

CERTIFIED TRUE COPY

PETER VERNIERO
ATTORNEY GENERAL OF NEW JERSEY

FILED WITH THE BOARD
OF MORTUARY SCIENCE

ON July 15, 1997

By: John DeCicco
Deputy Attorney General
Division of Law
124 Halsey St., PO Box 45029
Newark, New Jersey 07101
Tel: 973-648-2894

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MORTUARY SCIENCE

IN THE MATTER OF THE SUSPENSION)
OR REVOCATION OF THE LICENSES)
AND REGISTRATIONS OF:)
)
RUSSELL C. SHEPPARD)
LICENSE NO. JP02400)
)
RUSSELL C. SHEPPARD FUNERAL)
HOME (BRIDGETON LOCATION))
REGISTRATION NO. JB00223)
)
RUSSELL C. SHEPPARD FUNERAL)
HOME (SALEM LOCATION))
REGISTRATION NO. JB00801)
)
TO PRACTICE MORTUARY SCIENCE)
AND TO OPERATE REGISTERED)
MORTUARIES IN THE STATE OF)
NEW JERSEY)

Administrative Action
VERIFIED COMPLAINT

PETER VERNIERO, Attorney General of New Jersey, by John DeCicco, Deputy Attorney General, with offices located at the Division of Law, 124 Halsey Street, P.O. Box 45029, Newark, New Jersey 07101, by way of Verified Complaint says:

GENERAL ALLEGATIONS

1. Complainant, Peter Verniero, the Attorney General of New Jersey, is charged with enforcing the laws of the State of New Jersey, pursuant to N.J.S.A. 52:17A-4 and is empowered to initiate

administrative disciplinary proceedings against persons licensed by the State Board of Mortuary Science pursuant to N.J.S.A. 45:1-14 et seq.

2. The State Board of Mortuary Science is charged with the duty and responsibility of regulating the practice of mortuary science in the State of New Jersey pursuant to N.J.S.A. 45:7-32 et seq. and N.J.S.A. 45:1-14 et seq.

3. Respondent, Russell C. Sheppard, is licensed to practice mortuary science in the State of New Jersey and holds License No. JP02400. Respondent Russell C. Sheppard Funeral Home is located at 40 East Avenue, Bridgeton, New Jersey and was formerly registered as Registration No. JB00223. Respondent Russell C. Sheppard Funeral Home is also located at 613 Salem-Quinton Road, Route 49, Salem, New Jersey and was formerly registered under Registration No. JB00801. Both mortuaries will be herein referred to as "respondent Funeral Homes".

4. Respondent Russell C. Sheppard is the owner and manager of both respondent Funeral Homes and, in accordance with N.J.A.C. 13:36-4.1 et seq., is responsible for the management and control of all activities at both establishments.

5. Prepaid funeral arrangements and prepaid funeral agreements may be funded only through funeral trusts or funeral insurance policies. In either event, monies paid by consumers for preneed funeral arrangements and prepaid funeral agreements must be placed in the appropriate trust fund or be transmitted to the appropriate insurance company on behalf of the purchaser or intended funeral recipient. Until the time of need, all monies

paid to Board licensees in connection with preneed funeral arrangements and prepaid funeral agreements are not the property of Board licensees and must be maintained in an appropriate funeral trust fund or transmitted to the appropriate funeral insurance company. In the instances cited in this Verified Complaint, all monies received by respondents should have been placed in a P.O.D. interest bearing account in the names of the purchasers of the prepaid funeral agreements. Moreover, all such monies remain the property of the purchasers of the funeral trusts and, at any time, upon the request of the purchasers must be refunded with interest. N.J.S.A. 2A:102-13 and 14, N.J.S.A. 2A:102-16 and N.J.S.A. 45:7-90(c), and N.J.S.A. 45:7-92.

6. It is a crime to fail to deposit or to keep on deposit, misapply or misappropriate or otherwise co-mingle any monies deposited with the provider or licensee in furtherance of the purchase of a preneed funeral arrangement or prepaid funeral trust agreement. N.J.S.A. 2A:102-16. Any person, firm or corporation who fails to make appropriate disposition of the monies paid in furtherance of preneed funeral arrangements and prepaid funeral agreements shall be guilty of theft by failure to make required disposition of the property received pursuant to N.J.S.A. 2C:20-9. Such persons are presumed to have dealt with the property as his or its own if the monies are misappropriated, misapplied or co-mingled.

7. On April 24, 1997, a complaint against each of the respondents named herein was filed with the State Board of Mortuary Science. The 21 Count Complaint charged, among other things, the

misappropriation of monies received by respondents for the purpose of establishing funeral trusts. Said misappropriations are charged in Counts One, Two and Three of that Complaint. The instances of misappropriation of monies charged in this Verified Complaint are separate and distinct from those charged in the Complaint of April 24, 1997.

8. On July 14, 1997, respondent Russell C. Sheppard was deposed under oath and admitted the violations contained herein.

COUNT ONE

1. Complainant repeats each and every allegation contained in the General Allegations of this Complaint and in the other Counts of this Complaint and the General Allegations of the Complaint filed with the Board on April 24, 1997 and the other Counts of that Complaint as if fully set forth herein.

2. On or about February 27, 1984, R.L.H. attempted to establish a funeral trust with respondents for purposes of purchasing a preneed funeral arrangement on behalf of herself. R.L.H. was accompanied by her son, R.H. R.L.H. paid respondent \$2,250 for this purpose. The agreement between respondent and R.L.H. was memorialized by way of a letter on respondents' stationery dated February 27, 1984. The letter was signed by R.L.H. and respondent Russell C. Sheppard signed as a witness to having received said monies. Attached to the letter, is a bill itemizing the services to be rendered for \$2,250. Said bill is not a Statement of Funeral Goods and Services, but rather an itemized statement customarily used for purposes of billing.

3. The \$2,250 referred to in the previous paragraph of this Count was, by law, required to have been placed in a funeral trust by respondents. Respondents did not deposit these monies into a funeral trust. Rather, respondents misappropriated these monies to their own use.

4. On July 14, 1997, respondent Russell C. Sheppard admitted in a deposition that a funeral trust had not been established for R.L.H. and that he had commingled the monies with his own.

5. On May 17, 1997, R.L.H. died. R.L.H. and R.H. had previously moved to Richburg, New York. R.H. arranged for respondent to conduct his mother's funeral and burial, as previously agreed upon. Respondent credited R.H. with \$1,560 in interest toward the cost of the funeral. The funeral was billed at a total cost of \$4,652. Between 1984 and 1997, neither R.L.H. nor R.H. received any records or statements regarding the establishment or status of a funeral trust on behalf of R.L.H.

6. Respondents' actions in failing to deposit the \$2,250 in a funeral trust on behalf of R.L.H. between 1984 and 1997 is an unlawful conversion of those monies to their own use and is a violation of N.J.S.A. 2A:102-13, N.J.S.A. 2A:102-16 and N.J.S.A. 45:7-92. Said violations constitute fraud, deception and misrepresentation contrary to N.J.S.A. 45:1-21(b) and professional misconduct contrary to N.J.S.A. 45:1-21(e). Said violations evidence respondents' failure to comply with the provisions of any act or regulation administered by the Board contrary to N.J.S.A. 45:1-21(h). By their actions, respondents have demonstrated that they are incapable of discharging the functions of a licensee or of

a registered mortuary in a manner consistent with the public health, safety and welfare in violation of N.J.S.A. 45:1-21(i).

COUNT TWO

1. Complainant repeats each and every allegation contained in the General Allegations in this Complaint and the other Counts of this Complaint and the General Allegations and the other Counts of the Complaint filed on April 24, 1997 as if fully set forth herein.

2. On April 13, 1996, respondent, Russell C. Sheppard, visited the home of R.J. for the purposes of establishing a prepaid funeral agreement and preneed funeral arrangement on behalf of A.D.H., R.J.'s mother-in-law. A.D.H. was living with R.J. and his spouse at the time of the transaction.

3. On August 13, 1996, A.D.H. gave to respondent a personal check drawn on the Colonial Bank in the amount of \$1,500 which was made payable to "Russell C. Sheppard". This check was intended to pay for a portion of A.D.H.'s funeral arrangements and was required by law to be deposited in a P.O.D. funeral trust on behalf of A.D.H.

4. In June, 1997, R.J. had a conversation with R.H., the son of R.L.H., referred to in Count One of this Complaint. As a result of that conversation, R.J. realized that A.D.H. had not been furnished with any documentation pertaining to the prepaid funeral arrangements made on behalf of A.D.H. on August 13, 1996. R.J. telephoned respondent Russell C. Sheppard and advised him that he wanted documentation proving establishment of a preneed arrangement on behalf of A.D.H.

5. On or about July 2 or 3, 1997, over ten (10) months after accepting the \$1,500 from A.D.H., respondent Russell C. Sheppard delivered to R.J.'s home a document entitled "Prearranged and Prepaid Funeral for: A.D.H.". The document consists of what is customarily referred to as an itemized bill for funeral services in the amount of \$3,615. The document indicates that on August 13, 1996, \$1,500 was received by respondents, leaving a balance of \$2,115. The document is signed by respondent Russell C. Sheppard. The document is undated. No Statement of Funeral Goods and Services was ever provided to A.D.H. or R.J. as evidence of the funeral arrangements made on August 13, 1996.

6. At the bottom of the document referred to in the previous paragraph of this Count, is the statement "The acceptance of this agreement creates an irrevocable trust". There is a signature line for A.D.H.

7. At no point was A.D.H. represented to respondent as being a recipient of social services, including Medicaid. At no time during the negotiation of the prepaid funeral arrangement or at any time thereafter was it represented to respondent that A.D.H. was about to become a recipient of any social services, including Medicaid.

8. Respondent Russell C. Sheppard also gave to R.J. a note on the stationery of respondent Russell C. Sheppard Funeral Home stating "Interest will be added in August at 5%", and said note was signed by respondent Russell C. Sheppard. Russell C. Sheppard did not provide to A.D.H. or R.J. any evidence of the existence of a funeral trust on behalf of A.D.H.

9. Respondents did not deposit the monies received from R.J. and A.D.H. in a funeral trust. Rather, on August 13, 1996, respondent Russell C. Sheppard personally cashed the check given to him by A.D.H. and retained said monies for his use.

10. After learning of the Board's investigation in this matter, respondent Russell C. Sheppard opened a funeral trust for A.D.H. on July 11, 1997.

11. On July 14, 1997, Russell C. Sheppard admitted in a deposition that he had not opened a funeral trust and that the monies had been commingled with his own monies until July 11, 1997.

12. Respondents' actions in failing to deposit the \$1,500 in a funeral trust on behalf of A.D.H. is an unlawful conversion of these monies to their own use and is a violation of N.J.S.A. 2A:102-13, N.J.S.A. 2A:102-16 and N.J.S.A. 45:7-92. Said violations constitute fraud, deception and misrepresentation, contrary to N.J.S.A. 45:1-21(b) and professional misconduct contrary to N.J.S.A. 45:1-21(e). Said violations evidence respondents' failure to comply with the provisions of any act or regulation administered by the Board contrary to N.J.S.A. 45:1-21(h). By their actions, respondents have demonstrated that they are incapable of discharging the functions of a licensee or of a registered mortuary in a manner consistent with the public health, safety and welfare in violation of N.J.S.A. 45:1-21(i).

COUNT THREE

1. Complainant repeats each and every allegations contained in the General Allegations of this Complaint and the other allegations of this Complaint and the General Allegations of the

Complaint filed on April 24, 1997 and the other Counts of that Complaint as if fully set forth herein.

2. In allegedly making the funeral arrangements on behalf of A.D.H. as more fully described in Count Two of this Verified Complaint, respondent did not provide A.D.H. or any other person with a Statement of Funeral Goods and Services Selected.

3. By failing to provide a Statement of Funeral Goods and Services Selected, respondents have violated the provisions of N.J.A.C. 13:36-1.9, N.J.A.C. 13:36-9.8, 9.12 and 9.16(b)(2). Violations of the foregoing regulations constitute unfair and deceptive practices constituting professional misconduct in violation of N.J.A.C. 13:36-9.2 and 9.3.

4. In a deposition on July 14, 1997, respondent Russell C. Sheppard admitted that he had not prepared a Statement of Funeral Goods and Services for A.D.H.

5. By their conduct, respondents have engaged in professional misconduct in violation of N.J.S.A. 45:1-21(e). Said violations evidence respondents' failure to comply with any act or regulation administered by the Board contrary to N.J.S.A. 45:1-21(h). By their actions respondents have demonstrated that they are incapable of discharging the functions of a Board licensee or of a registered mortuary in a manner consistent with the public health, safety and welfare in violation of N.J.S.A. 45:1-21(i).

WHEREFORE, Complainant demands the entry of an Order against respondents, including the following:

1. The suspension or revocation of the license of respondent Russell C. Sheppard;

2. The revocation or suspension of the registrations of the Russell C. Sheppard Funeral Home in Bridgeton and Salem, New Jersey;

3. Monetary penalties against each respondent for each and every separate unlawful act as set forth in this Verified Complaint;

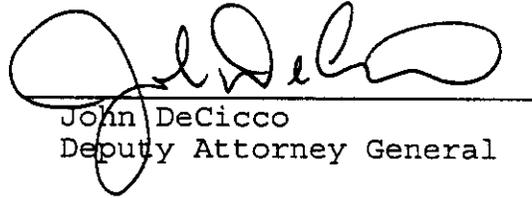
4. Payment of all costs of investigation and prosecution;

5. Restitution of any monies owed to any consumers; and,

6. Such other and further relief as the Board of Mortuary Science shall deem just and appropriate.

PETER VERNIERO
ATTORNEY GENERAL OF NEW JERSEY

By:



John DeCicco
Deputy Attorney General

Dated: July 15, 1997

CERTIFIED TRUE COPY

FILED WITH THE BOARD
OF MORTUARY SCIENCE
ON JULY 15, 1997

PETER VERNIERO
ATTORNEY GENERAL OF NEW JERSEY

By: John DeCicca
Deputy Attorney General
Division of Law
124 Halsey St., PO Box 45029
Newark, New Jersey 07101
Tel: 973-648-2894

CERTIFIED TRUE COPY

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MORTUARY SCIENCE

IN THE MATTER OF THE SUSPENSION)
OR REVOCATION OF THE LICENSES)
AND REGISTRATIONS OF:)
)
RUSSELL C. SHEPPARD)
LICENSE NO. JP02400)
)
RUSSELL C. SHEPPARD FUNERAL)
HOME (BRIDGETON LOCATION))
REGISTRATION NO. JB00223)
)
RUSSELL C. SHEPPARD FUNERAL)
HOME (SALEM LOCATION))
REGISTRATION NO. JB00801)
)
TO PRACTICE MORTUARY SCIENCE)
AND TO OPERATE REGISTERED)
MORTUARIES IN THE STATE OF)
NEW JERSEY)

Administrative Action
ORDER TO SHOW CAUSE

This matter was opened to the New Jersey State Board of Mortuary Science by the Verified Administrative Complaint of Peter Verniero, Attorney General of New Jersey, by John DeCicca, Deputy Attorney General, and it appearing that good cause exists for the entry of the within Order,

IT IS ON THIS 15th DAY OF JULY, 1997;
ORDERED:

1. Respondents, Russell C. Sheppard, the Russell C. Sheppard Funeral Home (Bridgeton location) and the Russell C. Sheppard Funeral Home (Salem location) show cause before the New Jersey State Board of Mortuary Science on August 5, 1997, at 124 Halsey Street, 6th Floor, Newark, New Jersey at 10:00 a.m., why the motion of the Attorney General to consolidate the Verified Complaint contained herein with the Complaint filed on April 24, 1997 should not be granted, and, why after summary hearing on all the documents and testimony presented, a Final Order should not be entered revoking or suspending respondents' license to practice mortuary science and registration to operate a registered mortuary, assessing civil penalties and costs and such further relief as the Board may order.

2. A copy of this Order together with the Notice of Motion of the Attorney General, Letter in Support of Said Motion, Verified Complaint, Certification and attached exhibits, shall be served upon the respondents not later than three (3) days following entry hereof.

3. Respondents shall file an Answer to the Motion and allegations contained within the Verified Complaint and such responding documents as being deemed necessary and appropriate not less than five (5) days after being served with said Motion and Verified Complaint, Certification and attached exhibits. Said responding documents shall be delivered to the New Jersey State Board of Mortuary Science, 124 Halsey Street, 6th Floor, Newark, New Jersey 07101, with a copy delivered on that same date to John

DeCicco, Deputy Attorney General, Division of Law, 5th Floor, 124 Halsey Street, Newark, New Jersey 07101.

4. **AND TAKE NOTICE** that failure to respond as directed by this Order to Show Cause, may result in this matter being considered in respondents' absence on the proofs presented and a Final Order being entered against respondents for any and all relief demanded in the Motion and Verified Complaint.

NEW JERSEY STATE BOARD
OF MORTUARY SCIENCE

By: Donald Codey / DC 7/15/97
Donald Codey, President

CERTIFIED TRUE COPY

PETER VERNIERO
ATTORNEY GENERAL OF NEW JERSEY

FILED WITH THE BOARD
OF MORTUARY SCIENCE

ON July 15, 1997

By: John DeCicco
Deputy Attorney General
Division of Law
124 Halsey St., PO Box 45029
Newark, New Jersey 07101
Tel: 973-648-2894

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MORTUARY SCIENCE

IN THE MATTER OF THE SUSPENSION)
OR REVOCATION OF THE LICENSES)
AND REGISTRATIONS OF:)

RUSSELL C. SHEPPARD)
LICENSE NO. JP02400)

RUSSELL C. SHEPPARD FUNERAL)
HOME (BRIDGETON LOCATION))
REGISTRATION NO. JB00223)

RUSSELL C. SHEPPARD FUNERAL)
HOME (SALEM LOCATION))
REGISTRATION NO. JB00801)

TO PRACTICE MORTUARY SCIENCE)
AND TO OPERATE REGISTERED)
MORTUARIES IN THE STATE OF)
NEW JERSEY)

Administrative Action

NOTICE OF MOTION

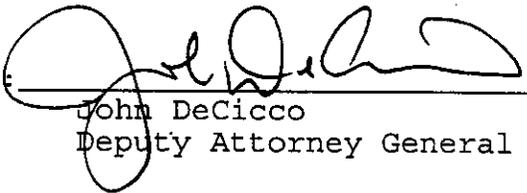
TO: Russell C. Sheppard
Russell C. Sheppard Funeral Home
40 East Street
Bridgeton, New Jersey

PLEASE TAKE NOTICE that Peter Verniero, Attorney General of New Jersey, by John DeCicco, Deputy Attorney General, hereby moves before the New Jersey State Board of Mortuary Science on August 5, 1997, at 10:00 a.m., for an Order consolidating the Complaint filed against Russell C. Sheppard by the Office of the Attorney General on April 24, 1997, with the Order to Show Cause and Verified

Complaint filed with the Board by Peter Verniero, Attorney General of New Jersey, by John DeCicco, Deputy Attorney General, on July , 1997.

Movant, relies upon the attached Order to Show Cause, Verified Complaint, Certification of the undersigned and Exhibits in support of the Motion made herein. Movant also relies upon the Letter to the Board submitted herewith.

PETER VERNIERO
ATTORNEY GENERAL OF NEW JERSEY

By: 
John DeCicco
Deputy Attorney General

Dated: July 15, 1997