

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

**In The Matter Of:**

**George F. West Funeral Home  
409 Martin Luther King Jr. Street  
Natchez, MS 39120**

**Administrative Proceeding  
Number: P-08-0209**

**RESPONDENT**

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**FINAL ORDER**

This cause came before the hearing officer for a hearing on September 3, 2009, following several continuances. On October 5, 2009, the appointed Hearing Officer submitted his Recommendations as Findings of Fact and Conclusions of Law, attached as Exhibit A. Thereafter, on October 14, 2009, the undersigned contacted counsel for the Respondent by written communication to provide an opportunity until Friday, October 23, 2009, for the submission of any additional information or material deemed relevant to the recommendations contained within the hearing officer's report. Exhibit B. Having received nothing further from the parties following the hearing and recommendations from the hearing officer, 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 Pre-need Cemetery and Funeral Registration Act (hereinafter "Act"), Mississippi Code Annotated § 75-63-51 *et seq.*, which governs persons and businesses engaged in the sale of pre-need funeral and cemetery services and merchandise in Mississippi.

2. As a provider of pre-need funeral services and merchandise, the George F. West Funeral Home (“West”), owned as a sole proprietorship by Theodore West, is subject to the requirements of the Act and regulations promulgated thereunder.
3. A final Cease and Desist Order Imposing Administrative Penalties dated July 17, 2006, was issued by the Office of the Secretary of State against Theodore West, d/b/a the George F. West Funeral Home. A copy of this Order is attached as Exhibit C. This Order required West to permanently Cease and Desist from selling pre-need contracts in and from the State of Mississippi and further to pay an administrative penalty in the amount of \$5,000 to the Mississippi Secretary of State’s Office. Despite the Cease and Desist Order issued by this Office in July of 2006, West continued thereafter to violate the Act by engaging in the sale of pre-need merchandise and services. The administrative penalty imposed in 2006 remains unpaid.
4. Beginning in May of 2008, an examination was conducted by three (3) examiners from the Office of the Secretary of State on the business records of the George F. West Funeral Home. Based on the records made available to the examiners, West maintained woefully inadequate client file documentation for pre-need contracts that he sold and inadequate client payment histories on those contracts. The lead examiner testified that the client payment history was so poorly maintained it was often impossible to determine a beginning balance on a client account as well as a remaining balance for a client to pay on account. Even the ledger book for the initial recording of cash flow coming in to the business appeared incomplete. However,

several ledger book entries pages were clearly labeled “Pre-Need 2008” clearly indicating pre-need sales made after July of 2006. .

5. The contracts being used by West do not list the merchandise, cost, or services that the customer is purchasing as required by the Act.
6. West clearly did not remit all insurance premiums to the insurer for insurance funded sales. Further, documentation entered into evidence at the hearing supplied by Magnolia Guaranty Life Insurance Company compared against West’s business records clearly indicated that West continued to collect premiums from clients *years* after his authority to act on behalf on Magnolia Guaranty was revoked. Hearing Composite Exhibit 10.
7. Payments were made to West by clients for future use to “bank” funds for the client’s funeral upon death; yet, contracts were not written for these clients as required by the Act.
8. The George F. West Funeral Home is not a registered establishment with the Secretary of State’s Office as an authorized pre-need provider, yet West continued to sell pre-need plans to the public. The hearing testimony and exhibits revealed that Theodore West had been advised four (4) times by the Secretary of State’s Office that he needed register the funeral home to comply with the Act. Additionally, Theodore West is not a registered agent authorized to act in the capacity of a pre-need sales agent for the George F. West Funeral Home.
9. When West issued written contracts to consumers, the contracts were not sample contracts that have been registered with the Secretary of State’s Office as required by the Act.

10. The Act authorizes three (3) means by which a provider of pre-need goods and services may fund the sale of funeral merchandise and services to ensure the delivery of the same upon the death of the client. The three (3) methods are trust-funded sales; insurance-funded sales; and, delivery of warehouse claim tickets for merchandise kept in inventory. West sold contracts which were not funded by insurance, trust, or warehouse receipts.
11. No trust account has been established for the pre-need sales made by West. Based upon the available records provided to the lead examiner for the Secretary of State's Office, she testified that the trust deficiency was very conservatively ninety-one thousand one hundred seven dollars and twenty-five cents (\$91,107.25). Hearing Exhibit 15. The examiner emphasized that this was a low, conservative estimate of unfunded pre-need sales due to the poor, incomplete condition of business records maintained by West. It is an affirmative responsibility of all pre-need providers to maintain and make available to the Secretary's examiners all client contracts and associated books and records. *Miss. Code Ann.* §§ 75-63-57; 75-63-71 (Rev. 2009). The inability of West to maintain complete and current client records is either gross negligence or intentional to cover up even more glaring accounting omissions for examiners and auditors. At the hearing of this cause, Mr. West presented the testimony of a bookkeeper/accountant who testified she that she was engaged to assist him with presenting a defense to the Secretary of State's enforcement action. She offered an estimate through her testimony that the funding deficiency for pre-need sales made by Mr. West *could be* as low as thirty-five thousand dollars (\$35,000). The undersigned categorically rejects this testimony. Mr. West's accountant testified

that she had not reviewed any source documentation to support her estimate of her client's funding deficiency for pre-need sales. On the other hand, Mr. West provided the Secretary's examiner with source documents that underlie her findings. These included the general ledger book for incoming payments (Hearing Composite Exhibit 6); the content of client files reflecting entries on client payments (Hearing Composite Exhibits 7 and 8); Payment Records/Debit Report runs on insurance clients furnished by Mr. West (Hearing Composite Exhibit 9); lapsed policy status reports on West's insurance customers furnished by Magnolia Guaranty Life Insurance (Hearing Composite Exhibit 10); and, bank account information provided by Mr. West. (Hearing Exhibit 12). Moreover, in a written response to questions posed by the Secretary's examiner in June of 2008, Mr. West states, "All Records were made available to examines (sic)." Hearing Exhibit 14. Mr. West reaps what he sows. He gets the benefit and the burden of what he provided to the Secretary's examiner, regardless of how incomplete or negligent his recordkeeping practices might have been. He does not get the advantage of an after-the-fact, unsubstantiated opinion that his funding deficiency is perhaps "only" \$35,000. The hearing officer's report recommends an independent audit of all books and records of the George F. West Funeral Home. However, we are limited to the relief and sanctions authorized at Mississippi Code Annotated § 75-63-69. As noted above, Mr. West has stated that he has provided all of his records to the Secretary's examiners, and there is no reason to expect that an independent auditor would discover a more complete set of client records at the West Funeral Home. Additionally, Hearing Exhibit 12 casts

considerable doubt on Mr. West's solvency and his ability to engage an outside auditor.

### Conclusions of Law

12. The contract in use by West does not list the required merchandise, cost, or service in violation of Mississippi Code Annotated § 75-63-55(2).
13. West did not send premiums collected on pre-need contracts to the insurer in violation of Mississippi Code Annotated § 75-63-61.
14. Some contracts for pre-need services offered by West are not in writing in violation of Mississippi Code Annotated § 75-63-55(1).
15. The George F. West Funeral Home is not registered with the Secretary of State as a pre-need establishment in violation of Mississippi Code Annotated § 75-63-65(1).
16. The written contract sometimes used by West has not been approved as a pre-need contract by the Office of the Secretary of State in violation of Mississippi Code Annotated § 75-63-55(1).
17. Theodore West acted as an agent for the George F. West Funeral Home, and he sold pre-need contracts without being registered with the Office of the Secretary of State in violation of Mississippi Code Annotated § 75-63-65(2).
18. Contracts for pre-need services and merchandise were not funded by insurance, trust or warehouse receipts in violation of Mississippi Code Annotated § 75-63-55(3).  
Each sale that was made without an authorized funding plan was a violation of the Act.

Therefore, pursuant to the authority granted by Mississippi Code Annotated § 75-63-69(1)(a), Theodore West d/b/a/ the George F. West Funeral Home is hereby **ORDERED** to

immediately **CEASE AND DESIST** all pre-needs sales and to cease and desist from further illegal activity as described in this Final Order.

Further, pursuant to the authority granted by Mississippi Code Annotated § 75-63-69(1)(b)(i), an administrative penalty in the amount of five thousand dollars (\$5000) to be paid to the Secretary of State for the violations described above is hereby **ORDERED** against Theodore West d/b/a the George F. West Funeral Home. Such penalty is in addition to the administrative penalty in the amount of five thousand dollars (\$5,000) imposed by the Secretary of State by Final Cease and Desist Order dated July 17, 2006.

Further, pursuant to the authority granted by Mississippi Code Annotated § 75-63-69(1)(b)(i), Theodore West d/b/a the George F. West Funeral Home is hereby **ORDERED** to pay four thousand five hundred sixty-four dollars and forty-one cents (\$4,564.41) as reflected in the attached Bill of Costs to the Secretary of State for investigative costs, expenses, and the institution of administrative proceedings in this cause.

**SO ORDERED and ADJUDGED.**

This, the \_\_\_\_\_ day of January, 2010.



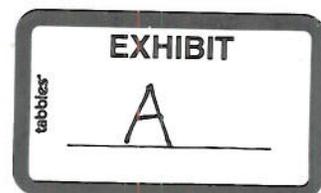
C. DELBERT HOSEMANN, JR.  
Secretary of State  
State of Mississippi

The Hon. F. Kirk Nelson  
1675 Lakeland Drive, Ste. 301  
Jackson, MS 39216  
Tel. (601) 981-1115  
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Hon. Dave Scott  
Mississippi Secretary of State's Office  
700 North Street  
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Hon. Earle S. Banks  
Hon. Halbert E. Dockins, Jr.  
6520 Dogwood View Parkway, Suite B  
Jackson, MS 39213

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



IN THE MATTER OF:

GEORGE F. WEST FUNERAL HOME  
409 Martin Luther king Jr. Street  
Natchez, Mississippi 39210

Administrative Proceeding  
Number: P-08-0209

Respondent

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**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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As Hearing Officer appointed in the above referenced case, I have reviewed documents including, but not limited to, Final Cease and Desist Order and Order Imposing Administrative Penalty dated July 17, 2006, Notice of Intent to Issue a Cease and Desist Order and Impose Administrative Penalty dated August 15, 2008, including exhibits, letter from Theodore J. West requesting an Administrative Hearing dated August 19, 2008, Motion for Summary Judgment dated November 20, 2008, and Exhibits. An Order was issued denying the Motion for Summary Judgment and numerous continuances were granted. An administrative hearing was held in the Office of the Secretary of State on September 3, 2009 which time I heard testimony from Kim Anderson for the Office of the Secretary of State and from Dana Barnes for George F. West Funeral Home.

Having considered all testimony, all Exhibits admitted at the administrative hearing (Exhibits No. 1-19) 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, George F. West Funeral Home("West") is subject to the requirements of the Act and regulations promulgated thereunder.
3. A final Cease and Desist Order and Order Imposing Administrative Penalty dated July 17, 2006 was issued by the Office of the Secretary of State in this matter. The Order required West to permanently Cease and Desist from selling Pre-need contracts in and from the State of Mississippi and further to pay an administrative penalty in the amount of \$5,000 to the Mississippi Secretary of State. West continues to sell Pre-need contracts and the administrative penalty remains unpaid.
4. An audit was conducted by three examiners from the Office of the Secretary of State on the records of West. From the records made available to the examiners, the count, cost and balance information from the files was not available nor were complete ledgers related to the transactions. The examiners were unable to accurately account for the purchase values and balances of the customer contracts and the original costs of the contracts were not documented in most files. The records were not in auditable format.
5. The contract being used by West does not list the required merchandise, cost, or services.
6. West did not send all premiums collected to the insurer.
7. Payments were made to West for future application to services, when needed, and contracts were not in writing.

8. West is not registered with the Secretary of State and continues to sell Pre-need policies. This is the fourth time that Theodore West has been advised to register the funeral home.
9. When contracts are used by West, they are not in the format recommended by the Secretary of State and have not been approved by the Secretary of State's office.
10. Pre-need contracts have been sold by Theodore West who is not registered as an Agent with the Office of the Secretary of State.
11. West sold contracts which were not funded by insurance trust or warehouse receipts.
12. No trust account has been established for the Pre-need sales of West. Based on the estimated value of Pre-need files, the amount of funds to be secured into a Pre-need trust account is estimated at \$95,180.00 by the Secretary of State's office. Taking into account individuals who are deceased, and assuming no unpaid obligations on those accounts, the amount to be secured into a Pre-need trust account could be as low as \$35,000, as estimated by West. An independent audit is required to determine the correct amount.

#### **CONCLUSION OF LAW**

13. The contract in use by West does not list the required merchandise, cost, or service in violation of Mississippi Code of 1972 (Annotated) § 75-63-55(2).
14. West did not send all premiums collected on Pre-need contracts to the insurer in violation of Mississippi Code of 1972 (Annotated) § 75-63-61.

15. Some contracts for Pre-need services offered by West are not in writing in violation of Mississippi Code of 1972 (Annotated) § 75-63-55(1).
16. George F. West Funeral Home is not registered with the Secretary of State as a Pre-need establishment in violation of Mississippi Code of 1972 (Annotated) § 75-63-65(1).
17. The written contract sometimes used by West has not been approved as a Pre-need contract by the Office of the Secretary of State in violation of Mississippi Code of 1972 (Annotated) § 75-63-55(1).
18. Theodore West has acted as an agent for West and has sold Pre-need contracts without being registered with the Office of the Secretary of State in violation of Mississippi Code of 1972 (Annotated) § 75-63-65(2).
19. Contracts for Pre-need services were not funded by insurance, trust or warehouse receipts in violation of Mississippi Code of 1972 (Annotated) § 75-63-55(3).

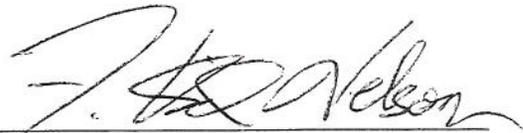
THEREFORE, a Cease and Desist Order is hereby recommended ordering George F. West Funeral Home to immediately cease and desist from further illegal activity.

FURTHER, an administrative penalty in the amount of \$5,000 is hereby recommended against Theodore West 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 addition to the administrative penalty in the amount of \$5,000 imposed by the Secretary of State by Final Cease and Desist Order dated July 17, 2006.

FURTHER, an independent audit is hereby recommended of all the books and records of George F. West Funeral Home to be paid for by Theodore West. The audit will determine the amount of funds to be secured into a Pre-need trust account.

FURTHER, it is recommended that the Secretary of State report these violations to the Insurance Integrity Enforcement Bureau within the Office of the Attorney General created in § 7-5-301.

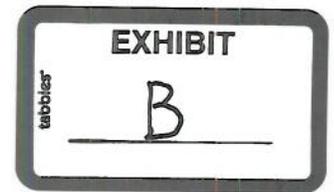
Respectfully submitted, this the 30<sup>th</sup> day of September 2009.

A handwritten signature in black ink, appearing to read "F. Kirk Nelson", written over a horizontal line.

F. Kirk Nelson  
Hearing Officer



DELBERT HOSEMANN  
*Secretary of State*



October 14, 2009

The Honorable Earle S. Banks  
Mississippi State Representative  
6520 Dogwoodview Parkway, Suite B  
Jackson, MS 39213

Re: George F. West Funeral Home  
Administrative Proceeding No. P-08-0209  
Hearing Officer Recommendations

Dear Representative Banks:

Please find enclosed the recommendations presented by the hearing officer in this cause. Please provide me with information or material, if any, you deem pertinent to the hearing officer's recommendations prior to Friday, October 23, 2009 at 5:00 p.m.

I will issue a final order upon review of the available record and any information that might be submitted. I want to emphasize that no submission is required or specifically requested. Rather, this is your opportunity to present anything, if desired, relative to the recommendations.

Sincerely,

A handwritten signature in cursive script that reads "Delbert".

Delbert Hosemann  
Secretary of State

CDH,JR/me

Enclosure

cc: F. Kirk Nelson, Esq.  
Dave Scott  
Assistant Secretary of State, Business Regulations



3. In January 2002, the legislature gave the Division jurisdiction over all pre-need contracts in the State of Mississippi. Every establishment and agent selling pre-need contracts must register with the Division.
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 found that West is not registered with the Division to sell pre-need contracts. In addition, no agents are registered to sell pre-need contracts for West.
6. According to documents submitted by the complainant, West sold a pre-need contract in 2003.
7. The pre-need contract that was used has not been approved by the Division.
8. Because West has been selling pre-need contracts without being registered with the Division and has been using an unapproved contract to sell pre-need merchandise and/or services, the Division issued a Notice of Intent to Issue a Cease and Desist Order and Impose Administrative Penalty on June 1, 2006.
9. On July 11, 2006, the Division had not received West's registration or a response to the Notice of Intent.
10. Since West has failed to register with the Division or respond to the Notice of Intent, issuance of this Final Order is appropriate.

### **III. CONCLUSIONS OF LAW**

11. 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. It 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 West was not registered to sell pre-need contracts in the State of Mississippi. Neither were any agents registered to sell pre-need contracts for West. When West entered into a pre-need contract in 2003, it was in violation of this provision.

12. 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. The pre-need contract used by West in 2003 had not been registered and approved by the Division; therefore, West is in violation of this provision.
13. 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. West received the Division's Notice of Intent but failed to respond within the time frame required by law. Further, West failed to request an administrative hearing.

#### 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 WEST 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 WEST 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 10th day of July 2006.

ERIC CLARK  
Secretary of State  
State of Mississippi

BY:

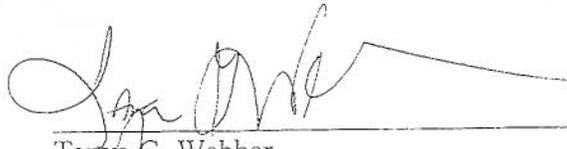
  
\_\_\_\_\_  
JAMES O. NELSON, II  
Assistant Secretary of State  
Business Regulation & Enforcement

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:

George F. West Funeral Home  
409 Martin Luther King Jr. Street  
Natchez, Mississippi 39120

This the 17<sup>th</sup> day of July, 2006.



Tanya G. Webber  
Senior Attorney  
Business Regulation and Enforcement

Tanya G. Webber, MSB # 99405  
Mississippi Secretary of State's Office  
Post Office Box 136  
700 North Street  
Jackson, Mississippi 39205-0136  
(601) 359-1350

2. Article Number



7115 4411 7551 6000 1595

1. Article Addressed to:

George F. West Funeral Home  
409 Martin Luther King Jr. Street  
Natchez, MS 39120

7/17/2006 3:20 PM

PS Form 3811

COMPLETE THIS SECTION ON DELIVERY

A. Signature *[Handwritten Signature]*  Agent

B. Received by (Printed Name) *George F. West*  Addressee

C. Date of Delivery *7-18*

D. Is delivery address different from item 1?  Yes  No  
If YES enter delivery address below:

3. Service Type  Certified

4. Restricted Delivery? (Extra Fee)  Yes  No

Domestic Return Receipt