

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
CORPORATIONS, SECURITIES & COMMERCIAL LICENSING BUREAU

In the matter of:

KNOLLWOOD MEMORIAL PARK CEMETERY
SAM TOCCO, OWNER
Cemetery Registration No. 22-01-000375

Complaint No. 338664

and

KNOLLWOOD MEMORIAL PARK CEMETERY
SAM TOCCO, OWNER
Crematory Registration No. 22-03-000085

Complaint No. 338673

Respondent.

_____ /

Issued and entered
This 6th day of December, 2018

NOTICE AND ORDER TO CEASE AND DESIST

This matter came before the Cemetery Commissioner (the “Commissioner”) for the State of Michigan following an investigation conducted by the Corporations, Securities & Commercial Licensing Bureau (the “Bureau”) on behalf of the Commissioner. Based on her statutory authority and responsibility to administer and enforce the Michigan Cemetery Regulation Act, MCL 456.521 *et seq.* (the “Cemetery Act”), the Commissioner orders Knollwood Memorial Park Cemetery, Sam Tocco, Owner (“Respondent”), to cease and desist from continuing to violate the Cemetery Act, including, but not limited to, violating article 18 of the Occupational Code, MCL 339.1801 *et seq.* (the “Occupational Code”). Respondent is also notified of the opportunity to request a hearing in this matter.

I. BACKGROUND

A. Respondent

1. Knollwood Memorial Park Cemetery, both a cemetery and a crematory, is owned by Sam Tocco who also serves as the resident agent, President, Secretary, Treasurer, and Director of Knollwood Memorial Park Cemetery Association, which has a registered office address of P.O. Box 836, Union Lake, Michigan 48387. Its physical address is 1299 Ridge Road, Canton, Michigan 48187. Knollwood Memorial Park Cemetery Association's resident agent's mailing address, and Knollwood Memorial Park Cemetery's address on record with the Bureau's Licensing Division is 5363 Pembroke Crossing Ct., West Bloomfield, Michigan 48322. Knollwood Memorial Park Cemetery, Sam Tocco, Owner, obtained its cemetery and crematory registrations via a Change of Control Application under the Cemetery Act in April 2017. It has, at all times relevant to this Order, been registered as a cemetery and crematory under the Cemetery Act.

B. Findings of Fact

2. On December 5, 2018, the Bureau's investigators presented to Respondent Knollwood Memorial Park Cemetery, located at 1299 Ridge Road in Canton, Michigan based on a review of the evidence obtained in another investigation indicating that a mortuary science establishment was temporarily storing the uncremated remains of fetuses and infants at the cemetery.
3. Accompanied by personnel from the Michigan State Police, the Bureau's investigators discovered hundreds of uncremated remains of fetuses and infants who died as far back as 2009 in four of five crypts.
4. The crypts were not purchased by the loved ones of the deceased but were being used as temporary storage until each crypt was full at which point final disposition would presumably occur.
5. The remains were stored in plastic containers inadequately sealed with duct or packaging tape and, in some instances, were leaking fluids.
6. 27 plastic containers containing the uncremated remains lacked the appropriate documentation, including, but not limited to, incomplete or missing burial transit permits, or documentation ("Final Disposition of a Stillbirth" forms for fetuses and death certificates for born alive infants) indicating "storage – Knollwood" or that the authorized final disposition was cremation. The Bureau took possession of the containers on December 5, 2018.
7. Most of the remains appeared to be stored on behalf of Perry Funeral Home, Mortuary Science Establishment License No. 45-02-000788, located at 5045 Trumbull in Detroit,

Michigan. The Bureau summarily suspended Perry Funeral Home's mortuary science license and that of its manager, Gary Ecsedi Deak, on October 19, 2018, in part, because of its improper storage of the uncremated remains of 63 fetuses and infants found in the establishment that day, contrary to MCL 750.160c, various provisions of the Occupational Code, and other laws. Attached as Exhibit 1 is a copy of a verification of Perry Funeral Home's License status.

8. On October 19, 2018, the Bureau, accompanied by officers from the Detroit Police Department, took possession of the uncremated remains of the 63 fetuses and infants found in the establishment that day.
9. At no time since October 19, 2018, did Gary Ecsedi Deak, or anyone on behalf of Perry Funeral Home or Knollwood Memorial Park Cemetery notify the Bureau or the Detroit Police Department that additional remains were being stored at a location other than the establishment.
10. A violation of article 18 of the Occupational Code, MCL 339.1801 to 339.1812, is also a violation of the Cemetery Act when the person who committed the violation holds a registration or registrations under the Cemetery Act.
11. A violation of article 18 of the Occupational Code and a violation of the Cemetery Act are also violations of the Prepaid Funeral and Cemetery Sales Act, MCL 328.211 *et seq.*, if the same person holds registrations under both the Cemetery and Prepaid Funeral and Cemetery Sales acts.
12. A violation of a state law or municipal or county ordinance or regulation affecting the handling, custody, care, or transportation of a dead human body is a violation of MCL 339.1810(1)(h).
13. In some cases, Respondent obtained possession of deceased infants without first being expressly directed or authorized to do so by a relative of the deceased persons or a person entitled to custody.
14. By storing the uncremated remains on behalf of Perry Funeral Home, Respondent aided and abetted Perry Funeral Home, a person not licensed under article 18 of the Occupational Code, in the "practice of funeral directing," as defined by MCL 339.1801(d).
15. In other cases, Respondent, after agreeing to provide for the final disposition of a dead human body, failed or refused to properly dispose of the infants for more than 180 days after the date it took possession of the infants in violation of the Michigan Penal Code, which is a state law affecting the handling, custody, care, or transportation of a dead human body within the meaning of MCL 339.1810(1)(h).
16. The conduct described above demonstrates Respondent's lack of integrity to protect the public welfare, dishonest and unfair dealing, and a lack of good moral character.

II. RELEVANT STATUTORY PROVISIONS

17. MCL 456.529(5) provides the following:

When it appears to the commissioner that a person or registrant has engaged in, or is about to engage in, any act or practice constituting a violation of this act or a rule promulgated or order issued under this act, the commissioner may do 1 or more of the following:

- (a) Issue a cease and desist order.
- (b) Accept an assurance of discontinuance of the violation.
- (c) Bring an action in the circuit court for the county in which the person resides or in the circuit court for the county of Ingham, to enforce compliance with this act or a rule promulgated or order issued under this act.

18. MCL 456.538(1) provides the following, in relevant part:

The commissioner may deny an application filed under this act and refuse to issue a permit or registration, or may suspend or revoke a permit or registration, or may reprimand, place on probation, or take other disciplinary action against the applicant if the commissioner's investigation reveals facts which, with reference to the establishment of a cemetery, show . . . that the cemetery owner, operator, or applicant or the officers, cemetery owners, directors, members, affiliated persons, or general manager of those entities has done 1 or more of the following: . . . (b) Not complied with this act . . . (d) Been guilty in the judgment of the commissioner of other conduct whether of the same or different character than specified in this act which constitutes dishonest and unfair dealing or a demonstration of a lack of good moral character. (e) Violated article 18 of the [Occupational Code].

19. MCL 456.538(3) provides the following:

The commissioner may impose an administrative fine of not more than \$5,000.00 for each separate violation of this act.

20. MCL 339.1810(1)(d) prohibits a person from:

Aiding or abetting an unlicensed person to engage in the practice of funeral directing or embalming.

21. MCL 339.1801(d) defines the "practice of funeral directing" as:

[E]ngaging in or representing oneself as engaging in the supervising of the burial and disposal of a dead human body; maintaining a funeral establishment for the

preparation, disposition, and care of a dead human body; or using, in connection with the user's name or funeral establishment, the word "funeral director", "funeral service professional", "undertaker", or "mortician", or any other title embodying the words "mortuary science" or otherwise implying that one is engaged as a funeral director.

22. MCL 339.1810(1)(h) prohibits a person from committing:

A violation of a state law or municipal or county ordinance or regulation affecting the handling, custody, care or transportation of a dead human body.

23. MCL 750.160c provides the following, in relevant part:

(1) A person shall not do any of the following:

* * *

(b) After agreeing to provide for the final disposition of a dead human body, fail or refuse to properly dispose of that dead human body.

(2) A person who violates this section is guilty of a crime as follows:

(a) If the failure or refusal to properly supervise the final disposition of the dead human body occurs more than 60 days but not more than 180 days after the date the person takes possession of the dead human body, the person is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$10,000.00, or both.

(b) If the failure or refusal to properly supervise the final disposition of the dead human body occurs more than 180 days after the date the person takes possession of the dead human body, the person is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$50,000.00, or both.

(3) It is not a violation of this section if the failure or refusal is due to 1 or more of the following factors:

(a) Delays due to seasonal factors relating to the method of final disposition of the dead human body.

(b) Delays due to the availability of services required to complete the final disposition of the dead human body.

(c) The directives of the person having lawful authority over final disposition of the dead human body to postpone that disposition pending funeral services, the presence of certain family members, or other activities.

(d) Delays due to the inability to obtain the necessary authorizations regarding the method of final disposition of the dead human body or due to the inability to

locate individuals essential to making a decision regarding the final disposition of the dead human body [emphasis added.]

(e) Delays due to an autopsy, investigation of the cause of death, the gathering of evidence, or other activity or procedure required by a governmental or law enforcement agency.

(f) Delays pursuant to an order issued by a court of competent jurisdiction upon petition and showing of good cause for a delay in the final disposition of a dead human body.

* * *

(5) As used in this section, “final disposition of a dead human body” means cremation, burial, entombment, or other method of final disposition of a dead human body allowable under law.

24. MCL 339.1810(1)(k) prohibits a person from:

Obtaining possession or embalming a dead human body without first being expressly directed or authorized to do so by a relative of the deceased person or a person entitled to custody.

III. CONCLUSIONS OF LAW

25. In some cases, Respondent obtained possession of deceased infants without first being expressly directed or authorized to do so by a relative of the deceased persons or a person entitled to custody, contrary to MCL 339.1810(1)(k).

26. By storing the uncremated remains on behalf of Perry Funeral Home as recently as December 5, 2018, Respondent aided and abetted Perry Funeral Home, a person not licensed under article 18 of the Occupational Code since October 19, 2018, in the “practice of funeral directing,” as defined by MCL 339.1801(d), contrary to MCL 339.1810(1)(d).

27. In other cases, Respondent, after agreeing to provide for the final disposition of dead human bodies, and absent an applicable exception, failed or refused to properly dispose of the dead human bodies for more than 180 days after the date it took possession of the dead human bodies, contrary to MCL 750.160c and MCL 339.1810(1)(h).

28. Based on the above, the Commissioner finds that Respondent is guilty of conduct which constitutes dishonest and unfair dealing or a demonstration of a lack of good moral character, contrary to MCL 456.538(1)(d).

29. Based on the above, Respondent violated article 18 of the Occupational Code, MCL 339.1801 to 339.1812, thereby also violating the Cemetery Act, contrary to MCL 456.538(1)(e) & (b).

IV. ORDER

IT IS THEREFORE ORDERED, under MCL 456.529(5)(a), that:

- A. Respondent shall immediately CEASE AND DESIST from further violating the Cemetery Act, as set forth above, by refraining from doing the following, until further notice from the Commissioner:
 1. Advertising its services to provide temporary storage of fetuses or dead human bodies under the Cemetery Act to mortuary science establishments.
 2. Entering into any new agreements with mortuary science establishments to provide such services.
 3. Burying, cremating, or otherwise facilitating the final disposition of fetuses and infants it has temporarily or improperly stored in its crypts on behalf of multiple mortuary science establishments.
- B. The Commissioner, under MCL 456.532a(2) intends to impose an ADMINISTRATIVE FINE of \$135,000.00 against Respondent, under MCL 456.538(3), payable within 60 days of the date that this order becomes final.
- C. This CEASE AND DESIST ORDER IS IMMEDIATELY EFFECTIVE.
- D. Under MCL 456.541, a person who violates the Cemetery Act is guilty of a misdemeanor punishable by a fine of not more than \$10,000.00. If the violator is an individual, the offense is punishable by a fine of not more than \$10,000.00 or imprisonment for not more than 1 year, or both. **ACCORDINGLY, FAILURE TO COMPLY WITH THIS ORDER MAY SUBJECT RESPONDENT TO THESE ADDITIONAL CRIMINAL SANCTIONS, FINES, AND/OR PENALTIES.**
- E. Under MCL 456.536(20), the Commissioner shall advise the attorney general of the failure of a person to pay an administrative fine imposed under MCL 456.536. The attorney general may bring an action in a court of competent jurisdiction for the failure to pay an administrative fine imposed under MCL 456.536.
- F. The Commissioner retains the right to pursue further civil or administrative action against Respondent under the Cemetery Act if the Commissioner determines that such action is in the public interest and is authorized by the provisions of the Cemetery Act.

V. NOTICE OF OPPORTUNITY FOR HEARING

Respondent has thirty (30) days beginning with the first day after the date of service of this **NOTICE AND ORDER TO CEASE AND DESIST** to submit a written request to the Commissioner asking that this matter be scheduled for a hearing. If the Commissioner receives a written request in a timely manner, the Commissioner will schedule a hearing. The written request for a hearing must be addressed to:

Cease & Desist Order
Knollwood Memorial Park Cemetery
Complaint No. 338664

Corporations, Securities & Commercial Licensing Bureau
Regulatory Compliance Division
P.O. Box 30018
Lansing, MI 48909

VI. ORDER FINAL ABSENT HEARING REQUEST

- A. Respondent's failure to submit a written request for a hearing to the Commissioner within 30 days after the service date of this **NOTICE AND ORDER TO CEASE AND DESIST** will result in this order becoming a **FINAL ORDER** by operation of law. The **FINAL ORDER** includes the imposition of the administrative fine described in section IV.B. The amount set forth below is due to the Commissioner within 60 days after the date this order becomes final:

\$135,000.00 – imposed against Knollwood Memorial Park Cemetery, Sam Tocco, Owner, under MCL 456.538(3).

- B. The ADMINISTRATIVE FINE payment must be payable to the STATE OF MICHIGAN and contain identifying information (e.g., registrant name(s) and complaint number) and mailed to the following address:

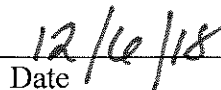
Corporations, Securities & Commercial Licensing Bureau
Final Order Monitoring – Securities & Audit Division
P.O. Box 30018
Lansing, MI 48909

- C. Failure to comply with the terms of this Order within the time frames specified may result in additional administrative penalties, including fines, the summary suspension or suspension of all registrations held by Respondent under the Cemetery Act, the denial of any registration renewal, and/or the denial of any future applications for registration or change of control, until full compliance is made. Before the Commissioner may deny, suspend, revoke, or refuse registration of an existing cemetery, MCL 456.539 requires that notice of intent be provided to the applicant or registrant, and a contested case hearing must be scheduled.
- D. Failure to pay the administrative fine within six (6) months after it becomes overdue shall result in the referral of the fine to the Michigan Department of Treasury for collection action against Respondent.

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS



Julia Dale
Michigan Cemetery Commissioner and Director
Corporations, Securities & Commercial Licensing Bureau


Date