemeteries in the State of Mississippi, pursuant to the Mississippi Cemetery Law, Mississippi Code annotated Section 41-43-31 to 41-43-53 ("Cemetery Law").

2. That Autumn Woods, at the time of the alleged violations that were submitted to the Hearing Officer at the Administrative proceeding, was a contract provider as defined by Mississippi Code Annotated §75-63-53(e), and the owner and operator of a perpetual care cemetery as contemplated by Mississippi Code Annotated §41-43-33.



3. That the Hearing Officer finds that the Secretary of State has jurisdiction of the parties and subject matter herein.

4. That the Hearing Officer finds that Autumn Woods was not registered for the sale of preneed merchandise and/or services with the Secretary of State as required by Mississippi Code Annotated §75-63-65, and the Hearing Officer further finds that Autumn Woods sold in excess of twenty (20) preneed contracts without being registered with the Secretary of State, all in violation of Mississippi Code Annotated §75-63-65.

5. That pursuant to Mississippi Code Annotated §75-63-55(3), "All preneed contracts sold should be funded by trust or insurance...or evidenced by a warehouse receipt", and the Hearing Officer finds that Autumn Woods sold in excess of forty (40) preneed contracts which were not funded by trust or insurance or evidenced by a warehouse receipt, all in violation of Mississippi Code Annotated §75-63-53(3) .

6. That the Hearing Officer finds that Autumn Woods purchased a Certificate of Deposit with Trustmark Bank on December 3, 2013, and on the date of the Administrative Hearing, the sum of \$20,001.86 was in said Certificate of Deposit, but a Certificate of Deposit does not meet the requirements of Mississippi Code Annotated §75-63-55(3) and is in violation of the Act, which states that: "all preneed contracts sold shall be funded by trust or insurance...or evidenced by a warehouse receipt."

7. That pursuant to Mississippi Code Annotated §75-63-59(3), at least eighty-five percent (85%) of the funds received from the sale of preneed contracts must be placed in trust, and the Hearing Officer finds that of the forty (40) preneed contracts sold by Autumn Woods, seven (7) contracts have already been serviced by Autumn Woods, and in order for Autumn Woods to be in

compliance with Mississippi Code Annotated §75-63-55(3), and §75-63-59(3), the sum of \$20,804.25 must be funded by trust by Autumn Woods, or insurance, or evidenced by warehouse receipt.

8. That pursuant to Mississippi Code Annotated §41-43-37(1), “the owner of every cemetery...shall provide for the creation and establishment of an irrevocable perpetual care trust fund, the principal of which shall permanently remain intact...and only the income thereof shall be devoted to the perpetual care of the cemetery,” and the Hearing Officer finds that Autumn Woods did not create a perpetual care trust fund, nor did Autumn Woods set aside fifteen percent (15%) of the ground interment sale price as required by Mississippi Code Annotated §41-43-37(1)(a), all in violation of the Act.

9. That the Hearing Officer finds that the Secretary of State initiated the examination of Autumn Woods in April of 2013, and at that time Autumn Woods delivered to the Secretary of State for examination approximately fifty (50) contracts for the sale of burial spaces by Autumn Woods. That there was no plat or map of the cemetery that could be provided to the Secretary of State by Autumn Woods. That on May 17, 2013, the Secretary of State was provided with a three ring binder, entitled Plat Index, by Autumn Woods reflecting that Autumn Woods had made approximately 1,500 contract sales, (See Exhibit 3), and then a second three ring binder, entitled Amended Plat Index, was provided to the Secretary of State by Autumn Woods on June 10, 2013, with additional contracts listed therein, for the total amount of approximately 1,900 purchasers of burial spaces at Autumn Woods. (See Exhibit 4)

10. That the Hearing Officer finds, that after an examination by the Secretary of State of all of the grave markers in Autumn Woods, and also from various other sources, including funeral

home obituaries that the Secretary of State has correctly determined that there were over 3,100 purchases made of burial spaces in Autumn Woods. (See Exhibit 5)

11. That the Hearing Officer finds, that as a result of the evidence of contracts for the sale of burial spaces furnished by Autumn Woods to the Secretary of State, in order for the Secretary of State to calculate the total amount of funds that Autumn Woods should have placed in trust, the Hearing Officer finds that the Secretary of State submitted clear and convincing evidence at the Administrative Hearing that there were over 3,100 sales of burial spaces by Autumn Woods, and there were no business records maintained by Autumn Woods, and therefore that the only means and method for the Secretary of State to calculate the amount of the deficit owed by Autumn Woods to the perpetual care trust fund, was and is to obtain an average of the price of all of the burial spaces sold that the Secretary of State could obtain from Autumn Woods, and from all of the funeral homes which had contracts reflecting sales of burial spaces by Autumn Woods. That Exhibit (6) to the Administrative Hearing contained the only contracts for the sale of burial spaces by Autumn Woods that could be obtained by the Secretary of State, being eighty-one (81) contracts for the sale of 143 burial spaces, which reflected an average price of each burial space sold to be the sum of \$356.73. (See Exhibit 6)

12. That the Hearing Officer finds that the average sales price of each burial space was properly used by the Secretary of State to calculate the total sum of money that should have been placed in a perpetual care trust fund by Autumn Woods, in accordance with the "Cemetery Law", which sum is fifteen percent (15%) of the total sales price of all burial spaces sold by Autumn Woods. That the reasonable calculation by the Secretary of State of the total sales price of all burial spaces sold by Autumn Woods was the sum of \$1,182,943.75, and the Hearing Officer finds that said

calculation by the Secretary of State of \$1,182,943.25 was reasonable both as to number and price per number, and that fifteen percent (15%) of that amount is the sum of \$177,441.56, which the Hearing Officer finds should have been placed by Autumn Woods in a perpetual care trust fund, but was not. (See Exhibit 5)

13. That the Hearing Officer finds that in order for Autumn Woods to be in compliance with the "Cemetery Law", Autumn Woods must place the total sum of \$177,441.56 into a perpetual care trust fund.

14. That pursuant to Mississippi Code §41-43-40, "every perpetual care cemetery shall maintain continuously and at all times an up-to-date records of the persons buried in the cemetery or entombed with a mausoleum or columbarium, the date of burial or entombment, a map of the designated lot for burial or entombment as well as a map or lots, burial spaces, mausoleum crypts or columbarium niches that have been sold. The map or plat shall also contain up-to-date designations indicating committed or planned designations of burial lots, crypt, niche or mausoleum spaces for future use." That the Hearing Officer finds that Autumn Woods has not kept or maintained an up-to-date record of persons buried in the cemetery, nor has Autumn Woods kept a map or plat of the cemetery showing burials or sales of burial spaces, all in violation of Mississippi Code Annotated §41-43-40.

CONCLUSIONS OF LAW

15. It is therefore recommended that a Cease and Desist Order be immediately entered, prohibiting Autumn Woods, and/or the employees or the agents of Autumn Woods, from selling any preneed merchandise and/or services, or making any further illegal or unfunded preneed sales to the

public until the preneed trust deficiencies described herein are cured.

16. That the Hearing Officer finds that in excess of forty (40) preneed contracts were sold by Autumn Woods, without Autumn Woods being registered with the Secretary of State, and each sale of a contract represents over forty (40) separate violations of Mississippi Code Annotated §75-63-65.

17. That the Hearing Officer finds that thirty-seven (37) of the preneed contracts remain active and must be serviced at time of death. These thirty-seven (37) preneed contracts are not funded by trust, insurance or warehouse receipt, all in violation of Mississippi Code Annotated §75-63-55(3). These actions by Autumn Woods, in failing to fund said contracts by trust, insurance or warehouse receipt, represent thirty-seven (37) separate violations.

18. That in order for Autumn Woods to be in compliance with Mississippi Code Annotated §75-63-55(3), and §75-63-59(3), the sum of \$20,804.25 must immediately be placed by Autumn Woods in trust or insurance provided or evidenced by a warehouse receipt.

19. That the Hearing Officer finds that an administrative penalty in the sum of \$10,000.00, be and the same is hereby imposed upon Autumn Woods for all of the said violations, and said sum of \$10,000.00 shall be paid by Autumn Woods to the Secretary of State for the aforesaid violations.

20. That the Hearing Officer finds that Autumn Woods did not create a perpetual care trust fund, as required by Mississippi Code Annotated §41-43-37(1), nor did Autumn Woods set aside fifteen percent (15%) of the sales price of each burial space, as required by Mississippi Code Annotated §41-43-37(1)(a), all in violation of §41-43-37(1) and §41-43-37(1)(a).

21. That the Hearing Officer finds that Autumn Woods has not maintained an up-to-date

records of persons buried in the cemetery, nor has Autumn Woods kept a map or plat of the cemetery showing burials or sales of burial spaces, all in violation of Mississippi Code Annotated §41-43-40.

22. That Autumn Woods has sold over 3,100 burial spaces at an average price of each burial space in the approximate sum of \$356.73, for a total sales price of all burial spaces in Autumn Woods in the amount of \$1,182,943.75, and Autumn Woods did not create a perpetual care trust fund, nor did Autumn Woods set aside fifteen percent (15%) of the sales price as required by the Law, and in order for Autumn Woods to be in compliance with the Law, the sum of \$177,441.56 must immediately be placed in a perpetual care trust fund by Autumn Woods.

23. That every sale of a burial space by Autumn Woods without a perpetual care trust fund, and also without placing fifteen percent (15%) of the sales price in a perpetual care trust fund, is a separate violation of the Act, and the Hearing Officer finds that an administrative penalty in the sum of \$20,000.00, be and the same is hereby imposed upon Autumn Woods for the aforementioned violations, and said sum shall be paid by Autumn Woods to the Secretary of State for the above described violations.

SO ORDERED this the 15th day of April, 2014.



J. MACK VARNER
Hearing Officer

OFFICE OF THE MISSISSIPPI SECRETARY OF STATE BUSINESS
REGULATION AND ENFORCEMENT DIVISION

IN THE MATTER OF:

AUTUMN WOODS MEMORIAL GARDENS Administrative Proceeding
400 WEST NORTHSIDE DRIVE Number: LPC-13-0846
JACKSON, MS 39209

Respondent

RESPONDENT'S SUPPLEMENTAL RESPONSE TO THE
FINDINGS OF FACTS

COMES NOW the Respondent, Earle Stewart Banks as owner of Autumn Woods Memorial Gardens, by and through its attorney, Halbert E. Dockins Jr., Esq. and files this objection to the Findings of the hearing officer and requests reconsideration of one specific finding of the hearing officer prior to presentment and final ruling by Mississippi Secretary of State and directly to Mississippi Secretary of State prior to a final approval of the hearing officer's ruling. In support thereof, the Respondent will show the following:

1. Paragraph 22 of the findings of the hearing officer states the following:

"That Autumn Woods has sold over 3,100 burial spaces at an average price of each burial space in the approximate sum of \$356.73, for a total sales price of all burial spaces in Autumn Woods in the amount of \$1,182,943.75, and Autumn Woods did not create a perpetual care trust fund, nor did Autumn Woods set aside fifteen (15%) of the sales price as required by the Law, and in order for Autumn Woods to be in compliance with the Law, the sum of \$177,441.56 must immediately be placed in a perpetual care trust fund by Autumn Woods."



2. Respondent would show the Court that he has not sold \$3,100 burial spaces at an average price of each burial space of approximately \$356.73.¹

3. At the hearing the Respondent presented through his accountant, Ms. Dana Barnes, a matrix (Exhibit "A") which indicated the total amount of sales and total amount of sales receipts from the sale of those burial spaces.

4. The total amount of burial spaces at the time of the hearing was 2,660 at an average sum of \$270.35 for a total sales price of all burial spaces in Autumn Woods in the amount of \$719,125.00.

5. It is admitted that Respondent maintained a deficiency in the 15% set aside which should have been \$107,868.75, instead of the \$177,441.56 as indicated in the hearing officer's ruling.

6. And now having objected to the one single finding by the hearing officer, Respondent requests the Secretary of State adopt all other parts of the hearing officer's findings in total and without objection.

Respectfully Submitted,

AUTUMN WOODS MEMORIAL GARDENS,
by:



Halbert E. Dockins Jr., Esq. (MSB#6138)
One of the Attorneys for Respondent

OF COUNSEL:

¹ The Respondent on two occasions prior to the hearing attempted to present to the Secretary of State's investigator a full and accurate sum of spaces sold and the exact sales sums received from customers but the investigating officer and the Secretary of State refused to accept the data.

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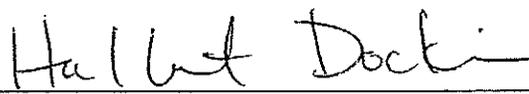
CERTIFICATE OF SERVICE

I, Halbert E. Dockins Jr., Esq. do hereby certify that I have this day served via United States mail, certified, return receipt a true and correct copy of the above and foregoing to:

J. Mack Varner
Hearing Officer
P.O. Box 1237
Vicksburg, MS 39181-1237

Dave Scott, Esq.
Assistant Secretary of State
Regulation and Enforcement Division
P.O. Box 136
Jackson, MS 39205-0136

THIS, the 22nd day of April, 2014.



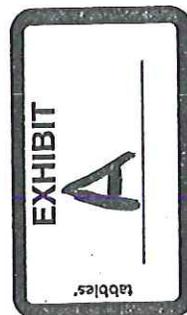
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YEAR	SECTION A			SECTION B			SECTION C		
	# OF PLOTS	PRICE	TOTAL SALES	# OF PLOTS	PRICE	TOTAL SALES	# OF PLOTS	PRICE	TOTAL SALES
1999	0	-	-	3	200.00	600.00	0	-	-
2000	18	225.00	4,050.00	13	225.00	2,925.00	8	225.00	1,800.00
2001	14	225.00	3,150.00	16	225.00	3,600.00	27	225.00	6,075.00
2002	17	225.00	3,825.00	13	225.00	2,925.00	9	225.00	2,025.00
2003	35	275.00	9,625.00	11	225.00	2,475.00	9	225.00	2,025.00
2004	15	375.00	5,625.00	5	225.00	1,125.00	11	225.00	2,475.00
2005	27	375.00	10,125.00	6	225.00	1,350.00	6	225.00	1,350.00
2006	27	375.00	10,125.00	6	225.00	1,350.00	6	225.00	1,350.00
2007	20	375.00	7,500.00	7	225.00	1,575.00	0	-	-
2008	17	375.00	6,375.00	4	350.00	1,400.00	3	350.00	1,050.00
2009	7	375.00	2,625.00	11	300.00	3,300.00	4	300.00	1,200.00
2010	9	500.00	4,500.00	11	300.00	3,300.00	3	300.00	900.00
2011	21	500.00	10,500.00	10	400.00	4,000.00	18	400.00	7,200.00
2012	8	650.00	5,200.00	17	400.00	6,800.00	19	400.00	7,600.00
2013	9	1,000.00	9,000.00	5	400.00	2,000.00	2	400.00	800.00
TOTAL	244		92,225.00	138		38,725.00	125		35,850.00

TOTAL SPACES 2660
TOTAL SALES 719,125.00
AVERAGE COST 270.35



AUTUMN WOODS CEMETERY SALES DETAIL

SECTION D			SECTION E			SECTION G			SECTION H	
# OF PLOTS	PRICE	TOTAL SALES	# OF PLOTS	PRICE	TOTAL SALES	# OF PLOTS	PRICE	TOTAL SALES	# OF PLOTS	PRICE
0	-	-	0	-	-	0	-	-	0	-
0	-	-	15	250.00	3,750.00	2	200.00	400.00	3	250.00
8	225.00	1,800.00	16	250.00	4,000.00	6	225.00	1,350.00	2	250.00
12	225.00	2,700.00	38	250.00	9,500.00	35	225.00	7,875.00	2	250.00
15	225.00	3,375.00	25	250.00	6,250.00	57	225.00	12,825.00	9	300.00
14	450.00	6,300.00	18	250.00	4,500.00	88	250.00	22,000.00	10	200.00
15	450.00	6,750.00	12	250.00	3,000.00	46	250.00	11,500.00	16	550.00
20	225.00	4,500.00	6	250.00	1,500.00	44	350.00	15,400.00	27	450.00
51	225.00	11,475.00	14	400.00	5,600.00	29	350.00	10,150.00	12	450.00
47	350.00	16,450.00	7	400.00	2,800.00	19	400.00	7,600.00	7	450.00
40	400.00	16,000.00	11	400.00	4,400.00	21	450.00	9,450.00	7	450.00
40	400.00	16,000.00	8	400.00	3,200.00	16	450.00	7,200.00	11	450.00
36	600.00	21,600.00	16	600.00	9,600.00	20	550.00	11,000.00	18	450.00
35	600.00	21,000.00	14	600.00	8,400.00	19	550.00	10,450.00	22	550.00
24	600.00	14,400.00	3	600.00	1,800.00	6	550.00	3,300.00	6	550.00
357		142,350.00	203		68,300.00	408		130,500.00	152	

TOTAL SALES	SECTION I			SECTION J			SECTION M		
	# OF PLOTS	PRICE	TOTAL SALES	# OF PLOTS	PRICE	TOTAL SALES	# OF PLOTS	PRICE	TOTAL SALES
-	0	-	-	0	-	-	0	-	-
750.00	0	-	-	0	-	-	1	25.00	25.00
500.00	4	-	-	0	-	-	3	25.00	75.00
500.00	4	-	-	0	-	-	5	25.00	125.00
2,700.00	3	-	-	0	-	-	35	100.00	3,500.00
2,000.00	5	-	-	0	-	-	23	100.00	2,300.00
8,800.00	5	-	-	0	-	-	46	100.00	4,600.00
12,150.00	3	-	-	0	-	-	53	100.00	5,300.00
5,400.00	11	-	-	1	100.00	100.00	64	100.00	6,400.00
3,150.00	6	-	-	1	100.00	100.00	60	100.00	6,000.00
3,150.00	5	-	-	1	100.00	100.00	74	100.00	7,400.00
4,950.00	3	-	-	0	-	-	96	100.00	9,600.00
8,100.00	11	-	-	2	100.00	200.00	147	100.00	14,700.00
12,100.00	11	-	-	4	100.00	400.00	153	100.00	15,300.00
3,300.00	10	-	-	0	-	-	52	100.00	5,200.00
67,550.00	81			9		900.00	812		80,525.00

SECTION W			SECTION X		
# OF PLOTS	PRICE	TOTAL SALES	# OF PLOTS	PRICE	TOTAL SALES
0		-	0		-
0		-	0		-
1		-	0		-
0		-	2		-
1		-	0		-
0		-	0		-
0		-	0		-
7	300.00	2,100.00	0		-
4	300.00	1,200.00	2		-
5	300.00	1,500.00	1		-
5	400.00	2,000.00	1		-
59	600.00	35,400.00	0		-
16	500.00	8,000.00	0		-
14	500.00	7,000.00	0		-
10	500.00	5,000.00	3		-

122

62,200.00 9

	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	Totals
A	0	18@ \$225 \$4050	14@ \$225 \$3150	17@ \$225 \$3825	35@ \$275 \$9625	15@ \$375 \$5625	27@ \$375 \$10125	27@ \$375 \$10125	20@ \$375 \$7500	17@ \$375 \$6375	7@ \$375 \$2625	9@ \$500 \$4500	21@ \$500 \$10500	8@ \$50 \$5200	9@ \$1000 \$9000	\$89000
B	3@ \$200 \$6000	13@ \$225 \$2925	16@ \$225 \$3600	13@ \$225 \$2925	11@ \$225 \$2475	5@ \$225 \$1125	6@ \$225 \$1350	6@ \$225 \$1350	7@ \$225 \$1575	4@ \$350 \$1400	11@ \$300 \$3300	11@ \$300 \$3300	10@ \$400 \$4000	17@ \$400 \$6800	5@ \$400 \$2000	\$44,125
C	0	8@ \$225 \$1800	27@ \$225 \$6075	9@ \$225 \$2025	9@ \$225 \$2025	11@ \$225 \$2475	6@ \$225 \$1350	6@ \$225 \$1350	0	3@ \$350 \$1050	4@ \$300 \$1200	3@ \$300 \$900	18@ \$400 \$7200	19@ \$400 \$9500	2@ \$400 \$800	\$37,750
D	0	0	8@ \$225 \$1800	12@ \$225 \$2700	15@ \$225 \$3375	14@ \$450 \$6300	15@ \$450 \$6750	20@ \$225 \$4500	51@ \$225 \$11475	47@ \$350 \$16450	40@ \$400 \$1600	40@ \$400 \$1600	36@ \$600 \$21,600	35@ \$600 \$21,000	24@ \$600 \$14,400	\$142,350
E	0	15@ \$250 \$3750	16@ \$250 \$4000	38@ \$250 \$9500	25@ \$250 \$6250	18@ \$250 \$4500	12@ \$250 \$3000	6@ \$250 \$1500	14@ \$400 \$5600	7@ \$400 \$2800	11@ \$400 \$4400	8@ \$400 \$3200	16@ \$600 \$9600	14@ \$600 \$9600	3@ \$600 \$1800	\$65,900
G	0	2@ \$200 \$400	6@ \$225 \$1350	35@ \$225 \$7875	57@ \$225 \$12,825	88@ \$250 \$22,000	46@ \$250 \$11,500	44@ \$350 \$15,400	29@ \$350 \$10,150	19@ \$400 \$7600	21@ \$450 \$9450	16@ \$450 \$7200	20@ \$550 \$11,000	19@ \$550 \$10,450	6@ \$550 \$3300	\$130,000
H	0	3@ \$250 \$750	2@ \$250 \$500	2@ \$250 \$500	9@ \$300 \$2700	10@ \$200 \$2000	16@ \$550 \$8800	27@ \$450 \$12,150	12@ \$450 \$5400	7@ \$450 \$3150	7@ \$450 \$3150	11@ \$450 \$4950	18@ \$450 \$8100	22@ \$550 \$12,100	6@ \$550 \$3300	\$67,550
I	0	0@ \$0	4@ \$0	4@ \$0	3@ \$0	5@ \$0	5@ \$0	3@ \$0	11@ \$0	6@ \$0	5@ \$0	3@ \$0	11@ \$0	11@ \$0	10@ \$0	0
J	0@ \$100	0@ \$100	0@ \$100	0@ \$100	0@ \$100	0@ \$100	0@ \$100	0@ \$100	1@ \$100 \$100	1@ \$100 \$100	1@ \$100 \$100	0@ \$100	2@ \$100 \$200	4@ \$100 \$400	0@ \$100	\$900
M	0	1@ \$25 \$25	3@ \$25 \$75	5@ \$25 \$125	35@ \$100 \$3500	23@ \$100 \$2300	46@ \$100 \$4600	53@ \$100 \$5300	64@ \$100 \$6400	60@ \$100 \$6000	74@ \$100 \$7400	96@ \$100 \$9600	147@ \$100 \$14,700	153@ \$100 \$15,300	52@ \$100 \$5200	\$80,525
W	0	0@ \$	1@ \$	0@ \$	1@ \$	0@ \$	0@ \$	7@ \$300 \$2100	4@ \$300 \$1200	5@ \$300 \$1500	5@ \$400 \$2000	59@ \$600 \$35,400	16@ \$500 \$8000	14@ \$500 \$7000	10@ \$500 \$5000	\$62,200
X	0	0@ \$	0@ \$	2@ 0	0@ \$	0@ \$	0@ \$	0@ \$	2@	1@	1@ 0	0@ \$	0@ \$	0@ \$	3@ 0	0

Total= \$721,300.00 X 0.15= \$108,195.00

\$721,300



	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	Totals
A	0	18@ \$225 \$4050	14@ \$225 \$3150	17@ \$225 \$3825	35@ \$275 \$9625	15@ \$375 \$5625	27@ \$375 \$10125	20@ \$375 \$7500	17@ \$375 \$6375	7@ \$375 \$2625	9@ \$500 \$4500	21@ \$500 \$10500	8@ \$50 \$5200	9@ \$1000 \$9000	\$89000	
B	3@ \$200 \$6000 600.	13@ \$225 \$2925	16@ \$225 \$3600	13@ \$225 \$2925	11@ \$225 \$2475	5@ \$225 \$1125	6@ \$225 \$1350	6@ \$225 \$1350	7@ \$225 \$1575	4@ \$350 \$1400	11@ \$300 \$3300	11@ \$300 \$3300	10@ \$400 \$4000	17@ \$400 \$6800	5@ \$400 \$2000	\$44,125
C	0	8@ \$225 \$1800	27@ \$225 \$6075	9@ \$225 \$2025	9@ \$225 \$2025	11@ \$225 \$2475	6@ \$225 \$1350	6@ \$225 \$1350	0	3@ \$350 \$1050	4@ \$300 \$1200	3@ \$300 \$900	18@ \$400 \$7200	19@ \$400 \$9500	2@ \$400 \$800	\$37,750
D	0	0	8@ \$225 \$1800	12@ \$225 \$2700	15@ \$225 \$3375	14@ \$450 \$6300	15@ \$450 \$6750	20@ \$225 \$4500	51@ \$225 \$11475	47@ \$350 \$16450	40@ \$400 \$1600	40@ \$400 \$1600	36@ \$600 \$21,600	35@ \$600 \$21,000	24@ \$600 \$14,400	\$142,350
E	0	15@ \$250 \$3750	16@ \$250 \$400	38@ \$250 \$9500	25@ \$250 \$6250	18@ \$250 \$4500	12@ \$250 \$3000	6@ \$250 \$1500	14@ \$400 \$5600	7@ \$400 \$2800	11@ \$400 \$4400	8@ \$400 \$3200	16@ \$600 \$9600	14@ \$600 \$9600	3@ \$600 \$1800	\$65,900
G	0	2@ \$200 \$400	6@ \$225 \$1350	35@ \$225 \$7875	57@ \$225 \$12,825	88@ \$250 \$22,000	46@ \$250 \$11,500	44@ \$350 \$15,400	29@ \$350 \$10,150	19@ \$400 \$7600	21@ \$450 \$9450	16@ \$450 \$7200	20@ \$550 \$11,000	19@ \$550 \$10,450	6@ \$550 \$3300	\$130,000
H	0	3@ \$250 \$750	2@ \$250 \$500	2@ \$250 \$500	9@ \$300 \$2700	10@ \$200 \$2000	16@ \$550 \$8800	27@ \$450 \$12,150	12@ \$450 \$5400	7@ \$450 \$3150	7@ \$450 \$3150	11@ \$450 \$4950	18@ \$450 \$8100	22@ \$550 \$12,100	6@ \$550 \$3300	\$67,550
I	0	0@ \$0	4@ \$0	4@ \$0	3@ \$0	5@ \$0	5@ \$0	3@ \$0	11@ \$0	6@ \$0	5@ \$0	3@ \$0	11@ \$0	11@ \$0	10@ \$0	0
J	0@ \$100	0@ \$100	0@ \$100	0@ \$100	0@ \$100	0@ \$100	0@ \$100	0@ \$100	1@ \$100 \$100	1@ \$100 \$100	1@ \$100 \$100	0@ \$100	2@ \$100 \$200	4@ \$100 \$400	0@ \$100	\$900
M	0	1@ \$25 \$25	3@ \$25 \$75	5@ \$25 \$125	35@ \$100 \$3500	23@ \$100 \$2300	46@ \$100 \$4600	53@ \$100 \$5300	64@ \$100 \$6400	60@ \$100 \$6000	74@ \$100 \$7400	96@ \$100 \$9600	147@ \$100 \$14,700	153@ \$100 \$15,300	52@ \$100 \$5200	\$80,525
W	0	0@ \$	1@ \$	0@ \$	1@ \$	0@ \$	0@ \$	7@ \$300 \$2100	4@ \$300 \$1200	5@ \$300 \$1500	5@ \$400 \$2000	59@ \$600 \$35,400	16@ \$500 \$8000	14@ \$500 \$7000	10@ \$500 \$5000	\$62,200
X	0	0@ \$	0@ \$	2@ 0	0@ \$	0@ \$	0@ \$	0@ \$	2@	1@	1@ 0	0@ \$	0@ \$	0@ \$	3@ 0	0 9

Total= \$721,300.00 X 0.15= \$108,195.00

~~2660~~
2660

\$721,300