

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

|                                 |   |                                  |
|---------------------------------|---|----------------------------------|
| <b>IN THE MATTER OF:</b>        | ) |                                  |
|                                 | ) | <b>Administrative Proceeding</b> |
| <b>WILLIAMS FUNERAL SERVICE</b> | ) | <b>Number: <u>L-11-0197</u></b>  |
| <b>3400 WASHINGTON STREET</b>   | ) |                                  |
| <b>VICKSBURG, MS 39180</b>      | ) |                                  |
| <i>Respondent</i>               | ) |                                  |

**FINAL ORDER**

This cause came before the hearing officer for a hearing on October 13, 2011. On October 26, 2011, the appointed Hearing Officer submitted his Report and Recommendation, attached as Exhibit A. 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 (hereinafter “Act”), Mississippi Code Annotated Section 75-63-51, *et seq.*, which governs persons operating in the preneed funeral business in the State of Mississippi.
2. As a provider of preneed funeral services and funeral merchandise, Williams is subject to the requirements of the Act and regulations promulgated thereunder.
3. Williams is not a registered preneed provider as required by Mississippi Code Annotated Section 75-63-55(1).
4. On September 24, 2008, in a prior, separate proceeding, a “Final Cease and Desist Order and Order Imposing Administrative Penalty” was issued ordering Williams to cease sales of preneed merchandise and services (See Exhibit B).

5. Following the issuance of the September 24, 2008 order, Williams, in violation of said order, sold *at least* eleven (11) preneed contracts. The purchasers and dates of the contracts are as follows: Alexis Carter – November 22, 2008; Charlotte Carter – November 22, 2008; Leslie Carter – November 22, 2008; Jonah Regan – November 22, 2008; Mary Miller – November 26, 2008; Tyrone Carter – December 1, 2008; Geneva Lee Moore – December 1, 2008; Queen Ester Moore – December 1, 2008; Lee Shields – September 15, 2009; Danny Steed – November 12, 2009; and Valerie Grant – November 30, 2009.
6. The contracts Williams sold were not funded by trust or insurance or evidenced by a warehouse receipt as required by Mississippi Code Annotated Section 75-63-55(3).
7. Williams sold contracts that stated that they were funded by trust without establishing a trust fund or submitting a trust agreement to the Secretary of State for review and approval as required by Mississippi Code Annotated Section 75-63-59(1).
8. Williams failed to remit eighty-five percent (85%) of funds received for funeral services and merchandise to the preneed trust as required by Mississippi Code Annotated Section 75-63-65(4).
9. The administrative fine in the amount of Five Thousand Dollar (\$5,000) ordered in Cause No. P-07-0780 (Exhibit B) remains unpaid as a debt owed the state.
10. A hearing on the matter was held on October 13, 2011, with Hon. David W. Mockbee serving as hearing officer.
11. The hearing officer's recommendation is attached to this Final Order as Exhibit A.

## CONCLUSIONS OF LAW

12. The eleven (11) preneed contracts sold by Williams were sold in violation of Cause No. P-07-0780, "Final Cease and Desist Order and Order Imposing Administrative Penalty". These actions represent eleven (11) separate violations.
13. Williams' failure to establish a preneed trust fund is a violation of Mississippi Code Annotated Section 75-63-55(3).
14. Williams' sales of preneed contracts while not registered with the Mississippi Secretary of State as a provider of preneed funeral merchandise and services is a violation of Mississippi Code Annotated Section 75-63-65(1).
15. Williams' sales of preneed contracts through agents not registered with the Mississippi Secretary of State is a violation of Mississippi Code Annotated Section 75-63-65(4).
16. Williams' failure to pay the Five Thousand Dollar (\$5,000.00) administrative fine is a violation of the September 24, 2008 "Final Cease and Desist Order and Order Imposing Administrative Penalty".
17. The Secretary of State finds that the hearing officer erred in his recommendation with the inclusion of the Five Thousand Dollar (\$5,000.00) fine imposed in the prior 2007 cause of action (P-07-0780) within the Ten Thousand Dollar (\$10,000.00) cap imposed by Mississippi Code Annotated Section 75-63-69(1)(b)(i) (Rev. 2009). The 2007 enforcement action was an entirely separate proceeding alleging violations that were not duplicative with the violations alleged in this proceeding. Additionally, the 2007 proceeding is *res judicata* with the entry of the Final Cease and Desist Order issued in September of 2008. This debt remains unpaid to the state, and Mr. Williams does not benefit from his own delinquency with the inclusion of this amount under the higher

penalty limits authorized by the Legislature in 2009<sup>1</sup>. Consequently, the Five Thousand Dollar (\$5,000.00) administrative penalty imposed by the 2008 Final Cease and Desist Order (Exhibit B) remains unpaid and owed to the state *in addition to Eight Thousand Dollars (\$8,000.00)* in additional penalties as proved by the Division at the hearing in this cause.

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 Eight Thousand Dollars (\$8,000) shall be paid to the Secretary of State for the above described violations against Williams Funeral Service which penalty is the maximum allowed by statute. Further, it is **ORDERED** that Williams Funeral Service shall pay the Five Thousand Dollar (\$5,000.00) administrative penalty contained in the September 24, 2008 “Final Cease and Desist Order and Order Imposing Administrative Penalty” for a total penalty in the amount of Thirteen Thousand Dollars (\$13,000.00).

**SO ORDERED and ADJUDGED.**

This, the 7<sup>th</sup> day of December, 2011.



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

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<sup>1</sup> Effective July 1, 2009, the administrative penalty ceiling was raised from Five Thousand Dollars (\$5,000.00) to Ten Thousand Dollars (\$10,000.00). *Miss. Code Ann.* § 75-63-69(1)(b)(i) (Rev. 2009).

OFFICE OF THE MISSISSIPPI SECRETARY OF STATE  
REGULATION AND ENFORCEMENT

|                          |   |                    |
|--------------------------|---|--------------------|
| IN THE MATTER OF:        | ) | ADMINISTRATIVE     |
| WILLIAMS FUNERAL SERVICE | ) | PROCEEDING NUMBER: |
| 3400 WASHINGTON STREET   | ) |                    |
| VICKSBURG, MS 39180      | ) | <u>L-11-0197</u>   |
| RESPONDENT               | ) |                    |

REPORT AND RECOMMENDATION

Pursuant to Miss. Code Ann. § 75-63-69, a hearing in the above-referenced Administrative Proceeding was duly noticed and conducted on October 13, 2011 commencing at 10:00 a.m., in the 2<sup>nd</sup> Floor Conference Room of the Office of the Secretary of State at 700 North Street, Jackson, Mississippi 39202.

The hearing was conducted by the undersigned acting as Hearing Officer pursuant to Order of the Secretary of State dated July 18, 2011.

At the hearing, the Respondent Williams Funeral Service ("Williams") was given the opportunity to question the one (1) witness called by the Regulation and Enforcement Division of the Office of the Secretary of State ("Division"); to challenge the documentary evidence the Division offered into evidence; and, to present testimony and documentary evidence in defense of the charges presented.

Williams availed itself of the opportunity to question the Division's witness and to challenge the documentary evidence the



Division offered into evidence. Williams did not present any testimony or documentary evidence of its own.

Having heard the testimony of Division Examiner Gary Haygood, the documentary evidence presented by the Division, and the cross-examination of Mr. Haygood by Mr. Dockins, attorney for Williams, and acting pursuant to statutory authority found in Miss. Code Ann. §75-63-51, et seq., the undersigned Hearing Officer, David W. Mockbee, makes the following Findings of Fact and Conclusions of Law:

#### FINDINGS OF FACT

1. The October 13, 2011 Hearing was held pursuant to notice and conducted in the presence of Respondent Williams represented by Mr. Matthew Williams and legal counsel, Mr. Hal Dockins.

2. The Division was represented by Ms. Amy Foster.

3. One witness, Examiner Gary Haygood, testified under oath, and four exhibits were introduced into evidence by the Division through Mr. Haygood.

4. Eleven (11) preneed contracts introduced as collective Exhibit No. 3 were authenticated by Mr. Haygood's testimony that those contracts were located among the files maintained in the office of Williams Funeral Service and that those files were made available to him by Mr. Williams, reviewed by Mr. Haygood, and

then copied by Mr. Haygood, and the originals returned to Williams Funeral Service.

5. Per Miss. R. Evid. Rules 1003 and 1004(3), the Exhibit No. 3 copies were sufficiently authenticated.

6. Williams counsel's hearsay objection to Exhibit No. 3 was overruled per Miss. R. Evid. Rules 803(6) and (24) as a regularly recorded business record exception to the hearsay rule; and per the Miss. Code Ann. §75-63-57 record-keeping requirements applicable to Williams.

7. Counsel for Williams raised possible defenses on cross-examination of Examiner Haygood, but Williams offered no evidence to support those defenses.

8. The Division called Mr. Matthew Williams as an adverse witness. However, Mr. Williams asserted his constitutional right not to incriminate himself, and did not testify.

9. Williams did not call any witnesses or offer any documentary evidence to refute the Division's proof.

10. Given the above record, without any contrary evidence, the facts as established by Examiner Haygood and the documents introduced into evidence through Mr. Haygood must be accepted.

11. Those facts establish that Williams had received notice of the previously issued Final Cease and Desist Order and Order Imposing Administrative Penalty dated September 24, 2008, in Division Administrative Proceeding No. P-07-0780; that Williams

failed to pay the \$5,000 administrative penalty assessed in that Order and that Williams has sold preneed merchandise and services since September 24, 2008, in violation of that Order.

11. Those facts establish that Williams sold the eleven (11) preneed policies identified as Exhibit No. 3 without itself or its employees being registered with the Secretary of State as required by law.

#### CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and the undersigned's review of Mississippi's Preneed Cemetery and Funeral Registration Act, Miss. Code Ann. §§75-63-51 to 75-63-81 (hereafter "Act"), establishing the statutory basis for the proceeding against Williams Funeral Service, the undersigned makes the following conclusions of law:

1. Based upon the uncontradicted evidence presented by the Division, Williams is not a registered preneed provider as required by Miss. Code Ann. §75-63-55(1).

2. Based upon the uncontradicted evidence presented by the Division, Williams sold preneed contracts through agents who were not registered with the Secretary of State as required by Miss. Code Ann. §75-63-65(4).

3. Based upon the uncontradicted evidence presented by the Division, Williams sold preneed contracts without funding those

contracts with trust funds or with policies of insurance as required by Miss. Code Ann. §75-63-55(3).

4. Given the above, Williams has engaged in acts and practices constituting a violation of Miss. Code Ann. §75-63-51, et seq.

5. Per Miss. Code Ann. §75-63-69, for each violation, an administrative penalty of up to One Thousand Dollars (\$1,000) may be imposed.

6. The Division seeks an administrative penalty of Thirteen Thousand Dollars (\$13,000) against Williams Funeral Service, \$5,000 for the previous Administrative Penalty and \$8,000 for the 11 preneed contracts included in Exhibit No. 3. However, per Miss. Code Ann. §75-63-69, the maximum that can be assessed in one proceeding is \$10,000.00.

#### RECOMMENDATION

Based upon the above Findings of Fact and Conclusions of Law, the undersigned Hearing Officer recommends that the Secretary of State:

(1) Issue a cease and desist order against Williams Funeral Service directing Williams Funeral Service to cease and desist from further violation of Miss. Code Ann. §75-63-51, et seq.;

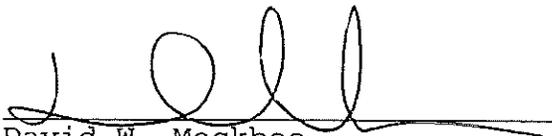
(2) Impose an administrative penalty for each contract violation referenced above subject to a total penalty to Williams of \$10,000.00 (the maximum allowed per Miss. Code Ann. §75-63-69)

plus reimbursement to the Secretary of State for all costs and expenses incurred in the investigation of the violation(s) and in the institution of this administrative proceeding.

(3) Report the above violations, accompanied by all relevant records, to the Insurance Integrity Enforcement Bureau within the office of the Attorney General.

The above penalties are recommended per Miss. Code Ann. §75-63-69)(1)(b)(ii) in light of the frequency, persistence, and willfulness of Williams' conduct constituting multiple violations of Miss. Code Ann. §75-63-51, et seq., and of the Secretary of State's prior Final Cease and Desist Order issued in Administrative Proceeding No. P-07-0780, and in light of the number of persons adversely affected by Williams' violations referenced above.

So recommended, this the 26<sup>th</sup> day of October, 2011.

  
David W. Mockbee  
Administrative Hearing Officer

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

IN THE MATTER OF : )  
 )  
WILLIAMS FUNERAL SERVICES ) Administrative Proceeding  
 ) Number: P-07-0780  
3400 Washington Street )  
Vicksburg, Mississippi 39180 )  
 )  
*Respondent* )

FINAL CEASE AND DESIST ORDER AND  
ORDER IMPOSING ADMINISTRATIVE PENALTY

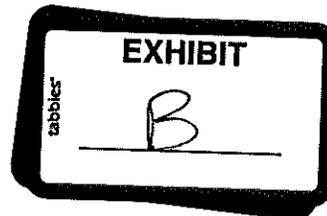
The SECRETARY OF STATE OF MISSISSIPPI, Division of Business Regulation and Enforcement (hereinafter "Division") by and through the undersigned designated representative, after having already issued a *Notice of Intent to Issue a Cease and Desist Order and Impose Administrative Penalty* against WILLIAMS FUNERAL SERVICES (hereinafter "Williams"), and in support hereof, states the following:

I. JURISDICTION

The Secretary of State is vested with the regulation of establishments that sell pre-need merchandise and/or services in the State of Mississippi pursuant to Miss. Code Ann. §75-63-51, *et seq.* Respondent Williams is a funeral home as defined by Miss. Code Ann. §75-63-53 (g). The Secretary of State, therefore, finds that he has jurisdiction over the subject matter and the parties herein.

II. FINDINGS OF FACT

1. In September 2007, the Division received information from a complainant regarding the pre-need practices of Williams.
2. After reviewing the information received, an examination was conducted on Williams resulting in a finding that Williams was selling pre-need contracts in the State of Mississippi.



3. In January 2002, the legislature gave the Division jurisdiction over all pre-need contracts sold in the State of Mississippi. Every establishment and agent selling pre-need contracts must be registered with the Division prior to any pre-need sales.
4. In addition, all pre-need contracts must be approved by the Division prior to its use.
5. After reviewing the records on file with the Division, it was determined that Williams was not registered with the Division to sell pre-need contracts. In addition, neither was any agents registered to sell pre-need contracts for Williams. Previously, Williams submitted a pre-need contract for approval. However, Williams did not complete registration and failed to use the contract that was approved by the Division.
6. The examination indicated that Williams has sold at least nine illegal pre-need contracts since January 2002.
7. Since Williams has failed to complete its pre-need registration with the Division or respond to the Notice of Intent to Issue a Cease and Desist Order and Impose Administrative Penalty, issuance of this Final Order is appropriate.

### III. CONCLUSIONS OF LAW

8. Pursuant to Miss. Code Ann. §75-63-65, any establishment or organization which engages in the business of selling pre-need merchandise and/or services shall register with the Secretary of State and shall pay a registration fee. The law also states that any person who engages in the business of selling pre-need contracts shall register with the Secretary of State. Official records revealed that Williams is not registered to sell pre-need contracts in the State of Mississippi. Neither is there any agents registered to sell pre-need contracts on behalf of Williams. Each pre-need contract sold by Williams from 2003 - 2007, was a violation of this provision.

9. Pursuant to Miss. Code Ann. §75-63-55, all pre-need contracts sold shall be evidenced in writing on forms registered with the Secretary of State. Evidence indicates that the pre-need contracts used by Williams has not been registered and approved by the Division; therefore, Williams is in violation of this provision.
10. According to Miss. Code Ann. §75-63-69, whenever it appears to the Secretary of State that any person has engaged in any practice in violation of the Act, he may issue a cease and desist order with a prior hearing and may impose an administrative penalty up to \$1,000.00 for each violation of the Act.

#### IV. PUBLIC INTEREST

The actions taken and proposed to be taken herein by the Secretary of State are in the public interest and are consistent with the purposes set out in Miss. Code. Ann. §75-63-51, *et seq.*

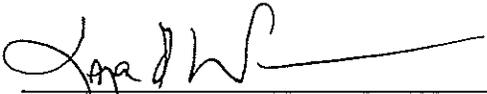
#### V. FINAL ORDER

IT IS THEREFORE ORDERED, that Williams shall permanently CEASE AND DESIST from selling pre-need contracts in and from the State of Mississippi as defined by Miss. Code Ann. §75-63-51 *et. seq.*

IT IS FURTHER ORDERED, that Williams shall pay an administrative penalty in the amount of Five Thousand Dollars (\$5,000.00), made payable to the Mississippi Secretary of State upon execution of this Final Order.

SO ISSUED, this the 24<sup>th</sup> day of September 2008.

DELBERT HOSEMANN  
Secretary of State  
State of Mississippi

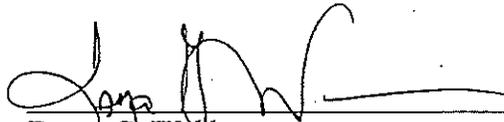
BY:   
TANYA G. WEBBER  
Senior Attorney  
Business Regulation & Enforcement

CERTIFICATE OF SERVICE

I, Tanya G. Webber, do here by certify that I have this day, mailed via United States Certified Mail, a true and correct copy of the Final Cease and Desist Order and Order Imposing Administrative Penalty to the following:

WILLIAMS FUNERAL SERVICES  
3400 Washington Street  
Vicksburg, Mississippi 39180

This the 24<sup>th</sup> day of September, 2008.

  
\_\_\_\_\_  
Tanya G. Webber  
Senior Attorney  
Business Regulation and Enforcement

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