

**CERTIFIED TRUE COPY**

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

IN THE MATTER OF THE SUSPENSION :  
OR REVOCATION OF THE LICENSES :  
AND REGISTRATIONS OF: :  
:  
RUSSELL C. SHEPPARD :  
LICENSE NO. JPO2400 :  
:  
RUSSELL C. SHEPPARD :  
FUNERAL HOME (BRIDGETON) :  
LICENSE NO. JP01223, and :  
:  
RUSSELL C. SHEPPARD :  
FUNERAL HOME (SALEM) :  
REGISTRATION NO. JB00801 :  
:  
TO PRACTICE MORTUARY SCIENCE AND :  
TO OPERATE REGISTERED MORTUARIES :  
IN THE STATE OF NEW JERSEY :  
:

Administrative Action

ORDER

FILED WITH THE BOARD  
OF MORTUARY SCIENCE

ON August 21, 1997

This matter was opened to the New Jersey State Board of Mortuary Science on or about April 24, 1997, upon the filing of a complaint by Peter Verniero, Attorney General of New Jersey, John DeCicco, Deputy Attorney General, appearing, seeking the suspension or revocation of the license of Russell C. Sheppard to practice mortuary science in the State of New Jersey, and of the registrations of the Russell C. Sheppard Funeral Homes located in Bridgeton and Salem in the State of New Jersey. The Complaint alleged three counts of misappropriation, misapplication and commingling of monies entrusted to respondents by three consumers to fund preneed funeral arrangements and prepaid funeral agreements, in violation of N.J.S.A. 2A:102-13, N.J.S.A. 2A:102-16, and N.J.S.A. 45:7-92; three counts of fraud, deception and misrepresentation in violation of N.J.S.A. 45:1-21(b); three counts of

professional misconduct pursuant to N.J.S.A. 45:1-21(e); three counts of failure to comply with the provisions of a Board regulation pursuant to N.J.S.A. 45:1-21(h); three counts charging incapacity to discharge the functions of a licensee in a manner consistent with public health, safety and welfare in violation of N.J.S.A. 45:1-21(i); and three counts of violations of the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq.. The Complaint further alleged one count of failure to maintain and provide to consumers a current general price list in violation of N.J.A.C. 13:36-9.2, 9.3, 9.7, 9.9, and 9.16(b)(1), and N.J.S.A. 45:1-21(e), (h), and (i); one count of failure to maintain and provide to consumers a current casket price list, in violation of N.J.A.C. 13:36-9.2, 9.3, and 9.5, and of N.J.S.A. 45:1-21(e), (h), and (i); one count of failure from 1984 to January 1, 1997, to maintain and provide to consumers outer burial container price lists in violation of N.J.A.C. 13:36-9.2 and 9.3, and of N.J.S.A. 45:1-21(e), (h), and (i); one count of failure to renew the registrations of respondent Funeral Homes for the current biennial period in violation of N.J.S.A. 45:7-55, 7.61(a) and (b), and 7-83(a), and N.J.S.A. 45:1-3.2, and of N.J.S.A. 45:1-21(e), (h), and (i); and 14 counts of failure to provide consumers with a Statement of Funeral Goods and Services Selected in violation of N.J.A.C. 13:36-1.9, N.J.A.C. 13:36-9.2, 9.3, 9.8, 9.12 and 9.16(b)(2) and of N.J.S.A. 45:1-21(e), (h) and (i).

An Answer on behalf of respondents was filed by Michael L. Testa, Esq., on or about May 7, 1997, without admissions and with affirmative defenses. However, on or about June 12, 1997, Mr. Testa formally notified the Board that he no longer represented Mr. Sheppard or the Russell C. Sheppard Funeral Homes.

A Verified Complaint with an Order to Show Cause and a Motion to Consolidate were filed by Deputy Attorney General DeCicco on or about

July 15, 1997, based on two additional consumer complaints, alleging two counts of misappropriation, misapplication and commingling of monies entrusted to respondents by two consumers to fund preneed funeral arrangements and prepaid funeral agreements, in violation of N.J.S.A. 2A:102-13 and N.J.S.A. 2A:102-16; two counts of fraud, deception and misrepresentation in violation of N.J.S.A. 45:1-21(b); two counts of professional misconduct pursuant to N.J.S.A. 45:1-21(e); two counts of failure to comply with the provisions of a Board regulation pursuant to N.J.S.A. 45:1-21(h); three counts charging incapacity to discharge the functions of a licensee in a manner consistent with public health, safety and welfare in violation of N.J.S.A. 45:1-21(i); and two counts of violations of the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq.. The Complaint further alleged one count of failure to provide a consumer with a Statement of Funeral Goods and Services Selected in violation of N.J.A.C. 13:36-1.9, N.J.A.C. 13:36-9.2, 9.3, 9.8, 9.12 and 9.16(b)(2) and of N.J.S.A. 45:1-21(e), (h) and (i).

Respondent Russell C. Sheppard appeared before the full Board on August 5, 1997, at which time he waived his right to be represented by an attorney and the Board granted the motion to consolidate the two complaints. By prior agreement, Deputy Attorney General DeCicco read into the record stipulations agreed upon by respondent Sheppard on behalf of himself and the two funeral homes.<sup>1</sup> Those stipulations included, from the April 24, 1997, complaint, allegations number 2 and 3 of the General Allegations; allegations number 2 and 3 of Count One; allegations number 2 and 3 of Count Two; allegations number 2 and 3 of

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<sup>1</sup>With the agreement of the Deputy Attorney General, respondent commented specifically on two or more of these stipulations as they were read into the record.

Count Three;<sup>2</sup> allegation number 2 of Count Four; allegation number 2 of Count Five; allegation number 2 of Count Six, with the insertion of the date "1984" for the word "until" in the first sentence, and the omission of the second sentence; allegation number two of Count Seven, with the second sentence amended to conclude with the words "for the current biennial period"; allegations number 2, 3 and 4 of Counts Eight through Twenty-one, with the word "continuously" deleted from the first sentence of number two and the words "as defined by regulation" inserted in count 4 after "Statements of Funeral Goods and Services Selected."

In the Verified Complaint filed on July 15, 1997, both parties stipulated to allegations number 2, 3, 4 and 5 of Count One, with the deletion of the last sentence of allegation number 2 and the substitution of the words "commingled in the general operating account" for the word "misappropriated" in number 3;<sup>3</sup> allegations number 2, 3, 9, 10 and 11 of Count Two, with the substitution of the words "commingled with the General Operating Account of the funeral home" for the words "retained said monies for his own use" in allegation number 9;<sup>4</sup> and allegation number 2 of Count Three, with the deletion of the word "allegedly."

Two exhibits were offered by Deputy Attorney General DeCicco and marked in evidence as P1 and P2; transcripts of respondent's testimony at investigative inquiries held on March 11 and July 14, 1997.

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<sup>2</sup>Both parties also stipulated that Mr. Sheppard had made restitution with interest of the monies involved in Counts 1, 2, and 3, in one case prior to the investigation by the Board and in two cases before the complaint was filed.

<sup>3</sup>Both parties stipulated that Mr. Sheppard provided the funds with interest at the time of the death of the insured.

<sup>4</sup>Both parties stipulated that the money had been refunded with interest on August 1, 1997.

The Deputy Attorney General and respondent presented short statements pertaining to the nature of respondent's violations, and the Board went into executive session before putting its findings on the record. Both the Deputy Attorney General and respondent addressed the Board during the mitigation phase of the hearing, when Mr. Sheppard stated that he had not intended to "take anyone's money on preneed," and that consumers had received their money and interest. He stated that he had explained everything to those who came to him to make funeral arrangements, but that he had not bothered to have them sign anything. "Everyone I buried had what I told them." He indicated that he had been in compliance with the statute and regulations since the complaint had been filed and that over the past two years he and his wife had had significant medical problems. He reiterated that he had had no criminal intent, and that he had never had "that type of reputation." He indicated that he did not know how he would survive if his license were revoked. The Board went into executive session before putting its decision on the record.

It is clear to the Board that respondent's admitted misconduct in mishandling preneed funds; in failing to maintain price lists; in failing to provide statements of funeral good and services; and in failing to renew the registrations of his funeral homes, constituted a fundamental breach of the duty he owed to consumers. The fact that the mishandling of preneed funds occurred as long ago as 1984 (Count One of the Verified Complaint) and as recently as April 1996 (Count Two of the Verified Complaint), supports a conclusion by the Board that respondent has pervasively and irreparably compromised the legal, ethical and moral duties he owed to the public of New Jersey as a licensee of the Board.

The Board concludes that the admitted facts in this matter establish that in five instances respondent and the two named funeral

homes accepted preneed funds which were not deposited in a trust account and were, instead commingled with operating funds of the funeral homes. These findings clearly support the charges that respondents' conduct violated N.J.S.A. 2A:102-13 and N.J.S.A. 2A:102-16 (requiring that funeral preneed funds be deposited in a trust fund within thirty (30) days, and establishing that failure to do so is a crime) and the additional charges that the violations provide bases for disciplinary action pursuant to N.J.S.A. 45:1-21(b) (engaging in the use or employment of fraud, deception and misrepresentation), 45:1-21 (e) (engaging in professional misconduct), 45:1-21(h) (failure to comply with the provisions of statutes or regulations administered by the Board) and 45:1-21(i) (incapacity to discharge the functions of a licensee and of a registered mortuary in a manner consistent with the public's health, safety and welfare). The Board further finds that respondents had no current price list; that respondents had no current casket price list; that respondents had no current vault price list; that respondent funeral homes had been unregistered since the end of 1995; and that in 15 cases respondent Russell C. Sheppard failed to make and provide Statements of Funeral Goods and Services. These findings clearly support the charges that respondents' conduct violated N.J.A.C. 13:35-1.9, 9.2, 9.3, 9.7, 9.8, 9.9, and 9.16(b) (1) (requirement to maintain and provide price lists) and N.J.S.A. 45:7-55, N.J.S.A. 61(a) and (b), and N.J.S.A. 45:7-83(A) (1) (B) (requirement that funeral homes be registered), thereby provide bases for disciplinary action pursuant to N.J.S.A. 45:1-21(e) (engaging in professional misconduct); N.J.S.A. 45:1-21(h) (violating provisions of a regulation administered by the Board); and N.J.S.A. 45:1-21(i) (incapability of discharging the functions of a licensee and of a registered mortuary in a manner consistent with the public health, safety and welfare).

As announced in public session, the Board of Mortuary Science hereby orders that;

1. The license of Russell C. Sheppard to practice mortuary science in the State of New Jersey shall be suspended for a period of six years, three years of that time to be an active suspension commencing on August 15, 1997, and three years to be stayed and served as a period of probation;

2. The registrations of respondent funeral homes shall be actively suspended for 90 day commencing on August 15, 1997, and funeral homes shall be closed;

3. Respondent may accept no funerals after August 10, 1997;

4. Should respondent Sheppard wish to reopen the respondent funeral homes at the end of the 90 days of suspension of their registrations, respondent funeral homes must be under the management of a Board licensee of whom the Board has approved in advance, and said licensee must agree to provide quarterly reports to the Board listing all preneed and at-need arrangements made during the each three-month period, as well as a certification indicating that respondent Sheppard has not participated in funerals or funeral arrangements in any manner which would require a license;

5. Respondent Sheppard shall pay costs in this matter and a civil penalty of \$10,000. All costs and \$5000 of the penalty must be paid within thirty days of the entry of this Order, unless respondent Sheppard arranges to make installment payments which ensure that the costs and \$5000 are paid within his active period of suspension. The remaining \$5000 shall be paid at the beginning of the fourth year of respondent's suspension, unless respondent arranges installment payments, with the entire \$5000 to be paid before the end of the fourth year of suspension;

6. During the 90 days that the funeral homes are closed,

respondent Sheppard shall arrange to have forwarded to the Board a list of all active preneed accounts for both funeral homes. Should respondent Sheppard reveal during this 90-day period the existence of any preneed contracts which he has not handled in accordance with the Board's statutes and regulations, he shall be permitted to restore the money with interest to the consumers in question, and the Board will not take any legal action against him based on said accounts;

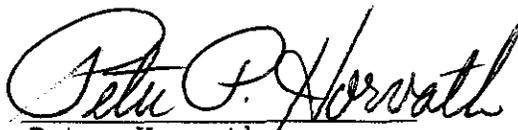
7. Respondent Sheppard shall notify all of his preneed clients by letter that the funeral homes will be closed for 90 days, explaining to them their options pertaining to preneed funds;

8. Respondent shall maintain an active telephone line to respond to telephones calls to either of the funeral homes from said preneed or other consumers, and shall ensure that someone answers that phone;

9. Should respondent Sheppard choose to reopen respondent funeral homes, he must reregister them for past and present biennial periods;

10. Respondent shall ensure that both funeral homes maintain and offer a current general price list, a current casket price list, a current vault price list and a Statement of Funeral Goods and Services Selected form.

BOARD OF MORTUARY SCIENCE

By:   
Peter Horvath  
President Pro Tem