

Arkansas Insurance Department

Asa Hutchinson
Governor



Alan McClain
Commissioner

BEFORE THE STATE BOARD OF EMBALMERS, FUNERAL DIRECTORS, CEMETERIES, AND BURIAL SERVICES

IN THE MATTER OF
Phillips Funeral Home,
Board ID # 20493,
John Phillips, a licensed
Funeral Director and Manager, Board ID #22919,

AND

Ermert Funeral Home, Board ID #20189,
and Richard Ermert, a licensed Funeral
Director and Manager, Board ID #22852
Respondents

Case No. 20-04

Mr. Kale Phillips
Phillips Funeral Home
4904 W. Kingshighway
Paragould, AR 72450

Via Certified Return Receipt 7020 0090 0000 1730 5378; and First Class Mail

December 22, 2020

Dear Mr. Phillips:

Please find the following Notice of Public Hearing on the complaint filed against you and the establishment:

NOTICE OF PUBLIC HEARING

You are advised that an administrative hearing will take place on February 16, 2021 at 9:00 a.m. at an official meeting of the State Board of Embalmers, Funeral Directors, Cemeteries, and

Burial Services, in the Diamond Mine Room on the 2nd Floor of the Department of Commerce, located at 1 Commerce Way, Little Rock, AR 72202. The hearing will be held before the Board concerning the following matters. The Hearing is your opportunity to defend yourself against the following allegations, and for the Board to make a determination with regard to your funeral director and embalmer licenses, and the funeral home's establishment license.

ALLEGATIONS

1. Respondent Phillips Funeral Home ("PFH") is currently licensed as a Type A establishment.
2. Respondent Kale Phillips ("Phillips") is the owner and manager of the funeral home.
3. Respondent Ermert Funeral Home ("EFH") is licensed as a Type A establishment.
4. Respondent Richard Ermert ("Ermert") is a part owner and the manager of Ermert Funeral Home.
5. The Complainant in this matter is Calvin Johnson, the son of the decedent.
6. The family made arrangements with Phillips Funeral Home.
7. The family has other relatives buried at Bond Cemetery, which is operated by EFH. There was a dedicated vacant plot at the cemetery for the decedent.
8. Upon information and belief, PFH had an agreement with EFH to dig the grave. Upon information and belief, EFH had an agreement with an individual, Lonnie Green ("Green"), to dig the grave.
9. Upon information and belief, Phillips relayed to Ermert the location of the plot while the decedent's family was present at PFH.

10. Ermert called Phillips later to advise he could not locate the grave plot. At that time Phillips gave Ermert the phone number of the family spokesman to obtain more detailed directions as to where to locate the grave plot.

11. Subsequently, Ermert called Phillips and advised that he (Ermert) had spoken with the family spokesman and would be able to find the plot.

12. Upon information and belief, the family spokesman offered to come to the cemetery to show Ermert the plot, but Ermert declined his assistance.

13. Upon information and belief, Ermert showed Green the incorrect grave plot.

14. Upon information and belief, Ermert mistakenly marked the plot of another family member, an infant and brother of the Complainant, rather than the vacant plot.

15. Upon information and belief, while Green was digging the grave, he hit something in the dirt. At that point he called Ermert, who told him to stop digging and to place the vault.

16. Upon information and belief, Green's backhoe struck the top of the vault belonging to the Complainant's mother.

17. Immediately prior to the graveside service, Phillips was informed by one of his employees that the vault men had questions about the proper location of the grave. However, Phillips thought it best to finish the service and then discuss the issue with the family.

18. Phillips stated in his response to the complaint that he discussed the matter with the family after the service. He further stated that the family chose to lower the decedent into the grave that had already been dug, on top of the interred brother of the Complainant. Phillips further stated that the family made this choice despite the fact the decedent was not yet lowered into the grave, and despite the fact that he (Phillips) offered to bury the decedent in another plot.

19. Phillips' response further states that he observed no damage to the vault of the Complainant's mother.
20. Litigation is pending in Greene County involving the events that gave rise to the Complaint filed in this case.
21. On behalf of Ermert, his attorney submitted a response to the Complaint.
22. Ermert asserts he received specific directions for the location of the grave by a family member, and that that family member gave him erroneous instructions as to where to find the correct grave plot.
23. Ermert's response is not notarized, and it was received by the Board two days late.

APPLICABLE LAWS

1. Pursuant to Ark. Code Ann. § 23-61-1103(a)(6) the Board is authorized to "suspend or revoke permits or licenses when a licensee fails to comply with any of the laws governing the licensee or when a licensee fails to comply with a rule or order of the board".
2. Pursuant to Ark. Code Ann. § 23-61-1103(a)(11)(A), the Board is authorized to "conduct hearings and subpoena witnesses, books, and records in connection with alleged violations of this subchapter, relevant laws, and the rules or orders of the board."
3. Ark. Code Ann. § 17-29-311(a) authorizes the Board to "issue letters of reprimand or caution, refuse to issue or renew a license, suspend or revoke any license for the practice of embalming or funeral directing, or may place the holder thereof on a term of probation after proper hearing upon finding the holder of the license to be guilty of acts of commission or omission, including the following:... (18) Failure to answer a complaint within the fifteen-day time period."
4. Board Rule IV.2.(f) states, "...The funeral director is responsible for the supervision of all work performed by his agents and employees. License invalidation procedures may be brought

against a licensed funeral director and funeral establishment because of the acts of their agents or employees which violate Chapter 29 Arkansas Code or the Rules and Regulations of this Board.”

5. Board Rule XV provides, “...4. The licensee or other party is to be given fifteen (15) days to respond, in writing, to the allegations of the complainant. Failure to respond to the complaint is an automatic violation. 5. All complaints and responses shall be typed, signed and notarized....”

6. Board Rule XIV.3 provides, “the personnel of a funeral establishment whose services are desired shall make every reasonable attempt to fulfill the needs and desires of the deceased and/or the authorizing agent...”

CHARGES

1. Respondent Ermert’s actions, as set forth in Allegations 12 through 14, wherein he declined assistance in finding the correct grave plot, and instructed the grave digger to dig in the wrong plot, violate Rule XIV.3.

2. Respondents Ermert’s and EFH’s actions, as set forth in Allegation 23, violate Ark. Code Ann. § 17-29-311(a)(18) and Board Rule XV.4 and 5.

3. All of the Respondents are responsible for the actions of Green pursuant to Rule IV.2.(f).

TIME AND PLACE OF HEARING

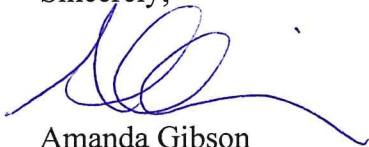
You are hereby notified that the Board will hold a hearing on the allegations set out above, on February 16, 2021 at 9:00 a.m. in the Diamond Mine Room on the 2nd Floor of the Department of Commerce, located at 1 Commerce Way, Little Rock, AR 72202.

The hearing will be conducted pursuant to the Arkansas Administrative Procedure Act, Ark. Code Ann. § 25-15-201 *et seq.* You may appear in person, be represented by counsel, and offer witnesses, affidavits, or documentary evidence in response to the allegations contained herein.

You are hereby notified that a continuance will be granted only for good cause and must be requested at least seven (7) days in advance. If you fail to appear at the hearing without first obtaining a continuance, the Board will conduct a hearing in your absence.

You are also notified that all evidence, including any documents, and any oral testimony which the Board determines to be relevant, shall be introduced on the day of the hearing. No additions will be permitted, nor will the record be allowed to be supplemented after the hearing is concluded.

Sincerely,



Amanda Gibson
Associate Counsel
Arkansas Insurance Department

Counsel for the State Board of Embalmers, Funeral
Directors, Cemeteries, and Burial Services

cc: Mr. Don Taylor
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