

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

In the matter of:

TRI-COUNTY CREMATION SERVICES, L.L.C.
Crematory
Application No. 22-03-000091

Complaint No. 344093

and

O'NEIL SWANSON
A/K/A O'NEIL D. SWANSON, II

Complaint No. 344099

and

DIANNE E. SWANSON,

Complaint No. 344098

Respondents.

_____ /

Issued and entered
This 4th day of June, 2021

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 Tri-County Cremation Services, L.L.C., O'Neil Swanson a/k/a O'Neil D. Swanson, II, and Dianne E. Swanson ("Respondents"), to cease and desist from violating the Cemetery Act, including, but not limited to, operating a cemetery without a valid registration issued under the Cemetery Act. Respondents are also notified of the opportunity to request a hearing in this matter.

I. BACKGROUND

1. Tri-County Cremation Services, L.L.C., Crematory Registration No. 22-03-000022, located at 1106 E. Michigan Ave, Ypsilanti, Michigan 48198, was previously owned and operated by Douglas H. Stark from 2001 until he passed away on July 21, 2015. Cemetery registration records and business entity records on file with the Department and the Department's Corporations Division indicate that Mr. Stark was the sole member and/or general manager of Tri-County Cremation Services, L.L.C., Business Entity ID# 801153899. Following his death, his estate's personal representative, Mary L. Fancher, served in that capacity. Attached as Exhibit 1 are a detailed verification of registration status and the probate court order appointing the personal representative.
2. O'Neil D. Swanson, II previously held a mortuary science license (License No. 45-01-006287) under Article 18 of the Occupational Code, MCL 339.1801 *et seq.* However, on April 11, 2018, the Board of Examiners in Mortuary Science revoked O'Neil Swanson's mortuary science license along with the mortuary science establishment license held by Swanson's Funeral Home, Inc. based on numerous and egregious violations of the Prepaid Funeral and Cemetery Sales Act, MCL 328.211 *et seq.*, the Occupational Code, MCL 339.101 *et seq.*, the Public Health Code, MCL 333.1101 *et seq.*, and the Michigan Occupational Safety and Health Act, MCL 408.1001 *et seq.* Attached as Exhibit 2 is the Final Order and Hearing Report in that matter.
3. On June 7, 2018, the Michigan Department of Attorney General charged O'Neil D. Swanson, II with 10 felony counts of conversion of prepaid contracts in violation of section 22(1) of the Prepaid Funeral and Cemetery Sales Act, MCL 328.232(1), in *People v O'Neil Swanson II*, Genesee County Circuit Court Case No. 18-043737-FH. In 2019, Mr. Swanson pleaded guilty to two of the felony counts in exchange for an 11-month delayed jail sentence with the understanding that one of the felony counts would be dropped if he paid more than \$75,000 in criminal restitution to his numerous victims plus probation supervision fees during that time frame. He was discharged from probation related to that matter on May 24, 2021, shortly after he paid the last of his victims. Attached as Exhibit 3 is a copy of the relevant charging documents, judgment of sentence, and order of probation.

II. FINDINGS OF FACT

4. On October 14, 2019, Mary L. Fancher entered into a Purchase Agreement for Business and Real Estate, indicating that O'Neil and Dianne E. Swanson offered to purchase, and the seller agreed to accept their offer to purchase, the business assets and real estate associated with Tri-County Cremation Services, L.L.C. The Purchase Agreement indicated that O'Neil and Dianne E. Swanson would purchase the land under a land contract. Attached as Exhibit 4 is a copy of the Purchase Agreement for Business and Real Estate.
5. On February 15, 2020, Tri-County Cremation Services, L.L.C. filed its 2020 Annual Statement with the Department's Corporations Division via its Corporations Online Filing

System identifying Mary Fancher, Personal Representative of the Estate of Douglas H. Stark, as its Resident Agent and an employee of the facility, Bill Hudson, as its "authorized agent." Attached as Exhibit 5 is its 2020 Annual Statement.

6. On or about March 6, 2020, the sale of the business assets and real estate of Tri-County Cremation Services, L.L.C. closed, with the new purported property owners listed as O'Neil and Dianne E. Swanson. Attached as Exhibit 6 is a copy of Ypsilanti Township's property records indicating that the property located at 1106 E. Michigan Ave, Ypsilanti, Michigan 48198, was purportedly sold on March 6, 2020 to O'Neil and Dianne Swanson.
7. On or about March 11, 2020, Tri-County Cremation Services, L.L.C., through its attorney, George A. Drosis, submitted to the Department an Application for Approval of Cemetery Change of Control, under the Act. Attached as Exhibit 7 is the March 11, 2020 application.
8. The application was signed by Dianne E. Swanson. On the application, Ms. Swanson responded "no" to the following questions:
 - a. Are the directors, officers, partners, members or affiliated persons in any way connected with, or do they have an interest in, the operation of a funeral home?
 - b. Has anyone listed on this application ever been convicted of a felony not previously reported to the Department for this license type or occupation?

Included with the application was Ms. Swanson's résumé but no reference to other members, managers, or operators or proposed members, managers, or operators of Tri-County Cremation Services, L.L.C., including O'Neil Swanson.

9. Also included with the application was a Sworn Statement signed by Mary L. Fancher, Personal Representative of the Estate of Douglas H. Stark, on March 10, 2020, indicating that the assets, liabilities, equipment, goodwill, and property associated with Tri-County Cremation Services, L.L.C., Crematory Registration No. 22-03-000022, were being purchased by "the current buyer of the business."
10. On March 17, 2020, the Commissioner requested additional information regarding Tri-County Cremation Services, L.L.C.'s application. On April 24, 2020, and May 5, 2020, an attorney on behalf of Tri-County Cremation Services, L.L.C., George A. Drosis, forwarded the Department additional records in connection with its application, including Articles of Organization filed with the Department's Corporations Division by Comfort Cremation Services LLC (Entity ID# 802436281) on April 10, 2020, and an updated air quality permit from the Department of Environment, Great Lakes, & Energy issued to that LLC indicating an April 1, 2011 approval date. Attached as Exhibit 8 is correspondence the Commissioner sent to Applicant on March 17, 2020. Attached as Exhibit 9 are the emails and attachments received by the Department from Mr. Drosis.
11. On May 7, 2020, the Commissioner sent correspondence to Tri-County Cremation Services, L.L.C.'s attorney requesting additional information within 30 days. Based upon the

additional information received from Mr. Drosis, it was unclear to the Department and the Commissioner whether Tri-County Cremation Services, L.L.C. or Comfort Cremation Services LLC¹ was the applicant and whether a change of control or a new crematory application needed to be submitted. Attached as Exhibit 10 is a copy of the Commissioner's May 7, 2020 correspondence.

12. To date, no one on behalf of Tri-County Cremation Services, L.L.C. has provided documentation or clarification in response to the Commissioner's May 7, 2020 correspondence.
13. On or around July 14, 2020, Mary Fancher filed a Notice of Continued Administration in the Washtenaw County Probate Court, *In the Matter of Stark, Douglas H.*, Case No. 15-000785-DE, as the estate's Personal Representative. The filing indicated that she "recently closed on the sale of the primary assets of the estate, a crematorium, and needs time to finalize the estate tax, if any, with the business's accountant. Extended 08/07/2021." Attached as Exhibit 11 is a copy of the Notice of Continued Administration.
14. No one on behalf of Tri-County Cremation Services, L.L.C. notified the Commissioner of the sale and transfer of the controlling interest in the property and assets associated with Tri-County Cremation Services, L.L.C, Crematory Registration No. 22-03-000022, until attorney Drosis sent correspondence with the Department in response to the Commissioner's May 7, 2020 correspondence on June 2, 2021. The application submitted by Applicant in 2020 notified the Commissioner of the impending purchase of the crematory business but did not notify her of the closing of the sale nor of the names of the individuals who would be acquiring a controlling interest in the crematory or operating the crematory.
15. On December 7, 2020, the Department conducted an onsite visit of the facility, located at 1106 E. Michigan Avenue in Ypsilanti, in connection with a complaint-related investigation of a mortuary science establishment. While onsite, an investigator with the Department interviewed an individual named Freeman Jennison, who, at the time, identified himself as the operator of the facility associated with Crematory Registration No. 22-03-000022, understood by the Department to be still controlled and managed by the Estate of Douglas H. Starks.²

¹ Notably, on June 3, 2020, Comfort Cremation Services LLC filed a Certificate of Assumed Name with the Department's Corporations Division indicating that the assumed name under which it would transact business was "Tricounty Cremations." The documents on file with the Corporations Division for the LLC identify Applicant's attorney, George A. Drosis, as its organizer and "member" and Dianne Swanson as its Resident Agent.

² In September 2019, the Department opened Complaint No. 341420 against Tri-County Cremation Services, L.L.C.'s crematory registration no. 22-03-000022 based on its receipt of an anonymous complaint, questioning who owned and operated the crematory after its sole member and manager, Douglas H. Stark, died on July 21, 2015. In response to the Department's inquiries, his estate's personal representative, Mary Fancher, indicated that the crematory was listed for sale, and the estate's attorney advised her that she need not submit an application for approval of cemetery change of control with the department, because, as his personal representative, she "stands in the shoes" of Mr. Starks. The Department ultimately agreed and closed that complaint in March 2020 with no additional action taken.

16. On January 22, 2021, Tri-County Cremation Services, L.L.C. filed its 2021 Annual Statement with the Department's Corporations Division via its Corporations Online Filing System identifying O'Neil Swanson as its Resident Agent and "member."³ Tri-County Cremation Services, L.L.C.'s apparent website, www.cremations800.com, also indicates that it is "under new management." Attached as Exhibit 12 is Tri-County Cremation Services, L.L.C.'s 2021 Annual Statement and a printout from the website.
17. On May 24, 2021, the Washtenaw County Health Department forwarded the Department an anonymous complaint it received concerning Tri-County Cremation Services, L.L.C., located at 1106 E. Michigan Ave., in Ypsilanti. It states: "[H]eavy smoke from crematory chimney, deceased not stored at proper temperature, body fluids leaking on the floor of facility." Attached as Exhibit 13 is a copy of the statement of complaint.
18. On May 26, 2021, the Department inspected the premises of the facility in response to receipt of the anonymous complaint, and the following conditions were observed:
 - a. 55 bodies onsite, some stacked two bodies high, in cremation containers.
 - b. One additional body, an individual who died in December 2018, was observed in a casket that was in the crematory's possession for an unknown time period but since at least March 25, 2019.
 - c. Most of the bodies were not embalmed.
 - d. None of the rooms were cool or cold, and the thermostat was set at 77-78 degrees.
 - e. Maggots were observed dropping out of one of the cremation containers onto the floor.
 - f. Bodily fluids were observed dripping from some of the cremation containers.
 - g. There was an overwhelming stench of decomposition.
19. O'Neil Swanson was present at the facility during the inspection. Employee Brian Bennett identified Mr. Swanson as the "owner and operator" of the facility. The last identified operator of the facility, Freeman Jennison, was not present at the facility that day.

III. RELEVANT STATUTORY PROVISIONS

20. MCL 456.529 (5) provides, in part:

(5) 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:

³ The Michigan Limited Liability Company Act, MCL 450.4101 *et seq.*, does not require a limited liability company to report or identify its members, managers, or employees to the Department's Corporations Division. It only requires it to report the name of its resident agent, which is the individual or entity that has a business office or residence that is identical to the company's registered office and is designated to accept mail or documents on behalf of the company. *See* MCL 450.4207.

- (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.

21. MCL 456.522(a)(iii) defines “cemetery” to include “a crematory for the cremation for human remains.”

22. MCL 456.532(1)-(3) provides as follows:

- (1) A person shall not establish a cemetery without a valid permit or operate an existing cemetery except under a valid registration issued under this act.
- (2) If a person proposes to purchase or otherwise acquire a controlling interest in an existing cemetery company, that person shall first apply to the commissioner for a certificate of approval of a proposed change of control of a cemetery company. The application shall contain all of the following:
 - (a) The name and address of the proposed new owner or operator.
 - (b) A sworn statement from the seller attesting to the assets and liabilities related to the cemetery, including all trust accounts and the value of those accounts.
 - (c) Sworn statements from both the seller and the purchaser stating who will assume the assets and liabilities related to the cemetery.
 - (d) A sworn statement that the principal from the endowment and perpetual care trust accounts will be held in escrow for 6 months from the later of the following:
 - (i) The commissioner’s approval of the application.
 - (ii) The close of the sale of a controlling interest in the cemetery owner or the sale of a substantial portion of the assets of the cemetery owner.
 - (iii) The transfer of title of the cemetery.
 - (e) Any other information the commissioner requires.
- (3) The commissioner shall issue a certificate of approval for a change of control only after he or she is satisfied that the proposed new cemetery owner or operator is qualified by **good moral character**, experience, and financial stability, responsibility, and security to control and operate the cemetery in a legal and proper manner, and that the interest of the public generally will not be jeopardized by the proposed change in ownership and management. The application for a purchase or change of control must be accompanied by an initial filing or investigation fee of \$1,500.00 [emphasis added.]

26. MCL 456.532(4) provides:

(4) If a person fails to comply with this section, the commissioner may do any of the following if a transfer of controlling interest is found to have taken place without prior commissioner approval:

- (a) Suspend or revoke the registration of the cemetery.
- (b) Issue a cease and desist order or other order requiring a person to immediately take remedial action as prescribed by the commissioner.
- (c) Seek injunctive or other equitable action from a court of competent jurisdiction.
- (d) Take other appropriate action until the person purchasing or otherwise acquiring a controlling interest in an existing cemetery, purchasing an existing cemetery, or otherwise acquiring the cemetery demonstrates compliance with this section or divests itself of any interest or control of the cemetery.

27. MCL 456.532(7) defines “controlling interest” to mean

the capability to decide the operating and financial policies of the cemetery company or to select the officers or directors with majority control of the cemetery company.

28. MCL 456.522 defines the following terms:

- (r) ‘Cemetery owner’ means the person who has title to the cemetery.
- (s) ‘Operator’ means any of the following:
 - (i) A person, an officer of a person, a partner of a person, or a member or manager of a limited liability company, who holds more than 50% voting rights in a cemetery owner.
 - (ii) A person who is a member of the board of directors of a cemetery owner, a partner in a cemetery owner, or a member or manager of a limited liability company that is a cemetery owner.
 - (iii) An administrative official of the cemetery owner or the person described in subparagraph (i), comparable to a chief administrative officer, chief executive officer, or chief financial officer.
- (t) ‘Affiliated person’ means a person directly or indirectly controlling the cemetery and includes all of the following:
 - (i) A person who holds at least 50% interest in a cemetery.
 - (ii) A person who is a member of the board of directors or a cemetery owner, a partner in a cemetery owner, or a member or manager of a limited liability company that is a cemetery owner.
 - (iii) A person who is an officer of the person who holds at least 10% interest in a cemetery corporation or other entity having control of the cemetery.

29. MCL 456.533a provides the following, in relevant parts:

- (1) Notwithstanding any other provisions governing eligibility as a cemetery owner, a person may be ineligible to become a cemetery owner or hold a controlling interest in a cemetery company if any of the following circumstances exist:
 - a. The person has been convicted of a felony under the laws of this state, any other state, or the United States.

* * *

- d. The person lacks the requisite character, experience, and financial responsibility to control and operate the cemetery in a legal and proper manner, as determined by the commissioner, and the proposed ownership or change in ownership and management is likely to jeopardize the public.
- (2) In determining whether to allow a person to become a cemetery owner, the commissioner shall also consider all of the following:
 - a. The past and present compliance of the person and its affiliated person with cemetery or cemetery-related licensing requirements, cemetery-related agreements, or compacts with the state of Michigan or any other jurisdiction.
 - b. Whether the person has been indicted, charged, arrested, or convicted, has pleaded guilty or nolo contendere, or has forfeited bail concerning any criminal offense under the laws of any jurisdiction, either felony or misdemeanor, not including traffic violations, unless the offense has been expunged, pardoned, or reversed on appeal or otherwise nullified as determined by the commissioner.

* * *

- e. The person has a history of noncompliance with any regulatory requirements in this state, any other jurisdiction, or the federal government.

30. MCL 456.538, provides, in part:

- (1) 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 inappropriate physical plans; lack of community need; inadequate experience, financial stability, or integrity to protect the public welfare; or when the commissioner finds 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:

- (a) Made a false statement of a material fact in the application.
- (b) Not complied with this act.

* * *

- (e) Violated article 18 of the occupational code, 1980 PA 299, MCL 339.1801 to 339.1812.

31. MCL 339.1810(1)(h)(iii), provides:

- (1) A person shall be subject to the penalties of article 6 if the person commits 1 of the following:

* * *

- (h) A violation of any of the following:

* * *

- (iii) A municipal or county ordinance or regulation affecting the handling, custody, care, or transportation of a dead human body.

32. MCL 750.160c(2) provides:

- (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 a dead human body or the failure or refusal to properly dispose 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 a dead human body or the failure or refusal to properly dispose 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.

IV. CONCLUSIONS OF LAW

33. Tri-County Cremation Services, L.L.C., O'Neil Swanson, and Dianne Swanson completed the sale and assumed a controlling interest in the business assets and real estate associated with an existing crematory, Tri-County Cremation Services, L.L.C., without first receiving a certificate of approval for a change of control from the Commissioner, in violation of MCL 456.532(2).

34. By including only the name and résumé of Dianne Swanson and failing to reference its members, managers, or operators or proposed members, managers, or operators of Tri-County Cremation Services, L.L.C., including O'Neil Swanson, on the application, Respondents made false statements of material fact on its application, in violation of MCL 456.538(1)(a).
35. Beginning on March 6, 2020 to present, Respondents operated and continue to operate an existing cemetery without a valid registration issued under the Cemetery Act, in violation of MCL 456.532(1).
36. Respondents failed to properly dispose of a dead human body that had been in Tri-County Cremation Services, L.L.C.'s possession for longer than 60 or 180 days, contrary to MCL 750.160c(2)(b) and MCL 339.1810(1)(h)(ii), in violation of MCL 456.538(1)(e).

V. ORDER

IT IS THEREFORE ORDERED, under MCL 456.329(5)(a) and MCL 456.532(4)(b) that:

- A. Respondents shall immediately CEASE AND DESIST from further violating the Cemetery Act, as set forth above, and shall:
 1. Immediately cease all operations requiring a registration under the Cemetery Act at the facility located at 1106 E. Michigan Ave Ypsilanti, Michigan 48198.
 2. Provide sufficient documentary proof to the satisfaction of the Commissioner by no later than **July 2, 2021** that O'Neil Swanson no longer has a controlling interest in Tri-County Cremation Services, L.L.C., and is no longer a cemetery owner or operator of Tri-County Cremation Services, L.L.C.
 3. These documents must be submitted by mail or email to:

Corporations, Securities & Commercial Licensing Bureau
Final Order Monitoring – Securities & Audit Division
P.O. Box 30018
Lansing, MI 48909
Email: LARA-CSCL-Securities-Audit@michigan.gov
- B. The Commissioner, under MCL 456.532a(2) intends to impose an ADMINISTRATIVE FINE of \$20,000.00 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.

VI. 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 by mail, fax, or email to:

Corporations, Securities & Commercial Licensing Bureau
Regulatory Compliance Division
P.O. Box 30018
Lansing, MI 48909
Email: CSCL-FOIA@michigan.gov
Fax: (517) 241-0290

VII. 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 documentation required by section V.A and the imposition of the administrative fine described in section V.B. The amount set forth below is due to the Commissioner within 60 days after the date this order becomes final:

\$20,000.00 – imposed against Tri-County Cremation Services, L.L.C., O'Neil Swanson, and Dianne Swanson, jointly and severally, 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



Linda Clegg

Cemetery Commissioner and

Corporations, Securities & Commercial Licensing Bureau Director

6/4/21

Date