

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

IN THE MATTER OF:

**GRAYSON-PORTER'S MORTUARY
401 NORTH SPRING STREET
TUPELO, MS 38804**

Respondent

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**Administrative Proceeding
Number: LPR-12-0503**

FINAL ORDER

This cause came before the Hearing Officer for a hearing on March 21, 2013. On June 7, 2013, 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 ("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, Grayson-Porter's Mortuary ("Grayson") is subject to the requirements of the Act and regulations promulgated thereunder.
3. Grayson is not a registered preneed provider as required by Mississippi Code Annotated Section 75-63-55(1).
4. On September 13, 2005, in a prior, separate proceeding, a "Final Cease and Desist Order and Order Revoking Registration and Imposing Administrative Penalty" was issued ordering Grayson to cease sales of preneed merchandise and pay a Five Thousand Dollar

(\$5,000.00) administrative penalty. This order also revoked Grayson's preneed registration (See Exhibit B).

5. Following the issuance of the September 13, 2005 order, Grayson, in violation of said order, sold *at least* eight (8) preneed contracts. The purchasers and dates of the contracts are as follows: Betty Jean Raper – February 21, 2007; Eugene Charles Raper – February 21, 2007; Arletta “Bay” Kilgore – April 5, 2007; Lena May Hickman – November 17, 2008; Earlene Hill – December 30, 2009; Mary Sampson – August 14, 2009; Rebecca Berry – June 3, 2010; and George Henry Berry – June 3, 2010.
6. The administrative fine in the amount of Five Thousand Dollars (\$5,000.00) ordered on September 13, 2005 (Exhibit B) remained unpaid until June 14, 2013, after an administrative hearing was held on the matter.
7. A hearing on the matter was held on March 21, 2013, with Hon. Robert P. Thompson serving as Hearing Officer.
8. The Hearing Officer's recommendation is attached to and incorporated into this Final Order as Exhibit A.

CONCLUSIONS OF LAW

9. The eight (8) preneed contracts sold by Grayson were sold in violation of Cause No. P-05-0177, “Final Cease and Desist Order and Order Revoking Registration and Imposing Administrative Penalty”. These actions represent eight (8) separate violations.
10. Grayson's 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).

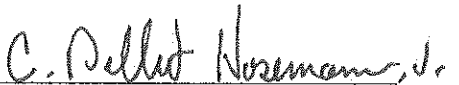
11. Grayson's failure to pay the Five Thousand Dollar (\$5,000.00) administrative fine is a violation of the September 13, 2005 "Final Cease and Desist Order and Order Revoking Registration and Imposing Administrative Penalty."

The Secretary of State acknowledges receipt of the aforementioned Five Thousand Dollar (\$5,000.00) administrative fine on June 14, 2013 by letter from Grayson's attorney, Ms. Chereka Witherspoon dated June 12, 2013 (Exhibit C). The Secretary of State also acknowledges the agreement from Grayson's attorney that Ms. Jacque Grayson will pay the remaining Two Thousand Eight Hundred Dollar (\$2,800.00) administrative penalty as assessed by the Hearing Officer by September 5, 2013, which is ninety (90) days from the Order signed by said Hearing Officer. As also stated by the Hearing Officer in the Report and Recommendation, if this penalty is not paid by September 5, 2013, the amount shall be raised to Four Thousand Dollars (\$4,000.00).

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 Two Thousand Eight Hundred Dollar (\$2,800.00) shall be paid to the Secretary of State for the above described violations against Grayson-Porter's Mortuary by September 5, 2013. If this penalty is not paid by September 5, 2013, the amount shall be raised to Four Thousand Dollars (\$4,000.00).

SO ORDERED and ADJUDGED.

This, the 21 day of June, 2013.


C. DELBERT HOSEMANN, JR.
In his Official capacity as
Secretary of State
State of Mississippi

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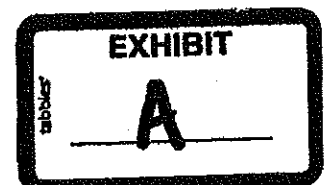
**GRAYSON-PORTER'S MORTUARY
401 NORTH SPRING STREET
TUPELO, MS 38804**

REPORT AND RECOMMENDATION

On March 21, 2013, at 10:30 a.m., a hearing on the above referenced matter was held with those present being Chereka Witherspoon, attorney, for Jacque Grayson; Amy Fisher, Senior Attorney for the Secretary of State's office; David Smoothers, Examiner; Bryce Bennett, intern; Drissa Smith, intern; and Sharrika Laneair, attorney for the Secretary of State's office.

The State called David L. Smoothers as the first witness. Mr. Smoothers was sworn in and stated that he is an examiner for the Secretary of State's office, Tupelo branch. He has experience working for John Deere, hardware company construction supply company, real estate agent, and four years with the Secretary of State's office in this position. He testified that he reviews pre-arranged funeral expenses, or pre-need funeral contracts. Mr. Smoothers advised that an annual report is to be filed by the funeral company whether they sell zero or fifty pre-need contracts.

On January 5, 2012, Smoothers examined Grayson's pre-need contracts. He talked with Jacque Grayson and advised they discussed the Final Cease and Desist Order and Order Revoking Registration and Imposing Administrative Penalty and dated September 12, 2005. This has been entered as Exhibit 1. Mr. Smoothers testified that since September 12, 2005, he found eight pre-need



contracts secured by Grayson-Porter's Mortuary. These contracts have been introduced as Exhibit 2 and have contract dates beginning in 2007 and run through 2010. Mr. Smothers explained the three ways these contracts could be taken out specifying that these eight contracts were secured with insurance and a declaration page attached. He did not follow up to see if the policies are still in effect. Mr. Smothers did not find anything out of the ordinary with the eight contracts.

On cross-examination by Ms. Witherspoon, Mr. Smother responded to Ms. Witherspoon's questions, advising that he obtained the eight contracts from Ms. Grayson; that Ms. Grayson was helpful; that Mr. Smothers did not have the original Cease and Desist Order and that "possibly the Secretary of State's office will dismiss the Cease and Desist Order." Deposition Exhibit 3 was also marked and is a letter dated February 2, 2006, from Tanya Webber, Senior Attorney and Business Regulations Enforcer with the Secretary of State's office, to Ms. Jacque Grayson advising that the checks submitted with her 2005 pre-need annual report is not required. Mr. Smothers also was asked questions and advised that he was not familiar with the Secretary of State's record keeping and that he only could testify about the documents he had that were forwarded to him from the Secretary of State's office and made part of his file. He further testified that he could not state whether or not the \$5,000.00 penalty fee from the Cease and Desist Order had been paid.

The Secretary of State's office next called Jacque Grayson. After being sworn in she testified that she had been the general manager of Grayson-Porter's Mortuary for thirty-two years. It was a family-owned business. Ms. Grayson testified that she signed the receipt for certified mail attached as Exhibit B to the Final Cease and Desist Order and Order Revoking Registration and Imposing Administrative Penalty and including in Exhibit 1. The date of delivery of the certified mail was September 15, 2005. Ms. Grayson testified that while she did not dispute that was her signature, she

could not recall what was included in the certified mail. Ms. Grayson testified that she believes if she got the Final Cease and Desist Order and Order Revoking Registration and Imposing Administrative Penalty, she would have done something. Ms. Grayson further testified that she registered in 2003 to sell pre-need contracts. She said that after 2005 the only pre-need contracts she sold were the eight contracts which had been marked as Exhibit 2. She further testified that she has not sold any pre-need contracts since that date. She further testified that she doesn't actively market pre-need contracts and only sells them when someone approaches her. Ms. Grayson testified that if she had been aware of the Cease and Desist Order she would not have sold the pre-need contracts.

Ms. Grayson testified she was puzzled why Mr. Smothers came to see her. She testified that the last time she had registered was 2002, 2004, and 2005. She has not been registered to sell pre-need contracts since that date. Ms. Grayson further testified that she did not pay the \$5,000 fee from the Final Cease and Desist Order because she was not aware of it. She does not dispute it is her signature.

In closing, Amy Foster succinctly stated that a Cease and Desist Order was sent out in 2005 by certified mail and that they have a signed receipt. She further testified there is evidence of eight contracts for sale of pre-need contracts between the years 2007 and 2010. She has stated the Secretary of State's office is asking for the maximum penalty for each contract of \$1,000.00, or \$8,000.00 total, together with collection of the \$5,000.00 assessed in the original Cease and Desist Order.

Chereka Witherspoon closed succinctly stating that Grayson-Porter's Mortuary did not receive the September 13, 2005, Cease and Desist Order, while admitting Ms. Grayson signed the certified mail, there was no proof to show what was received with the certified mail. She also stated

that on December 29, 2005, a letter was sent from the Secretary of State's office informing that annual reports were due. On February 6, 2006, she received the report, but no annual fee was due. Ms. Witherspoon further stated that she read the statute and that there was no requirement for zero sales for it to be filed. She further stated that Grayson-Porter's Mortuary has not sold any contracts since 2010.

ANALYSIS

1. There is no dispute that Grayson-Porter's Mortuary is a funeral home as defined by § 75-63-53(a) of the Miss. Code Ann. Further, there is no dispute that funeral homes that sell pre-need contracts must file annual reports pursuant to § 75-63-65 of the Miss. Code Ann.

2. There is no dispute that Grayson-Porter's Mortuary was late filing its annual report by March 31, 2005. Being late, the Mississippi Secretary of State's office issued a Notice of Intent on April 12, 2005, and a Final Cease and Desist Order and Order Revoking Registration and Imposing Administrative Penalty on September 12, 2005.

3. Jacque Grayson, general manager of Grayson-Porter's Mortuary expressed doubt, or denied, receiving the Final Cease and Desist Order and Order Revoking Registration and Imposing Administrative Penalty, although she admitted her signature to a certified mail receipt dated September 15, 2005. Grayson-Porter's Mortuary did not pay the \$5,000 penalty imposed. The State's position is, and logic follows, that the Final Cease and Desist Order and Order Revoking Registration and Imposing Administrative Penalty was included with the certified mail receipt; however, there was no proof from the person who mailed the certified mail or letter stating enclosures to support the Order was included in the certified mail.

4. Grayson-Porter's Mortuary was not registered to sell pre-need contracts after 2005, yet sold eight contracts between the years of 2007 to 2010. It has not sold any pre-need contracts since 2010.

FINDINGS

1. While there are questions surrounding whether or not Grayson-Porter's Mortuary received the Final Cease and Desist Order and Order Revoking Registration and Imposing Administrative Penalty, the proof clearly showed an Order had been entered assessing a \$5,000 penalty. This has not been paid. The failure to prove receipt of the Order would justify not assessing interest on the amount.

2. Grayson-Porter's Mortuary did not register to sell pre-need contracts following 2005 despite the law requiring it to register. Yet, Grayson-Porter's Mortuary sold eight contracts between 2007 and 2010. This is in violation of the statute. The State asks for \$1,000 per violation, but I have the discretion to enter any amount up to \$1,000 per violation. Based on the totality of the facts, I find that \$350 per violation to be sufficient. Thus, I assess a fine of \$2,800 (8 x \$350). This penalty shall be paid within ninety (90) days of this Order. If not paid within ninety (90) days of this Order, I would increase the amount to \$500 per violation, or \$4,000.

IT IS, THEREFORE, ORDERED AND ADJUDGED that Grayson-Porter's Mortuary be assessed \$5,000 as previously found, plus \$2,800 for a total of \$7,800 all as set forth above, and should this penalty not be satisfied within ninety (90) days of this Order, that the total penalty be \$4,000 plus \$5,000 or \$9,000.

THIS the 7th day of June, 2013.



ROBERT P. THOMPSON
Hearing Officer