

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

IN THE MATTER OF:

**DARDEN & SONS FUNERAL HOME, INC.
Post Office Box 665
Amory, Mississippi 38821**

**Administrative Proceeding
Number: P-10-0021**

Respondent

FINAL ORDER

This cause came before the hearing officer for a hearing on October 14, 2010. On November 15, 2010, the appointed Hearing Officer submitted his Recommendations as Findings of Fact and Conclusions of Law, 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 § 75-63-51 *et seq.* (hereinafter "Code") which governs persons operating in the preneed funeral business in the State of Mississippi.
2. As a provider of preneed funeral services, Darden is subject to the requirements of the Act and regulations promulgated thereunder.
3. In January 2010, an examination was conducted by David Smothers, an examiner from the Division, on the records of Darden. The examiner reviewed preneed written contracts, ledger books, and accounts receivable, among other records. A limited number of preneed contracts had been written by Darden, and the

Examiner was provided five (5) contracts for review. The purchasers and dates of the contracts are as follows: Daisy Luckett – November 21, 2006, Charles Davis Rowe – February 11, 2009, Patricia Pounds – February 13, 2008, Harrietta Crawford – December 1, 2009, and Renate Pannell – August 24, 2004.

4. Darden previously submitted a preneed contract form to the Secretary of State for review, however, the (5) preneed contracts reviewed by the Examiner were not on forms approved by and on file with the Secretary of State.
5. Four (4) of the preneed contracts reviewed by the Examiner did not indicate all merchandise and services covered by the contract, the total cost of all merchandise and services covered by the contract, or a description of the merchandise included in the contract.
6. The five (5) preneed contracts reviewed by the Examiner were not funded by trust or insurance or evidenced by a warehouse receipt.
7. An enforcement notice was issued to Darden on June 25, 2010 offering to resolve the violations by Consent Agreement and notifying them that they are entitled to an Administrative hearing on the matter.
8. The Division received a letter from Darden on July 26, 2010 requesting an Administrative Hearing on the matter.
9. Hearing was held on October 14, 2010, with Hon. F. Kirk Nelson serving as hearing officer.
10. The hearing officer's recommendation is attached to this Final Order as Exhibit A.

CONCLUSIONS OF LAW

11. Five (5) preneed contracts sold by Darden were not on forms approved by, and on file with, the Secretary of State, in violation of Mississippi Code Annotated § 75-63-55(1). This action represents five (5) separate violations.
12. Four (4) preneed contracts sold by Darden did not indicate all merchandise and services covered by the contract, the total cost of all merchandise and services covered by the contract, or a description of the merchandise included in the contract, in violation Mississippi Code Annotated § 75-63-55(2). This action represents four (4) separate violations.
13. Five (5) preneed contracts sold by Darden were not funded by trust or insurance or evidenced by a warehouse receipt in violation of Mississippi Code Annotated § 75-63-55(3). This action represents five (5) separate violations.

Pursuant to the authority granted by Mississippi Code Annotated § 75-63-69(1)(a), Darden & Sons Funeral Home Inc., is hereby **ORDERED** to **CEASE AND DESIST** from selling preneed contracts on forms not approved by the Secretary of State; selling preneed contracts not funded by trust or insurance or evidenced by a warehouse receipt; or selling preneed contracts that do not indicate with specificity the merchandise covered and the cost of that merchandise.

Pursuant to the authority granted by Mississippi Code Annotated § 75-63-69(1)(b)(i), it is **ORDERED** that an administrative penalty in the amount of one thousand dollars (\$1,000) shall be paid to the Secretary of State for the above described violations against Darden & Sons Funeral Home Inc.

SO ORDERED and ADJUDGED.

This, the 23 day of February, 2011.

C. Delbert Hosemann, Jr.

C. DELBERT HOSEMANN, JR.

Secretary of State

State of Mississippi

EXHIBIT A

**OFFICE OF THE MISSISSIPPI SECRETARY OF STATE
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Post Office Box 665
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Respondent

FINDINGS OF FACT AND CONCLUSIONS OF LAW

As Hearing Officer appointed in the above referenced case, I have reviewed certain documents, including, but not limited to, Notice of Hearing for Consideration of an Administrative Penalty and/or Suspension of Registration dated September 9, 2010, Witness List from the Regulation and Enforcement Division of the Office of the Secretary of State ("Division") dated September 30, 2010, applicable statutes and regulations.

An administrative hearing was held at the Offices of the Secretary of State, 700 North Street, Jackson, Mississippi 39205, second floor conference room, on October 14, 2010, at which time I heard testimony from David Smothers for the Division and from John Darden and George Darden for Darden & Sons Funeral Home, Inc. ("Darden")

Having considered all testimony, argument of Respondents, argument of Counsel for the Division, all Exhibits admitted at the Administrative Hearing (Exhibits No. 1-8) and applicable law, I hereby find:

FINDINGS OF FACT

1. The Secretary of State has the authority to administer and to provide for the enforcement of all provisions of the Pre-need Cemetery and Funeral Registration Act (hereinafter "Act"), Mississippi Code of 1972 (Annotated) § 75-63-51 et seq. (hereinafter "Code") which governs persons operating in the funeral business in the State of Mississippi.

2. As a provider of funeral services, Darden is subject to the requirements of the Act and regulations promulgated thereunder.

3. In January, 2010, an examination was conducted by David Smothers, an Examiner from the Division, on the records of Darden. The Examiner reviewed Pre-need written contracts, ledger books, and accounts receivable, among other records. A limited number of Pre-need contracts had been written by Darden, and the Examiner was provided five (5) contracts for review. The purchasers and dates of the contracts provided are as follows: Daisy Luckett - November 21, 2006, Charles Davis Rowe - February 11, 2009, Patricia Pounds - February 13, 2008, Harrietta Crawford - December 1, 2009, Renate Pannell - August 24, 2004.

4. Darden previously submitted a Pre-need contract form to the Secretary of State for review, however, the (5) Pre-need contracts reviewed by the Examiner were not on forms approved by and on file with the Secretary of State.

5. The alleged violation that two (2) Pre-need contracts were not in writing was withdrawn by the Secretary of State.

6. Four (4) of the Pre-need contracts reviewed by the Examiner did not indicate all merchandise and services covered by the contract, the total cost of all merchandise and services covered by the contract, or a description of the merchandise included in the contract.

7. The five (5) Pre-need contracts reviewed by the Examiner were not funded by trust or insurance or evidenced by a warehouse receipt.

8. An Enforcement letter was sent to Darden on June 25, 2010 offering to resolve the violations by Consent Agreement and notifying them that they are entitled to an Administrative hearing on the matter.

9. The Division received a letter from Darden on July 26, 2010 requesting an Administrative Hearing on the matter.

CONCLUSIONS OF LAW

10. Five (5) Pre-need contracts sold by Darden were not on forms approved by, and on file with, the Secretary of State, in violation of § 75-63-55(1) of the Mississippi Code of 1972 (Annotated). This action represents five (5) separate violations.

11. Four (4) Pre-need contracts sold by Darden did not indicate all merchandise and services covered by the contract, the total cost of all merchandise and services covered by the contract, or a description of the merchandise included in the contract, in violation of § 75-63-55(2) of the Mississippi Code of 1972 (Annotated). This action represents four (4) separate violations.

12. Five (5) Pre-need contracts sold by Darden were not funded by trust or insurance or evidenced by a warehouse receipt in violation of § 75-63-55(3) of the Mississippi Code of 1972 (Annotated). This action represents five (5) separate violations.

THEREFORE, a Cease and Desist Order is hereby recommended ordering Darden &

Sons Funeral Home, inc. to immediately cease and desist from further illegal activity.

FURTHER, an administrative penalty in the amount of \$1,000 is hereby recommended against Darden & Sons Funeral Home, Inc. for fourteen violations, to be paid to the Secretary of State, who shall also be reimbursed for all costs and expenses incurred in the investigation of the violations and the institution of the administrative proceedings as a result thereof. This administrative penalty is in lieu of the amount authorized by statute (\$1000 per violation up to a maximum penalty of \$10,000) in consideration of Darden's good faith cooperation with the Department.

Respectfully submitted, this the 15th day of November, 2010.



F. Kirk Nelson
Hearing Officer