

**BEFORE THE INSURANCE COMMISSIONER
FOR THE STATE OF ARKANSAS**

IN THE MATTER OF:

Perry Funeral Home,

and Roy Dean Hearn

Funeral Expense License No. 1664482,

Respondents

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A.I.D. ORDER NO. 2017-039A

AMENDED ORDER OF RESTITUTION AND REVOCATION OF LICENSE

Now on this day before Allen Kerr, the Insurance Commissioner for the State of Arkansas (“Commissioner”), a hearing was held at 9:00 a.m. on April 19, 2017, in the First Floor Hearing Room of the Arkansas Insurance Department (“Department”) pursuant to the Amended Notice of Hearing dated March 30, 2017. The hearing was held before Chief Deputy Commissioner Russ Galbraith (“Hearing Officer”) pursuant to his appointment by the Commissioner in accordance with Ark. Code Ann. § 23-61-103(e)(1). The Department was represented by Amanda Gibson, Associate Counsel. Respondents, represented by Gene McKissic, failed to appear at the hearing.

FINDINGS OF FACT

1. The Commissioner of Insurance has jurisdiction pursuant to the Arkansas Insurance Code, specifically Ark. Code Ann. §§ 23-60-101, *et seq.*
2. Respondent Hearn owns Perry Funeral Home located in Pine Bluff, Arkansas.
3. Perry Funeral Home has not held a permit to sell prepaid funeral benefit contracts since 1998.
4. An investigative conference was held in this matter on May 10, 2016.

5. Prior to the conference, the Department had been made aware of one contract sold by Respondents. Upon request of the Department after investigating the complaint made by the consumer, Respondents refunded the money to the consumer.

6. During the conference referenced above, Respondent Hearn denied he was engaged in the prepaid contract business, and denied having sold any other contracts besides the contract of which Department had knowledge.

7. Respondent Hearn also admitted during the conference that he used money received from one consumer to pay for another consumer's funeral services.

8. On September 23, 2016, the Department, upon examining Respondents' files, seized eight (8) files from Respondent that contained prepaid funeral benefits contracts and payment information.

9. Respondents collected \$19,060.00 in consumer funds, none of which were forwarded to a life insurance company in order to initiate a policy or annuity in which to fund prepaid funeral benefits contracts.

10. The funeral home's status with the Secretary of State has been listed as "revoked" since at least May 11, 2016.

11. Respondent Hearn's funeral expense license expired November 25, 2016.

POST-HEARING FACTS

12. The record was closed in this matter upon the conclusion of the hearing.

13. However, on April 20, 2017, Respondents submitted to the Department, a cashier's check for the payment of restitution in full.

CONCLUSIONS OF LAW

1. Ark. Code Ann. § 23-60-101, *et. seq.*, assigns the responsibility for administration

of the Arkansas Insurance Code to the Arkansas Insurance Commissioner. The Department is the lawful agency through which the Commissioner administers the Arkansas Insurance Code, and is authorized to bring this action for the protection of Arkansas consumers.

2. The Commissioner has jurisdiction over the parties and subject matter pursuant to Ark. Code Ann. §§ 23-40-107(a), 23-40-108, and 23-61-103.

3. The Arkansas Producer Licensing Model Act, codified at Ark. Code Ann. § 23-64-501 *et. seq.*, governs Respondent Hearn's funeral expense license.

4. More specifically, Ark. Code Ann. § 23-64-506(e)(1) requires that in order to obtain or renew a producer's license, the producer "must be deemed by the commissioner to be competent, trustworthy, financially responsible, and of good personal and business reputation." Further, Ark. Code Ann. § 23-64-506(e)(2) provides that "qualifications for licensure under this section must continue in order to remain licensed."

5. Ark. Code Ann. § 23-64-512(a) allows the Commissioner to "place on probation, suspend, revoke, or refuse to issue or renew an insurance producer's license or may levy a civil penalty in accordance with § 23-64-216 or any combination of actions for any one (1) or more of the following causes...(4) improperly withholding, misappropriating, or converting any moneys or properties received in the course of doing insurance business;".

6. Respondent Hearn's collecting consumer funds and not depositing them into a trust account, annuity or insurance policy, violates Ark. Code Ann. § 23-64-512(a)(8) because his actions exhibit dishonest and financially irresponsible behavior, to include misappropriation of consumer funds.

7. Respondent Hearn's conduct violates § 23-64-506(c) and (e)(2) because his actions exhibit that he is not fit to hold a producer's license.

8. Respondents' selling at least eight (8) contracts violates Ark. Code Ann. § 23-40-109(c), which provides that, "it shall be unlawful to sell prepaid funeral benefits unless the seller holds a valid, current permit at the time the contract is made."

9. In light of the foregoing Findings of Fact that show that Respondent Hearn acted in a manner that is untrustworthy, dishonest, and financially irresponsible, to include misappropriation of funds, Respondent Hearn no longer meets the statutory prerequisites and qualifications to hold a funeral expense license.

10. The Commissioner hereby concludes that the facts set forth in the Findings of Fact, above, provide grounds for the issuance of this Order.

RECOMMENDATION OF HEARING OFFICER

WHEREFORE, upon consideration of the evidence of record and the foregoing Findings of Fact and Conclusions of Law, the Hearing officer recommends the following:

1. Respondent Hearn's funeral expense license is hereby revoked.
2. Respondent Hearn is barred from selling any funeral expense policies in the State of Arkansas.
3. Respondents are barred from selling any prepaid funeral benefits contracts in the State of Arkansas.
4. All other provisions of Order No. 2017-039 remain in full force and effect.



Russ Galbraith
Chief Deputy Commissioner and
Hearing Officer

CERTIFICATION

I, Allen Kerr, Insurance Commissioner for the State of Arkansas, do hereby certify that the above Findings of Fact, Conclusions of Law, and Recommendation of the Hearing Officer were made by and under my authority and supervision by Russ Galbraith, Chief Deputy Commissioner and Hearing Officer in this proceeding. I hereby adopt the Hearing Officer's Findings of Fact, Conclusions of Law and Recommendation in full, as set forth herein.

THEREFORE, it is hereby ORDERED that the Funeral Expense license issued to Roy Dean Hearn is revoked, Respondents are ordered to make restitution as described above, and Respondents are barred from selling funeral expense policies and prepaid funeral benefits contracts.

IT IS SO ORDERED THIS 5th DAY OF JULY 2017.


ALLEN KERR
INSURANCE COMMISSIONER
STATE OF ARKANSAS