

NEW JERSEY
CEMETERY BOARD

May 27, 2009

ANNE MILGRAM
ATTORNEY GENERAL OF NEW JERSEY
Division of Law
124 Halsey Street
P.O. Box 45029
Newark, New Jersey 07101

FILED *Marie L. Ferraro*

State of New Jersey
Department of Law and Public Safety
Division of Consumer Affairs
New Jersey Cemetery Board

IN THE MATTER OF

MONTAGUE REFORMED
CHURCH CEMETERY

Certificate of Authority
Number 246

:
:
: Administrative Action
:
: **FINAL ORDER OF**
: **DISCIPLINE**
:
:
:

This matter was opened to the New Jersey Cemetery Board upon receipt of information which the Board has reviewed and on which the following findings of fact and conclusions of law are made:

FINDINGS OF FACT

1. Montague Reformed Church Cemetery ("Respondent"), 346 River Road, Montague 07827, has held Certificate of Authority Number 246 issued by the Cemetery Board on September 18, 1972 pursuant to N.J.S.A. 8A:3-9 now known as N.J.S.A. 45:27-6 and has been a New Jersey cemetery company at all times relevant to this matter and is not a municipality.
2. Pursuant to N.J.S.A. 45:27-12, each cemetery company that is not a municipality must establish a special, irrevocable trust fund for the continuous maintenance

and preservation of the cemetery. Only the income from the fund is to be applied to the maintenance of the cemetery in accordance with N.J.S.A. 45:27-12d.

3. Pursuant to N.J.S.A. 45:27-13c a cemetery company is required to make certain deposits into the Cemetery's Maintenance and Preservation Fund for each sale or transfer of a grave, crypt or niche as well as for each interment or placement of cremated human remains or for a foundation, base or installation of such.

4. Pursuant to N.J.S.A. 45:27-15, each cemetery company that is not a municipality must file an annual report with the Board showing the extent and sources of augmentation of the Maintenance and Preservation Fund not later than 120 days after the close of its fiscal year.

5. A review of the Board's files demonstrates that the last annual Maintenance and Preservation Fund report was filed on August 23, 2002 for the Cemetery's fiscal year ended April 30, 2002.

6. Based upon the above facts, the Board issued a Provisional Order of Discipline ("Provisional Order") filed on October 30, 2008.

7. In response to the Provisional Order, respondent filed the delinquent annual reports along with the filing fee of \$75.00 for each year, the latest of which, for 2008 shows a balance in the Maintenance and Preservation Fund of \$15,047.50 with interest of \$56.68.

CONCLUSIONS OF LAW

The failure to file an annual report with the New Jersey Cemetery Board and/or the failure to deposit statutorily required sums into the Maintenance and Preservation Fund provide grounds for discipline pursuant to N.J.S.A. 45:1-21 (h).

DISCUSSION

The Board considered the submissions of respondent and determined that no further proceedings were necessary as the facts alleged were not disputed. Based upon the limited funds available to the cemetery for the maintenance and upkeep of the cemetery from the interest earned on its Maintenance and Preservation Fund, and the fact that the Cemetery's annual reports are now current, the Board was persuaded that reduction of the civil penalty was warranted. The Board expressed its general concern that it understands the difficulty in locating individuals willing to assume the maintenance of a cemetery which has limited funds and a very small percentage of plots available for sale, and is of the opinion that it is in the public interest to do everything possible to avoid having such a cemetery fall into the category of so many others in this state that have been abandoned. These abandoned cemeteries are a nuisance to any community which does not have the funds to assume the responsibility for maintenance and turns what used to be a park-like setting, where individuals desired to be buried so that their loved ones could pay their respects and visit after their demise, into magnets for mischief and illegal activities. Therefore, imposition of a large fine in this matter would not serve a valid purpose and may hamper respondent's ability to maintain the cemetery, so the Board is inclined to reduce the fine to a minimal amount and respondent should be cautioned about its delinquent behavior.

ACCORDINGLY, IT IS ON THE 27th day of May, 2009,

ORDERED that:

1. Respondent shall cease and desist from failing to file its annual Maintenance and Preservation Fund Annual Report within 120 days of the close of its fiscal year and

from failing to make all statutorily required deposits into the Maintenance and Preservation Fund.

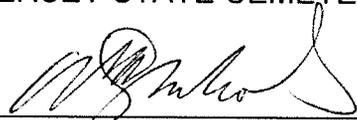
2. Respondent shall pay a civil penalty of \$100. Since respondent has paid the annual report filing fee of \$75.00 for 2008 when no filing fee was due based upon the fact that its income from the Maintenance and Preservation fund was less than \$1,000 and no fee was required pursuant to N.J.A.C. 13:44J-5.6(d), respondent shall be required to pay the balance of the \$25.00 penalty within ten (10) days from the date of this Order. Failure to do so will result in the filing of a certificate of debt and may result in further proceedings to collect any past due amount along with the cost of collection.

3. Respondent is exempt from paying the report filing fee of \$75.00 so long as the income from the Maintenance and Preservation Fund is \$1,000 or less pursuant to N.J.A.C. 13:44J-5.6(d).

4. Should respondent violate any provisions of the New Jersey Cemetery Act, N.J.S.A. 45:27-1 et seq., or the regulations, N.J.A.C. 13:44J-1.1 et seq., it may be subject to enhanced penalties as a second violation, as well as such other proceedings as authorized by law without prejudice to respondents' right to present evidence in mitigation and affirmative defenses.

NEW JERSEY STATE CEMETERY BOARD

By:



William C. Nichols, Chairman

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