

**FILED WITH THE BOARD
OF MORTUARY SCIENCE
ON April 14, 2009**

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
REVOCAION OF THE CERTIFICATE OF
REGISTRATIONS FOR:

Administrative Action

BERARDINELLI FOREST HILL MEMORIAL
Registration No. 23JB00125700

**FINAL DECISION
AND ORDER**

FUNERARIA SANTA CRUZ
Registration No. 23JB00131000

CREMATION AT A LOW COST
Registration No. 23JB00131700

TO OPERATE A REGISTERED MORTUARY
IN THE STATE OF NEW JERSEY

IN THE MATTER OF THE UNLICENSED
PRACTICE OF MORTUARY SCIENCE BY

STEPHEN K. FINLEY

This matter was opened to the New Jersey State Board of Mortuary Science (the "Board") upon the filing of an Order to Show Cause and Verified Complaint by the Attorney General of New Jersey, by Doreen Hafner, Deputy Attorney General, on February 18, 2009. The complaint, among other things, sought the immediate temporary suspension of the certificates of registration of Berardinelli Forest Hill Memorial, Funeraria Santa Cruz, and Cremation at a Low Cost pending a full plenary hearing; the suspension or revocation of the certificates of registration issued to Finley Funeral Services LLC ("Finley LLC") for

the operation of the Berardinelli Forest Hill Memorial, Funeraria Santa Cruz, and Cremation at a Low Cost. The complaint also sought the cessation of unlawful conduct in the State of New Jersey by Finley LLC as owner and Stephen K. Finley ("Finley") individually, as well as penalties, costs and fees pursuant to N.J.S.A. 45:1-25 and such other relief as the Board may find necessary and appropriate to safeguard the public's health, safety and welfare. The complaint alleged that Finley LLC, and Finley engaged in dishonesty and misrepresentation by holding Stephen Finley out as a licensed funeral director; repeatedly violated the terms of the Consent Order of Revocation entered by Stephen Finley and the Board on January 6, 2009; engaged in and permitted the unlicensed practice of funeral directing; and failed to provide documents responsive to a demand for inspection.

More specifically, the complaint alleges that Finley met with two investigators (acting in an undercover capacity), Oscar Amaya and Deborah Wacker, on January 15, 2009, and made preneed arrangements for a fictitious dying uncle, Felipe Delgado. As part of these arrangements, Finley discussed the cremation process, costs of the services requested, signed certain forms as a "witness" and prepared a Statement of Funeral Goods and Services Selected that he then faxed to the manager of the funeral home who was in another location.

The complaint further alleges that on January 30, 2009, two other investigators, Leida Martinez and Susan Thompson, met with Nadia, a funeral home employee, and Finley to make preneed arrangements for a fictitious dying sister, Rose Stefaneli. Again Finley quoted prices and discussed services with the investigators. The investigators were given a form to sign to authorize the removal and embalming of the sister's body, and the form contained Finley's name and license number as manager of the facility. Finley also

provided the investigators with a Statement of Funeral Goods and Services Selected, which was not signed by any licensed funeral director, as Finley advised the investigators that he would have his manager sign it later in the day.

The complaint also alleges that on February 4, 2009, demands for inspection were served upon the three funeral homes, seeking all records from January 6, 2009 until February 4, 2009. Finley accepted the demands for inspection and provided records to the investigators. The records provided did not include the preneed arrangements made for Felipe Delgado and Rose Stefaneli, the intended funeral recipients from the two undercover visits by investigators.

In addition, the complaint alleges that on January 15, 2009, Finley made preneed cremation arrangements for CM, with CM's daughter, VN.¹ During the conversation, Finley discussed the cremation process and obtained credit card information. When CM died on January 16, 2009, VN spoke again with Mr. Finley to advise him of her mother's death. Finley spoke again with VN to advise her that CM's body had been removed from the hospital. On January 23, 2009, Finley delivered CM's ashes to VN, and had VN sign a Statement of Funeral Goods and Services Selected that had been previously filled out and was signed by Carmine Berardinelli. The complaint alleges that VN positively identified Finley as the person with whom she made the arrangements, and that she never spoke with any other funeral director.

Finally, the complaint alleges that on January 26, 2009, Finley sent a letter to CB with pre-filled out Statements of Funeral Goods and Services Selected for CB and JSH.

¹ The names of consumers have been redacted to protect their privacy.

The statements were signed by Carmine Berardinelli. The documents were sent in response to a telephone call by CB to Cremation at a Low Cost inquiring about prepaid funeral agreements. The complaint alleges that CB spoke with a man at the funeral home who told her he was 46 years old, and expected the funeral home to be in business for a long time.

The complaint concludes with the assertion that all of these actions by Finley and Finley LLC as the holder of the mortuary registrations, were in violation of the Consent Order of Revocation, as well as violations of N.J.S.A. 45:7-47, -61, and -83; N.J.S.A. 45:1-21(b), (e) and (h); N.J.A.C. 13:36-1.9, -4.8, -4.9, -8.6, -8.9, -9.7 -11.2, and -11.15; and N.J.A.C. 13:45C-1.2, -1.3(a)(4) and -1.4.

Respondents Finley and Finley LLC, by their attorney Alan Dexter Bowman, Esq., submitted Verified Answers to the Complaint which were filed with the Board on March 3, 2009.² In the answers they admitted the majority of the general factual allegations of the complaint, including that Finley made arrangements for Rose Stefaneli, CM, CB and JH.³ Finley and Finley LLC denied the conclusions drawn in the complaint as to the violations and the appropriate penalty.

² Although Finley LLC is not specifically named in the caption of the Verified Complaint, the omission is not material to the resolution of this matter. The text of the complaint references Finley LLC throughout as the holder of the three mortuary registrations, and Finley LLC was served with the Complaint and Order to Show Cause. Finley LLC filed an Answer in the matter.

³ At one point in the Answers, however, respondents deny that Finley made arrangements with CB and JH in violation of the Consent Order. This denial was explained during testimony with Finley asserting that the initial contact with these individuals was made prior to the revocation of Finley's license, although the documents were not executed until after the revocation.

The Board entered an Order to Show Cause on February 18, 2009, returnable on March 3, 2009, directing respondents Finley Funeral Services LLC and Stephen K. Finley to show why the certificates of registration for the three facilities should not be temporarily suspended and directing that an answer to the complaint be filed. On the return date of the application for temporary suspension, the Board and the parties entered into an Interim Consent Order that imposed a temporary suspension of the registrations of the three funeral homes beginning on March 5, 2009 at midnight and continuing until further order of the Board and that set the plenary hearing in the matter for March 10, 2009.

The Board began the March 10 hearing and disposed of some preliminary motions.⁴ The parties had also stipulated to certain documents to be admitted into evidence, specifically Exhibits P1 through P5, P7 through P9, P14, P15 and P17 through P19. The Board then began the hearing with arguments and testimony on the issue of liability. The Attorney General offered the testimony of a single witness, Investigator Oscar Amaya. Respondents offered three witnesses, Paul Michael Brala, Ph.D., Stephen Finley and Patricia Finley. Due to a scheduling conflict, the Board agreed to hear the witnesses out of order, and therefore heard Dr. Brala's testimony first.

Dr. Brala, a clinical psychologist, testified that Finley had been referred by counsel so Dr. Brala could evaluate Finley to determine whether there were psychological reasons for Finley's failure to comply with the Consent Order entered with the Board. Dr. Brala's conclusions were based upon psychological testing, a three-hour interview of Finley, and

⁴ Mr. Bowman moved to sequester the witnesses, a motion unopposed by the Attorney General and granted by the Board.

a one-hour interview of Mrs. Patricia Finley.⁵ Dr. Brala noted several factors that he believed contributed to Finley's behavior: first, that Finley had developed an obsessive compulsive disorder with a focus on money; second, that Finley had overwhelming and untreated emotional depression and anxiety; and third, that Finley also had previously undiagnosed attention deficit hyperactivity disorder. Dr. Brala described Finley as a "hoarder of money, and he is often unable to control the drives that he experiences internally to acquire money, or refuse to spend money." Dr. Brala described Finley as someone whose mind and body work faster than those of other people. These factors were said to be a component in making Finley unable to shake his obsessive thoughts about money or focus appropriately on issues of spending money. In addition, Dr. Brala testified that when Finley finally went to his family physician, the medication prescribed, without therapy and referral to a psychiatrist, was insufficient treatment. He explained that as to the undercover investigators, Finley saw them as "shoppers" who might not actually use the funeral homes' services, and therefore Finley was reluctant to pay for a licensed funeral director to speak with them. Dr. Brala concluded that Finley's psychological state was impaired which made him unable to see the situation clearly and act in a conservative fashion; had Finley been appropriately treated with medication and therapy, Dr. Brala opined that Finley would have been able to act more appropriately.

On cross-examination, Dr. Brala conceded that he had only known Finley for a week, as the evaluation had been performed on March 3, 2009, the week before the plenary hearing. Dr. Brala admitted that he had not referred Finley to a psychiatrist, as his

⁵ Dr. Brala prepared a two-page letter and report with his conclusions, which was referred to by the witness and parties but not introduced into evidence.

role was of evaluator and not treating therapist. He explained that when his full report was completed, one of his recommendations would be that Finley see a psychiatrist. Dr. Brala noted that Finley scored in the 98th percentile of the population for depression, that is, only two percent of the population was more depressed than Finley. In spite of that determination, Dr. Brala still did not see it as his role to refer Finley to a treating psychiatrist.

Prior to the beginning of her case, DAG Hafner sought to move other previously marked documents into evidence, specifically P6, P11, P12, P13, P16, which were the affidavits of Catherine Butter, Leida Martinez, and Susan F. Thompson, and the sworn statements of VLN and CB. Mr. Bowman objected, and argued that the statements should not be admitted as the investigators and individuals were not present to be confronted by him relative to the trustworthiness and the veracity of the information contained in the certifications. Moreover, he argued that the certifications were not relevant, as they contained matters far outside the allegations of the complaint. In response, DAG Hafner argued that the certifications were admissible based on the Residuum Rule, N.J.A.C. 1:1-15.5, which provides that hearsay is admissible as long as there is some legally competent evidence that to support the ultimate findings of fact. DAG Hafner argued that the admissions that respondents made in their answers were the legally competent evidence upon which to admit the certifications based on the New Jersey Rules of Evidence, specifically N.J.R.E. 803(b)(1). Respondent's attorney countered that the certification was not necessary as evidence for issues admitted in the answer, as they are not challenged and are admitted based on the language of the allegations in the complaint.

He argued that admitting a ten-page affidavit that resulted in two paragraphs of allegations in a complaint would not be relevant or fair to respondents.

The Board deliberated on the motion, and after considering the well-crafted arguments of counsel, determined to admit the certifications offered and give them their appropriate weight, guided by N.J.A.C. 1:1-15.5.

The Attorney General then presented the testimony of its single witness, Investigator Oscar Amaya. Investigator Amaya testified that he works as an investigator for the Enforcement Bureau of the Division of Consumer Affairs, and in that capacity, he investigates different complaints and matters for all of the professional boards.

Amaya explained that on January 14, 2009, he placed an undercover phone call to Encarnación Santa Cruz, speaking in Spanish, as he was instructed to do. He told the woman he spoke with, who identified herself as Nadia, that he wanted to set up an appointment to arrange a cremation for an uncle, whose death was imminent. He asked if he could meet with Mr. Finley, who had been recommended to him, and was told that he could. The next day, Amaya, accompanied by another investigator, Deborah Wacker, went to the funeral home at the appointed time. Amaya testified that at the funeral home, they were greeted by a man who identified himself as Mr. Finley, who led them upstairs and brought them into a casket and urn showroom. Amaya stated that Finley called for Nadia to come in and meet with them, but that Finley stood in the room beside Nadia while the investigators were there. Amaya informed them that they were there to set up a cremation for an uncle who was going to die soon. Finley asked them if they were interested in a direct cremation or a viewing as well. They responded that they were interested in both, and that they wanted to know in detail the procedure and costs. Finley provided a price

of \$2,600, explaining that it would include a viewing and a small ceremony. Finley also indicated that there would be a \$150 additional charge if they wanted the service to be on a weekend. Amaya asserted that Finley also discussed caskets and urns with him, and offered to provide an oak casket for the viewing and the bronze urn at no charge.

Amaya indicated that Finley grabbed some blank forms for Amaya to fill out, one for the removal of the body and the other for the cremation. Amaya signed the forms, but told Nadia that he was uncomfortable signing them as they were in English, so she gave him copies of the forms for him to take home to his family. Amaya stated that Finley and Nadia discussed the cremation process. Finley explained the body would be picked up, taken to the funeral home and prepared. There would be a viewing and they could get a priest to hold a ceremony at the viewing. After that, Amaya was told the family would go out to the chapel at the cemetery for the cremation. Finley said that up to five family members would be allowed inside to see the actual cremation. Amaya testified that Finley gave him a typed document detailing all the information that Amaya had written down from their conversation.

Amaya told Finley that they were interested in leaving a deposit, and asked for some type of contract. Amaya asserted that Finley said that the manager was not there, but that Finley would give Amaya a contract. Amaya averred that he gave the money to Nadia and she gave it to Finley. The Statement of Funeral Goods and Services Selected was signed by Rodger W. Powell, after Finley faxed it to him at Bergen Funeral Services. Amaya was given a removal form which was signed by Finley as a witness.

Amaya described taking a business card for Stephen K. Finley that he obtained from a shelf on the way out of the funeral home that day. He said that a stack of the cards was

on the shelf next to cards for a florist, and he took one of each. He was never told not to take one, nor was any indication given that the cards were there by accident.

Amaya further explained that his job as investigator was to see if Finley would get involved in any way with the arrangements. Finley did not represent himself as being a manager of the funeral home or that he was acting in any licensed capacity. Amaya said that Finley said that he needed the manager to sign the contract. Amaya also stated that Finley did not give any indication of a title or his role at the funeral home. Amaya averred that he was not told he needed to make arrangements with someone else who was a licensed funeral director in New Jersey; nor did anyone tell Amaya that Finley was not a funeral director.

At the conclusion of Amaya's testimony, the State rested its case. Respondent continued its case by calling Stephen Finley to testify.

Finley acknowledged that he had signed a Consent Order on or about January 6, 2009 by which he was enjoined from performing any services required to be performed by a licensed funeral director, knew the Order indicated he could not be present in an area accessible to the public while people are making funeral arrangements, and could not make removals or hold himself out to be a funeral director or authorized to make funeral arrangements. He acknowledged that he read and understood the terms of the Consent Order and had agreed to be bound by them.

Finley testified that he met Investigator Amaya on January 15, 2009. Finley was not aware that anyone had called the day before to make an appointment to come in to the funeral home to meet with him. Finley said he escorted Amaya and Wacker upstairs, sat them in a room and had Nadia come in and speak with them. Finley said that he left the

room and went to a separate spot not accessible to the public, but Nadia came in to ask questions, including the cost of the service that Amaya had requested. Finley said he provided the information to Nadia, who then relayed the information to Amaya. Finley testified that after more questions, Nadia called him into the room to explain things to Amaya and Wacker. In response to counsel's question, Finley confirmed that meeting with Amaya and Wacker was a violation of the consent order. At the time, though, Finley said he was acting out of instinct from twenty-five years in practice to try to help. Finley claimed he did not see Amaya as an arrangement, but merely a "price shopper", such as someone who rings the doorbell or call to say they want to stop by. Finley said he took it "with a grain of salt" as these people might never be heard from again.

Finley testified that in response to the Consent Order, someone else was named as manager. Between January 6 and March 3, 2009 Finley testified that between twelve and fifteen funeral arrangements were made at the funeral home, and he did not participate in any other than the two covert operation arrangements made by the investigators. Finley's only explanation was that neither of these arrangements involved a death or at need situation. Finley claimed he was there to transition new staff.

Finley went to see physicians on the advice of his wife, a registered nurse. He was having anxiety and was prescribed Paxil and Xanax. He also testified that he went to see Dr. Brala based on his attorney's referral because of his behavior with respect to the Consent Order. Finley understood Brala's evaluation was that to figure out why Finley "felt the way I felt, why I act the way I do, why do I not think before I act."

He also testified as to the business cards, that he did not believe there were any out on display, and that he did not know Amaya had taken a business card until he saw the

verified complaint and the documents attached to it. He assured the Board that Amaya had not spoken to him about the business card found on the shelf.

Finley testified that Amaya asked for clarification of the costs of services, and that he pushed for an itemized bill. Finley stated that he responded that he was not the manager or licensed funeral director of the facility. He testified that he told Amaya that he owned the property and that was all, the manager was the person who has to sign off on the documents. Finley claimed he also told Amaya that he was not the manager or a licensed funeral director when Amaya asked about prices, and that they would have to get hold of a funeral director/manager if Amaya wanted to pursue the matter further.

Nevertheless, Finley testified that he prepared documents for Amaya and Wacker, to try to appease them and not have them leave. At the time of the hearing, he understood that what he did was wrong, but does not understand why he behaved in that fashion. He also admitted that on January 20, 2009, he met with Investigator Leida Martinez, and behaved in similar fashion in violation of the consent order.

As to Finley LLC, Finley testified that his wife, Patricia Finley, was the majority stockholder. He said that she told him to read the consent order multiple times, and if he did not understand something, he should stay away from it. Finley testified that as to Amaya and Martinez, he only told his wife that there were some "price shoppers" at the funeral home. He claimed that his wife told him not to be involved in any way as a licensee, but that he believed he was not doing so. He testified he told the second investigator that he was not the manager of the funeral home and then insisted that he told people that he owned the property and the funeral home but that he is not "the licensed director" or "the manager". When asked why the removal authorization form used as part

of the prearrangements made by Investigator Martinez still listed him (Stephen K. Finley) as manager of the funeral home, Finley asserted that it must have come from the bottom of a pile. Finley asserted that he does not believe there was any harm done by the name on the form, as the form was only being sent or given to someone in a hospital to authorize the removal of the body. He also acknowledged that he signed the form as a witness.

Finley further explained what he meant by "price shoppers" in response to questions from DAG Hafner and the Board. Finley testified that a consumer is a "price shopper until the body is in the building" and there is a signed contract. However, he conceded that if he were to receive a deposit from a consumer, then the consumer is no longer a price shopper because of the demonstrated intent to use his services. On further questioning, Finley admitted that the investigators moved out of the realm of being price shoppers, as they signed contracts and provided deposits; he also admitted that he interacted with them after they stopped being price shoppers.

Finley testified that Rodger Powell became the manager of the facility after Finley's license was revoked. Finley stated that he spoke with Scott Nimmo at Bergen Funeral Services, and Nimmo suggested Rodger Powell, one of his employees. Bergen Funeral Services does the layout work, the embalming, the directing and the death certificates. Finley also identified Carmine Berardinelli and John Rotondo as funeral directors who assist him at the funeral homes. Finley testified that his personal responsibilities included picking up and getting out of the funeral home, taking care of loose ends, training staff on procedures with their office, cemeteries, shipping bodies and maintaining the property. Finley testified that his wife is now the financial manager of the business. She pays all of the bills, writes the checks and makes the calls to the licensed director. These have been

her responsibilities for the two weeks preceding the hearing, but she had been helping out since they purchased the business eight years ago. Finley and others on the staff, including his wife, would have the responsibility to contact Rodger Powell or another licensee when the time came to actually make funeral arrangements with a consumer. Finley acknowledged he did not instruct Nadia to tell people that Finley could not meet with them to make arrangements.

The Board questioned Finley further about when a licensed funeral director needed to be present to make arrangements. Finley began by stating that when a person had died a licensed person needed to be with the consumers to make arrangements. He defined funeral arrangements as "when you are sitting, going over an itemized bill planning the funeral and that's going to be at this church on Monday at 10 o'clock, and the viewing Sunday 1:00 to 4:00 and 7:00 to 9:00. Doing all of the planning and putting together the funeral, to me, that's a funeral arrangement." In response to additional questions, Finley admitted that preplanning a funeral is also an arrangement. He explained that if he were to take down the consumer's biographical information, complete an itemized statement of goods and services selected and everyone were to sign off, that would be a funeral arrangement. He admitted to receiving a deposit on the preneed arrangements made by the investigators, but also conceded that he did not deposit the money in any account or complete pre-need forms for the arrangements.

Finley asserted that although he participated in the funeral arrangements identified by the Attorney General, he does not believe he made "full funeral arrangements" and did not hold himself out as being a licensed practitioner. He admitted that he filled out the Statement of Funeral Goods and Services Selected, faxed it to Mr. Powell for signature,

and then gave the form to Amaya. He also admitted that he filled out the Statement of Funeral Goods and Services Selected for Rose Stefaneli, the arrangement made by Investigator Martinez, and gave it to her unsigned. Finley claimed that Martinez met with Nadia, and that he came in at the end. He asserted that he told Martinez that he was the owner of the funeral home but not the licensed manager, and if she wanted to pursue the arrangements she would have to make an appointment to see Mr. Powell. He could not explain why he filled out the Statement of Funeral Goods and Services Selected in that case.

As to CB and JH, Finley testified that he had begun the preneed arrangements before his license was revoked. When they called and spoke to Nadia, he then got on the phone with CB and told her he would have a licensee fill out the paperwork and send it to her. He sent it to her, under his signature, on paper with the funeral home's name on it but no manager's name or license number. The documents indicated she was to sign the forms and to return them to the funeral home.

Finley made a closing statement, apologizing to the Board for betraying the funeral service profession and begging the Board to spare his family and allow them to run the business.

Respondents' final witness was Patricia Finley, Stephen Finley's wife, part owner in the funeral home business. She testified that she was aware of the Consent Order entered between her husband and the Board and that she had discussed the Consent Order with Finley. She said that she discussed the order with him to be sure he understood it and that he would do the correct thing when he was in the funeral home. More specifically, she testified that she questioned Finley on days when she could not be

at the funeral home, to see if anything happened while she was not present. She testified that when she was there, if someone called to make an appointment or even if they just showed up, Bergen Funeral Services would immediately be called to send over a licensed director. She was unaware of the visits of the two undercover investigators until she was served with the State's papers. However, she stated that she recalled on one of those days asking Finley "did anything happen today he said, a few price shoppers. I said, did you do what you were suppose to do, he said, yes, I said, okay." She asserted he did not indicate that he had spoken to anyone or touched any documents. However, she claimed that after being served with the papers she questioned him more extensively, but was told by him that he did not know why he did what he did.

Patricia Finley explained that her husband sought medical attention in November 2008 because "he was not acting right." She claimed that he seemed to be suffering from depression, was confused and needed a lot of direction from her. After he saw the doctor and began medication, he seemed a bit calmer and not so confused, and "could function a little bit better". However, she testified that Finley went to Dr. Brala because Finley seemed confused and unable to make the right decisions, so they decided he should see a psychologist. She asserted that she was relieved that there was a definitive diagnosis after seeing Dr. Brala.

Patricia Finley also indicated her desire to continue to run the business, possibly with her daughter who wants to go to mortuary school. She testified that she became a sixty percent owner of the business a few months prior to the hearing because of concern about possible issues over the bone and tissue problems with Michael Mastromarino. They wanted to keep the business going. Although the violations were committed when

she had a great deal of administrative responsibility for the funeral homes, she was unaware that Finley was behaving inappropriately. She testified that Finley misrepresented his actions to her, but she did not check with anyone at the funeral home to find out what Finley was doing when she was not present.

In closing, counsel for respondents asserted that there was no doubt that Finley had violated the Consent Order, but they felt an obligation to correct some of the factual assertions so the Board could impose the appropriate sanction based on the correct statement of facts. He argued that Mrs. Finley trusted her husband to do the right thing, and she made what she thought was an adequate inquiry of her husband to be sure he was complying with the Consent Order. However, counsel asserted that Mr. Finley did not intend to disrespect the profession, but that he simply could not control his actions, as Dr. Brala explained.

DAG Hafner argued that based on the evidence, Finley engaged in unlicensed practice and violated the Board's order. Over the objections of respondents' counsel, DAG Hafner made arguments regarding aspects of the Limited Liability Company Act and how the law operates to make Finley LLC responsible for Finley's actions. She concluded by requesting the Board find both Finley and Finley LLC responsible for the actions set forth in the complaint.

DISCUSSION ON LIABILITY

On January 6, 2009, the Board entered an order revoking respondent Stephen Finley's license to practice mortuary science. The Board deemed revocation to be the appropriate discipline because of the gravity of the misconduct asserted: Finley's

involvement in a scheme to harvest tissue from numerous decedents from whom consent to harvest tissue had not been given. Notice of that order was given to Finley and to Finley LLC, and the undisputed testimony before the Board is that Stephen Finley individually and the shareholders of Finley LLC, Stephen and Patricia Finley, read the Order and understood it. At the time of the Consent Order, the Board believed that it was appropriate to prevent Stephen Finley from engaging in any activities as a funeral director, appearing in any way to be a funeral director or interacting with the public who he had served for approximately twenty-five years. The Board did not, however, take action against the funeral home registrations, which permitted the Finley family to operate the mortuaries and earn a livelihood – with the transfer of majority ownership to Patricia Finley, the facilities were given the opportunity to operate lawfully in New Jersey. Unfortunately, however, Stephen Finley destroyed that opportunity for Finley LLC. He violated the terms of the Consent Order and Patricia Finley failed to take sufficient steps to prevent him from committing those violations.

The Board finds that respondent Finley was present in areas of the funeral home accessible to the public while consumers were making arrangements. Indeed, the Board finds that Finley made arrangements, quoted prices and filled out Statements of Funeral Goods and Services Selected for the preneed arrangements of Felipe Delgado and Rose Stefaneli. The Board also finds Finley made arrangements by telephone, both for preneed and at need services, with VN for her mother, CM.

The Board also finds that Finley completed arrangements by mail for CB and JH. Mr. Finley's explanation that these arrangements were not violations of the law or the Order because they were begun prior to the revocation of Finley's license, is not persuasive. The

arrangements were completed when the signatures were placed on the documents. Finley spoke with CB after the revocation of his license, and he used funeral home "note paper" which contained the name of the funeral home, but no manager or licensee, to send her the documents for signature. Thus, these arrangements were made after revocation and constitute violations of the Order and the law.

In addition, the Board finds that Finley failed to provide all documents responsive to the demand for inspection served on February 4, 2009, specifically, that he failed to provide the files for Rose Stefaneli and Felipe Delgado,⁶ in violation of N.J.A.C. 13:45C-1.3(a)(4), constituting professional misconduct pursuant to N.J.A.C.13:45C-1.2.

Finley's presence in the funeral home, meetings with the investigators to discuss funeral arrangements and conducting of the business of mortuary science in person, by telephone and by mail all constitute violations of the January 6, 2009 Board Order and also constitute the unlicensed practice of mortuary science in violation of the Mortuary Science Act and its regulations.

Finley LLC, as the owner of and holder of certificates of registration for Berardinelli Forest Hill Memorial, Funeraria Santa Cruz and Cremation at a Low Cost, is responsible for compliance with all laws and regulations governing the practice of mortuary science pursuant to N.J.A.C. 13:36-4.16. Based on the admissions, testimony and evidence

⁶ The Board is concerned at Finley's admitted failure to deposit the preneed monies given to him by the investigators in connection with these arrangements or complete any of the necessary forms for the money to be deposited in accord with the requirements of the law. This behavior provides additional evidence of an attempt to conceal information that would disclose Finley's unlicensed practice to the Board, and also constitutes a separate violation of the law by Finley and Finley LLC. (See N.J.S.A. 2A-102-13; N.J.A.C. 13:36-11.2, -11.12 and -11.15(a)).

submitted, the Board finds that Finley LLC is also responsible and liable for the conduct that occurred at and on behalf of the registered mortuaries it owns.

The Board finds the conduct of Finley and Finley LLC as set forth above constitutes violations of N.J.S.A. 45:7-47 (license required for the practice of mortuary science), 45:7-61 (mortuary must be under immediate and direct supervision of New Jersey licensed funeral director, and operation must conform to the rules and regulations of the Board), and 45:7-83 (license is required to make preneed arrangements); N.J.A.C. 13:36-1.9 (failure to provide signed Statement of Funeral Goods and Services Selected), 13:36-4.8 (failure to have mortuary under direct supervision of full-time licensed manager), 13:36-4.9 (unlicensed persons actively participating in funeral arrangements), 13:36-8.6 (business card misrepresenting license status), 13:36-8.9 (unlicensed person making funeral arrangements), 13:36-11.2 (unlicensed person making preneed arrangements), and 13:36-11.15 (liability for aiding and abetting violations of preneed laws, duty to report); and N.J.A.C. 13:45C-1.4 (failure to comply with Board order). The Board also finds that Finley and Finley LLC engaged in the use of dishonesty, deception and misrepresentation, committed professional misconduct and failed to comply with acts and regulations administered by the Board, in violation of N.J.S.A. 45:1-21(b), (e) and (h), all providing a basis for discipline in this matter.

After its determination as to liability, the Board proceeded to hear argument on the issue of appropriate penalty in this matter. The parties presented no witnesses in this phase of the proceedings but instead pointed to aspects of the testimony previously elicited. Respondents' counsel argued that Finley's psychological state taken together

with Mrs. Finley's testimony should serve as mitigation with respect to the sanction considered by the Board. Counsel asserted that Mrs. Finley is the majority owner of Finley LLC and has taken over administrative responsibilities following the revocation of Mr. Finley's license. He asked the Board to be as lenient as possible, and make it possible for the funeral homes to reopen and run on whatever conditions the Board deemed appropriate.

DAG Hafner reminded the Board that this was Mr. Finley's second violation of the law. She suggested that the value of Dr. Brala's testimony was limited, as he had only known Finley for a week, and had failed to make recommendations for further treatment despite the claimed test results. DAG Hafner asserted that Mrs. Finley failed to supervise her husband's activities: she trusted her husband, but admitted that he was confused and unfocused. Permitting her to operate the business would not ensure that it would operate according to law.

DISCUSSION ON PENALTY

The Board notes at the outset that the practice of mortuary science is a privilege – and one burdened with responsibilities. Primary among those responsibilities is the obligation of a licensee to act with integrity, good faith and fair dealing. At a time when people may be at their most vulnerable, licensees of the Board must behave toward them in an exemplary fashion and seek to benefit themselves. Mr. Finley has demonstrably failed to satisfy these responsibilities.

By his actions, Mr. Finley violated both the letter and the spirit of the Consent Order revoking his license. The provision in the Order prohibiting Finley from holding "himself out

in any manner as a funeral director or as being authorized to make funeral arrangements” cannot by any reasonable interpretation be as narrow as Mr. Finley suggests. Holding himself out as a funeral director does not mean Finley must literally say he is a funeral director; his actions not only implied, they actually misrepresented his ability to make arrangements with consumers. Finley discussed cremation prices, services and options with Investigators Amaya and Martinez and with VN. He took biographical data and filled out Statements of Funeral Goods and Services Selected. Presumably he spoke knowledgeably on these subjects based upon his years of experience. Simply informing consumers that he was not the manager of the funeral home or that the documents needed to be signed by the manager does not alter the perception that Finley was able to make arrangements; the average consumer has no reason to know that the law does not require the manager to sign documents.

Moreover, at no time did investigators Amaya, Wacker or Martinez meet with any individual licensed to make funeral arrangements in New Jersey when they attempted to make arrangements. The investigators made appointments in advance, giving Finley and his staff ample time to ensure that a licensee was present at the funeral home. Signatures were obtained by fax in the first instance from a licensee of the Board who had no part in making the actual arrangements, and in the case of investigator Martinez, a Statement of Funeral Goods and Services Selected was provided to the consumer without signature, yet another violation of the Board’s regulations. By filling out the forms and discussing all of the arrangements with these individuals, Finley violated the law and the Consent Order he had signed only weeks earlier. Indeed, it appears he never directed his staff to obtain the services of a licensed funeral director to meet with anyone making preneed arrangements,

or even to tell consumers that they could no longer meet with him to make arrangements as Finley was no longer licensed.

Dr. Brala's explanation that Finley was too traumatized to spend money in a situation where someone may not use the funeral home is belied by Finley's conduct. Finley knew a licensee must make preneed arrangements with consumers and he admitted that the investigators gave him a deposit and filled out contracts. His hollow claim that they were "price shoppers" is nothing more than a feeble attempt to avoid responsibility for his willful deceit. VN, with whom he made arrangements by telephone, was also never told that Finley could not make arrangements, nor was she referred to a licensee. Had he truly wished to assist a grieving daughter on the death of her mother, Finley could have ensured that a licensee of the Board was available to her in her time of need. Suggesting that he was motivated by a desire to help is simply not convincing.

The Board is also troubled by Finley's cavalier attitude when explaining the arrangements made with CB and JH. His argument that these arrangements were begun prior to his revocation, and thus completing them was not a violation of the Order, is unavailing. If in fact Finley began the arrangements prior to his license revocation, these individuals had no reason to know that they could no longer look to Finley as a funeral director. Using funeral home "note paper" containing the funeral home's name and address, but no manager's name or license number, is at best an attempt to conceal the material fact of the revocation of Finley's license, and at worst a deliberate effort at deception. Suggesting this was a cover note with documents signed by another funeral director does not change the fact that Finley continued to act in the capacity of a funeral director for the purpose of making arrangements.

The Board is also not persuaded that Mrs. Finley, who purportedly became more heavily involved with the business operations following the entry of the Consent Order, took sufficient action to ensure that the funeral homes were operating in compliance with the law and that her husband did not violate the Order. By her own testimony, Mrs. Finley indicated her husband was confused and required more direction from her. While the Board recognizes that a spouse of more than twenty years may trust her husband, the changes in his behavior should have prompted more diligence on her part than simply asking him "did you do the right thing?"

Perhaps most troubling about the serious and continuing violations found here is that they occurred after the Board, as part of a negotiated settlement in the revocation proceeding, allowed Finley and Finley LLC the opportunity to demonstrate the funeral homes could operate in compliance with the law. They have fallen woefully short. The claimed transfer of majority ownership of the funeral home to Patricia Finley and employment of a licensed manager did not result in compliance and were instead utilized to cover unlicensed and improper practices at the funeral homes. The Board therefore finds no alternative, short of revocation of the registrations, that would suffice to protect the public's health, safety and welfare from the continued egregious violations committed at these registered facilities.

THEREFORE, IT IS ON THIS 14th DAY OF April, 2009,

ORDERED:

1. The registrations of respondents Berardinelli Forest Hill Memorial Home, Funeraria Santa Cruz and Cremation at a Low Cost are hereby revoked.

2. Respondent Stephen K. Finley is ordered to cease and desist the unlicensed practice of mortuary science and all other actions found herein in violation of the prior Consent Order, the Mortuary Practice Act and the regulations promulgated thereunder.

3. Finley LLC, as owner, shall be responsible for compliance with all regulations governing the closing of the funeral home, including, without limitation, N.J.A.C. 13:36-5.14 and N.J.A.C. 13:36-11.19. The preneed ledgers of the funeral homes shall be provided to the Board within 10 days of the entry of this Order. Letters shall be sent to all holders of preneed arrangements pursuant to N.J.A.C. 13:36-11.19(b). Copies of those letters shall be furnished to the Board within 30 days.

4. The Board awards costs and attorneys fees against respondents, jointly and severally in this matter in an amount to be determined. The Attorney General was directed to submit an application by March 13, 2009, and has done so. Respondents were directed to respond by March 20, 2009. Although a request for a hearing was received, no response to the substance of the application was appended. The Board will consider all submissions on the papers at its next meeting, determine whether any other proceedings are necessary, and a supplemental order will issue.

New Jersey State Board of Mortuary Science

By: 
Louis J. Stellato, Jr.
Board President

APPENDIX

DOCUMENTS ACCEPTED INTO EVIDENCE

- P1 Certified True Copy of Certificate of Formation for Finley Funeral Services, LLC, certified February 3, 2009
- P2 Certificate of Good Standing for Finley Funeral Services, LLC, certified February 3, 2009
- P3 Limited Liability Company Statements for Berardinelli Forest Hill memorial, Funeraria Santa Cruz and Cremation at a Low Cost
- P4 Letter dated November 7, 2000 with applications for Certificates of Registration for Berardinelli Forest Hill Memorial, Funeraria Santa Cruz and Cremation at a Low Cost
- P5 Establishment License Inspection Form for Funeraria Santa Cruz signed by Stephen K. Finley on February 4, 2009
- P6 Certification of Catherine Butter, with attachments, dated February 11, 2009
- P7 Consent Order of Revocation of License, entered January 6, 2009
- P8 Change of Manager Applications with supporting documents for Berardinelli Forest Hill Memorial, Funeraria Santa Cruz and Cremation at a Low Cost
- P9 Letter from Board of Mortuary Science dated January 8, 2009
- P10 Documents annexed as Exhibits to Affidavit of Oscar Amaya (Affidavit not in evidence): Business Card of Stephen K. Finley, Business Card of the Newark Florist; receipt for \$100 deposit; Statement of Funeral Goods and Services for Felipe Delgado; Typed information sheet, in Spanish; Authorization to Remove and Embalm decedent; Handwritten information sheet, in Spanish; Cremation Authorization form
- P11 Affidavit of Leida Martinez, with Exhibits, dated February 17, 2009
- P12 Affidavit of Susan F. Thompson, dated February 13, 2009
- P13 Sworn Statement of VLN, dated February 9, 2009
- P14 Statement of Funeral Goods and Services Selected, Cremation Authorization and Certificate of Cremation for CM

- P15 Letter dated January 26, 2009, with attached documents and supporting certification of JH
- P16 Sworn Statement of CB, dated February 9, 2009
- P17 Transcript of Plea, dated February 3, 2009
- P18 Verified Answer of Stephen K. Finley, entered March 3, 2009
- P19 Verified Answer of Finley Funeral Services, LLC, entered March 3, 2009
- P20 Funeral Log for Stephen K. Finley, dated February 14, 2009