

OFFICE OF THE MISSISSIPPI SECRETARY OF STATE  
REGULATION AND ENFORCEMENT DIVISION

IN THE MATTER OF:

GREENSCAPE MICHIGAN, INC.  
2638 23<sup>RD</sup> AVENUE  
MERIDIAN, MS 38305

Administrative Proceeding  
Number: LPR-15-1343

Respondent

---

**FINAL ORDER**

This cause came before the hearing officer on July 14, 2015. On July 17, 2015, the appointed hearing officer submitted his Recommendations as a Hearing Officer Report – Proposed Findings of Facts and Conclusions of Law, attached as Exhibit A. The Respondent was sent the recommendation and given fourteen (14) days to respond. At the time of this Order, no response has been received. The above styled cause stands ready for final adjudication via this Final Order.

**Findings of Fact**

1. The Secretary of State has the authority to administer and to provide for the enforcement of all provisions of the Preneed Cemetery and Funeral Registration Act (“Act”), Mississippi Code Annotated § 75-63-51 *et. seq.* which governs persons operating in the preneed funeral business in the State of Mississippi.
2. The Secretary of State has the authority to administer and to provide for the enforcement of all provisions of the Mississippi Cemetery Law (“Law”), Mississippi Code Annotated § 41-43-31 *et. seq.* which governs persons operating perpetual care cemeteries in the State of Mississippi.

3. As a provider of preneed funeral services, Greenscape Michigan, Inc. d/b/a Magnolia Cemetery, d/b/a Meridian memorial Park ("Greenscape") is subject to the requirements of the Act and regulations promulgated thereunder.
4. As a business that operates two perpetual care cemeteries, Greenscape is subject to the requirements of the Law and the regulations promulgated thereunder.
5. The Secretary of State, Regulation and Enforcement Division has jurisdiction of the parties and subject matter herein.
6. Mississippi Code Annotated Section 75-63-67 requires that any establishment or organization that sells preneed merchandise and/or services must submit a written or electronic report (annual report) of its preneed contract sales and performance of those contracts. As of the date of this Order, Greenscape's annual report which was due on March 31, 2015, has not been filed for calendar year 2014.
7. Mississippi Code Annotated Section 41-43-38(2) requires each perpetual care cemetery to file an annual report with the Secretary of State's Office by March 31<sup>st</sup> of each year. As of the date of this Order, the Secretary of State's Office has not received an annual report for either of Greenscape's cemeteries (Magnolia Cemetery, Meridian Memorial Park).
8. A hearing was held on this matter on July 14, 2015 with Hon. Harry R. Allen serving as hearing officer.

#### CONCLUSIONS OF LAW

9. Greenscape's failure to file their preneed annual report is a violation of Mississippi Code Annotated Section 75-63-67. Section 75-63-67 requires a penalty in the amount of One Hundred Dollars (\$100.00) per day that the annual

report is late. Mississippi Code Annotated Section 75-63-69(b)(i) caps the amount of penalties under the Act for a single proceeding or a series of related proceedings at Ten Thousand Dollars (\$10,000.00).

10. Mississippi Code Annotated Section 75-63-56(2) allows the Secretary of State to issue a Cease and Desist Order, with or without a prior hearing, against a registrant engaged in any prohibited act or practice.

11. Greenscape's failure to file annual reports for both cemeteries (Magnolia Cemetery and Meridian Memorial Park) constitutes two (2) violations of Mississippi Code Annotated Section 41-43-38(2). Mississippi Code Annotated Section 41-43-53 allows penalties for violations of the Law of not less than Five Hundred Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00).

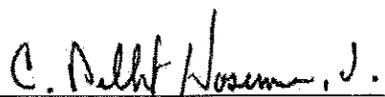
Pursuant to the authority granted by Mississippi Code Annotated Section 75-63-69(1) (a), it is hereby ORDERED that Greenscape CEASE AND DESIST all preneed sales. It is now illegal for Greenscape to sell any and all preneed services or merchandise.

Pursuant to the authority granted by Mississippi Code Annotated Section 75-63-56(1)(a), the Preneed License Registration Number 120000418 issued to Greenscape will be nonrenewed for cause. Greenscape is no longer registered with the Division to sell preneed services and merchandise.

Pursuant to the authority granted by Mississippi Code Annotated Section 75-63-69(1)(b)(i), it is ORDERED that an administrative penalty in the amount of Ten Thousand Dollars (\$10,000.00) shall be paid by September 14, 2015 to the Secretary of State for the above described violations of the Act against Greenscape.

Pursuant to the authority granted by Mississippi Code Annotated Section 41-43-53, it is ORDERED that an administrative penalty in the amount of Two Thousand Dollars (\$2,000.00) shall be paid September 14, 2015 to the Secretary of State for the above described violations of the Law against Greenscape.

SO ORDERED AND ADJUDGED,  
This, the 11 day of August, 2015.

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

# ALLEN LAW, PLLC

Harry R. Allen  
Attorney at Law

368 Courthouse Road, Suite D  
Gulfport, Ms 39507

Email: [hallen@hra-law.com](mailto:hallen@hra-law.com)  
Telephone: (228) 284-4261  
Facsimile: (228) 206-3773

July 17, 2015

Amy C. Foster  
Senior Attorney  
Regulation and Enforcement Division  
Mississippi Secretary of State's Office  
Post Office Box 136  
Jackson, MS 39205

Re: Hearing Officer Report -- Proposed Findings of Fact and Conclusion of Law  
Greenscape Michigan, Inc.  
SOS Cause No.: LPR—15-1343  
SOS Preneed Registration No.: 120000418  
SOS Perpetual Care Registration Nos.: MS-PCC-100, MS-PCC-064

Dear Ms. Foster:

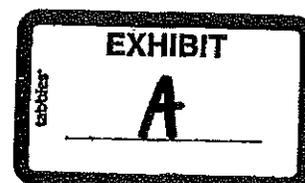
Pursuant to your letter to Mr. William Arlinghaus of Greenscape Michigan, Inc. ("Greenscape") dated June 4, 2015, I was appointed as Hearing Officer. The Hearing proceeded as scheduled in your letter of June 4, 2015 on Tuesday July 14, 2015, at 1:30 p.m. (See letter, Exhibit 1.) I was appointed to conduct a Hearing and to report a summary of my recommendations to the Secretary of State ("SOS") for Findings of Fact and Conclusions of Law.

The Hearing before a Court Reporter officially began proceedings at 1:35 p.m. on July 14, 2015. The Court Reporter recorded the proceedings and accepted nine exhibits introduced for the Record. Those present were as follows:

1. **Secretary of State ("SOS")**

Amy C. Foster, Senior Attorney  
Regulation and Enforcement Division  
Mississippi Secretary of State's Office

Mr. David Scott, Assistant SOS  
Regulation and Enforcement Division  
Mississippi Secretary of State's Office



Mr. Ian Underwood, Associate Attorney  
Regulation and Enforcement Division  
Mississippi Secretary of State's Office

2. **Greenscape Michigan, Inc.**

No representative or attorney appeared on behalf of Greenscape Michigan, Inc.

**THE ISSUES**

The letter dated June 4, 2015 from Amy C. Foster, Senior Attorney for Regulation and Enforcement Division of Mississippi SOS to Mr. William E. Arlinghaus of Greenscape defined three allegations and issues submitted by the Mississippi Secretary of State's Office against Greenscape Michigan, Inc. (See Exhibit 1.)

**PROPOSED FINDINGS OF FACT**

1. The only witness offered by SOS was Mr. David Scott, Attorney and Assistant Secretary of State for Regulation and Enforcement Division of the Mississippi Secretary of State's Office. The record will reflect that Mr. Scott was well qualified as an attorney and as a witness in the Regulation and Enforcement Division, having previously served as a United States District Court Law Clerk, served as an attorney for the Mississippi Office of Attorney General, conducted Tax Litigation in the Department of Revenue and has served as an Assistant Secretary of State for Regulation and Enforcement since March of 2008.

2. As testified by Mr. Scott, the Office of SOS first submitted a reminder to William Arlinghaus of Greenscape on February 2, 2015, that Greenscape, as a preneed provider, would need to renew the preneed registration and file the annual report for the calendar year 2014, describing its preneed contract sales and performance of those sales, prior to March 31, 2015; that the preneed registration would expire on March 31, 2015 and Greenscape would be required to submit its registration renewal with a \$50.00 renewal fee to the SOS office prior to March 31, 2015. (See Exhibit 2.)

3. On February 2, 2015, Mary Powell of the Mississippi SOS Office also forwarded to Greenscape a package of documents by email which included, "Instructions for Application for Registration or Renewal of Preneed Establishment", with a Preneed Registration and Annual Report form. That letter also advised that the appropriate form for registration could be found on the Regulation Enforcement Page of the SOS website at [www.sos.ms.gov](http://www.sos.ms.gov). Finally the letter advised Greenscape to be aware that

there was a statutory penalty of \$100.00 for each day the report is late after the March 31, 2015 deadline and that there was no discretion to waive or reduce the penalty.

4. Mr. Scott identified an exhibit (see Exhibit 3) which recorded that Mary (presumed to be Mary A. Powell, Registration Analyst) spoke to a Greenscape representative on March 26, 2015 and spoke with an individual named "Kim" to remind Greenscape of its impending deadline for submitting its annual report.

5. Mr. Scott also identified a letter dated April 9, 2015 (see Exhibit 4) to Greenscape, stating that the preneed registration had expired on March 31, 2015 and that state law mandated a penalty of \$100.00 per day be assessed for each day this renewal is late. As of the date of the letter, the penalty was \$900.00.

6. A formal notice of intention to assess penalty was directed to Greenscape on April 9, 2015 by Billy C. Luckey, Director of the Mississippi Office of the Secretary of State, Regulation and Enforcement Division. (See Exhibit 5.)

7. On April 14, 2015, Mr. Luckey wrote a letter to Greenscape (see Exhibit 6), not only reminding Greenscape of its violation in failing to file Preneed Registration Renewal and Annual Report and a subsequent penalty but also notifying Greenscape it must "...immediately cease and desist from all preneed sales."

8. The Hearing Officer finds that neither Greenscape nor its representative responded to any of the notices of the need to file the Renewal Registration or Annual Report of Preneed Contract Sales and performance of those contracts for the calendar year of 2014 on or before March 31, 2015 nor has any such report or registration been filed as of the date of the Hearing.

9. In accordance with Mississippi Code Annotated Section 75-63-67, Greenscape's Annual Report not having been filed for the calendar year 2014 as required by Section 75-63-67, it appears the SOS is required to impose the administrative fine of \$100.00 per day for each day the report is late with no discretion to waive or reduce the penalty. As of the date of the Hearing, the maximum statutory penalty had accrued and capped at \$10,000.00 and it appears a Cease and Desist Order for preneed sales revocation/nonrenewal of Greenscape's registration should be granted.

10. On January 27, 2015, Mr. Luckey, Director of the Regulation and Enforcement Division of Mississippi SOS sent an email to Mr. William E. Arlinghaus of Greenscape as a reminder that he needed to file a renewal of his Perpetual Care Cemetery Registration and Annual Report for the year 2014 on or before March 31, 2015. (See Exhibit 7.)

The email of January 27, 2015 contained a letter from Mr. Luckey forwarding a copy of the form. That letter advised Greenscape that it could be penalized \$10.00 per day for each day the report is late. The "Perpetual Care Cemetery Registration Form" and the "Annual Trustee Report Form" were attached to the package emailed to Mr. Arlinghaus for Greenscape on January 27, 2015.

11. On February 18, 2015, Mr. Luckey as Director of the Regulation and Enforcement Division of Mississippi SOS submitted another reminder that the "Perpetual Care Cemetery Registration and Annual Report for the calendar year 2014" had not been filed and that it must be postmarked on or before March 31, 2015 and that failing to do so would result in a late fee of \$10.00 per day. (See Exhibit 8.)

12. On March 25, 2015, records of Mississippi SOS, reflect that a representative of SOS telephoned Greenscape as a last minute reminder of the need for the renewal of the Perpetual Care Cemetery Registration and Annual Report for both the Magnolia Cemetery and Meridian Memorial Park.

13. Pursuant to Mississippi Code Annotated Section 41-43-38(2) failure of Greenscape to file a Annual Report for the Perpetual Care Cemeteries identified as Magnolia Cemetery and Meridian Memorial Park constitutes two separate violations of the Perpetual Care Act for which the SOS Office is entitled to seek the maximum fine of \$1,000.00 per violation.

#### CONCLUSIONS OF LAW

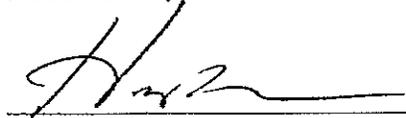
1. The Hearing Officer has jurisdiction of the persons and subject matter.
2. Greenscape is in violation of Mississippi Code Annotated Section 75-63-67 for its failure to file a renewal Registration or Annual Report of Preneed Contract Sales and Performance of those Contracts for the calendar year 2014 on or before March 31, 2015. As a result of such violation, a statutory fine of \$100.00 per day for each day the report is late should be assessed against Greenscape pursuant to Mississippi Code Annotated Section 75-63-67 and that there is no discretion to waive or reduce the penalty. Therefore, the fine that has accrued since March 31, 2015 has reached the statutory cap of \$10,000.00. Consequently, the Mississippi SOS is entitled to recover the statutory cap of \$10,000.00 as a fine against Greenscape for such violation.
3. An Order of Cease and Desist the operation of Greenscape for the sale of pre-need contracts and performance of those contracts is hereby entered and Greenscape's registration should be revoked or nonrenewed.

4. Greenscape has failed to file Perpetual Care Cemetery Annual Reports for Magnolia Cemetery and Meridian Memorial Park in violation of Mississippi Code Annotated Section 41-43-38(2), those reports having been due by March 31, 2015 for the prior year of 2014. Such failure constitutes two separate violations of the Perpetual Care Act for which the Mississippi SOS is entitled to recover \$1,000.00 for each violation or a total of \$2,000.00.

Recommended this 17 day of July, 2015.

  
ALLEN LAW, PLLC

BY:

  
HARRY R. ALLEN,  
Hearing Officer Appointed by the  
Mississippi Secretary of State