

# FILED

FEB 26 2013



CHIEF FINANCIAL OFFICER  
JEFF ATWATER  
STATE OF FLORIDA

Docketed by

CASE NO. 123568-12-FC  
124587-12-FC  
129486-12-FC  
129488-12-FC  
129489-12-FC  
129510-12-FC  
124590-12-FC  
129904-12-FC  
129906-12-FC  
129910-12-FC  
130906-12-FC  
130912-12-FC  
130915-12-FC  
130917-12-FC  
130918-12-FC

IN THE MATTER OF:

WORK & SON SARASOTA MEMORIAL  
d/b/a SARASOTA MEMORIAL,

WORK & SON-OSIRIS  
d/b/a ROYAL PALM CEMETERY (NORTH)

WORK & SON-ROYAL PALM ACQUISITION,  
INC.  
d/b/a ROYAL PALM CEMETERY (SOUTH)

WORK & SON-MEMORIAL SERVICES, INC.  
d/b/a BRADENTON FUNERAL HOME

---

ADMINISTRATIVE COMPLAINT

To: WORK & SON SARASOTA MEMORIAL  
d/b/a SARASOTA MEMORIAL  
5833 South Tamiami Trail  
Sarasota, Florida 34231

WORK & SON-OSIRIS  
d/b/a ROYAL PALM CEMETERY (NORTH)  
2600 Gandy Boulevard  
St. Petersburg, Florida 33702

WORK & SON-ROYAL PALM ACQUISITION, INC.  
d/b/a ROYAL PALM CEMETERY (SOUTH)  
101 55<sup>th</sup> Avenue South  
St. Petersburg, Florida 33707

WORK & SON-MEMORIAL SERVICES, INC.  
d/b/a BRADENTON FUNERAL HOME  
5827 14<sup>th</sup> Street West  
Bradenton, Florida 34207

TO: WENDY R. WIENER, ESQ., as Registered Agent  
Gardner, Bist, Wiener, Wadsworth & Bowden, P.A.  
1300 Thomaswood Drive  
Tallahassee, Florida 32308

WORK & SON SARASOTA MEMORIAL d/b/a SARASOTA MEMORIAL, WORK & SON-OSIRIS d/b/a ROYAL PALM CEMETERY (NORTH), AND WORK & SON d/b/a ROYAL PALM CEMETERY (SOUTH), and WORK & SON-MEMORIAL SERVICES, INC. d/b/a BRADENTON FUNERAL HOME (hereinafter collectively referred to as WORK & SON) are hereby notified that the Chief Financial Officer of the State of Florida has caused to be made an investigation of your activities while licensed as Cemeteries (34-00) and a Funeral Establishment (26-00), in this state, as a result of which it is alleged:

GENERAL ALLEGATIONS

1. WORK & SON SARASOTA MEMORIAL d/b/a SARASOTA MEMORIAL (hereinafter "Sarasota Memorial") is a licensed Cemetery Company (34-00), license number F039746, which operates a cemetery located at 5833 South Tamiami Trail, Sarasota, Florida.
2. WORK & SON-OSIRIS d/b/a ROYAL PALM CEMETERY (NORTH) (hereinafter "Royal Palm North") is a licensed Cemetery Company (34-00), license number F039668, which operates a cemetery located at 2600 Gandy Boulevard, St. Petersburg, Florida.
3. WORK & SON-ROYAL PALM ACQUISITION, INC. d/b/a ROYAL PALM CEMETERY (SOUTH) (hereinafter "Royal Palm South") is a licensed Cemetery Company (34-00), license number F039669, which operates a cemetery located at 101 55<sup>th</sup> Avenue South, St. Petersburg, FL.

4. WORK & SON-MEMORIAL SERVICES, INC. d/b/a BRADENTON FUNERAL HOME (hereinafter "Bradenton Funeral Home") is a licensed Funeral Establishment (26-00), license number F041688, which operates an establishment located at 5827 14<sup>th</sup> Street West, Bradenton, FL.

5. Pursuant to Section 20.121(2)(n), Florida Statutes, Chapter 497, Florida Statutes, the "Florida Funeral, Cemetery and Consumer Services Act," and Chapter 69K Florida Administrative Code (hereinafter collectively referred to as "the Act"), the Florida Department of Financial Services, Division of Funeral, Cemetery and Consumer Services (hereinafter the "Department") is the state agency charged with regulating the death care industry.

6. Pursuant to the Act, the Department has jurisdiction over the licensure and the eligibility of licensure of the Cemetery and Funeral Establishment Licenses of WORK & SON in this state, and the subject matter in this proceeding.

7. On February 19, 2013, a probable cause panel of the Division of Funeral, Cemetery and Consumer Services met and found probable cause to charge SARASOTA MEMORIAL, ROYAL PALM NORTH, ROYAL PALM SOUTH, and BRADENTON FUNERAL HOME with violations of the Act, as alleged in the Division's investigative file, maintained within Division records as ATN-19417, ATN-17795, ATN-17796, ATN-17270, ATN-17090, ATN-17091, ATN-17065, ATN-17049, ATN-17019, ATN-17015, ATN-19568, ATN-18492, ATN-18883, ATN-18944, ATN-18945, ATN-18948, ATN-19301, ATN-19738, ATN-19609, ATN-19610, and ATN-19638 and as set forth in this Administrative Complaint.

8. At all times pertinent to the dates and occurrences referred to herein, SARASOTA MEMORIAL was a licensed Cemetery Company which operated a cemetery located at 5833 South Tamiami Trail, Sarasota, Florida.

9. At all times pertinent to the dates and occurrences referred to herein, ROYAL PALM NORTH was a licensed Cemetery Company which operated a cemetery located at 2600 Gandy Boulevard, St. Petersburg, Florida.

10. At all times pertinent to the dates and occurrences referred to herein, ROYAL PALM SOUTH was a licensed Cemetery Company located at 101 55<sup>th</sup> Avenue South, St. Petersburg, FL.

11. At all times pertinent to the dates and occurrences referred to herein, BRADENTON FUNERAL HOME was a licensed Funeral Establishment located at 5827 14<sup>th</sup> Street West, Bradenton, FL.

12. Cliff Work is a principal of each Licensee.

13. Section 497.005(12), Florida Statutes, defines a "cemetery company" as "any legal entity that owns or controls cemetery lands or property."

14. Section 497.005(11), Florida Statutes, defines a "cemetery" as "a place dedicated to and used or intended to be used for the permanent interment of human remains or cremated remains. A cemetery may contain land or earth interment; mausoleum, vault, or crypt interment; a columbarium, ossuary, scattering garden, or other structure or place used or intended to be used for the interment or disposition of cremated remains; or any combination of one or more of such structures or places."

15. Section 497.005(35), Florida Statutes, defines "funeral establishment" as "a facility licensed under this chapter where a funeral director or embalmer practices funeral directing or embalming."

16. Section 497.005(34), Florida Statutes, defines "funeral director" as "any person licensed under this chapter to practice funeral directing in this state."

17. Section 497.005(31), Florida Statutes, defines “embalmer” as “any person licensed under this chapter to practice embalming in this state.”

COUNT ONE (Sarasota Memorial)

18. The above General Allegations are hereby re-alleged and fully incorporated herein by reference.

19. On June 14, 2011, a Settlement Stipulation for Consent Order (“Settlement Stipulation”) was entered into between Cliff Work, on behalf of SARASOTA MEMORIAL, and the Department to resolve the violations alleged in the Division’s investigative file as maintained in Division records SR 1-677711923, SR 1-628266201, SR 1-614278642, SR 1-654451611, SR 1-625418972, SR 1-621208970, SR 1-590484073, SR 1-644411923, SR 1-628266201, SR 1-614278642, SR 1-654451611, SR 1-650482080, SR 1-621208970, SR 1-590484073, 113856-10-FC, and 113857-10-FC for which probable cause was found on February 23, 2011.

20. On June 23, 2011, the Settlement Stipulation was presented to the Florida Board of Funeral, Cemetery and Consumer Services (“the Board”) for consideration for final action. The Board accepted the Settlement Stipulation for resolution of the administrative matters filed against SARASOTA MEMORIAL in Department case numbers 113856-10-FC and 113857-10-FC.

21. On August 4, 2011, the Consent Order was filed in the matter of BRADENTON FUNERAL HOME (License Number F041688), ROYAL PALM SOUTH (License Number F039669), ROYAL PALM NORTH (License Number F039668), and SARASOTA MEMORIAL (License Number F039746), Department case numbers: 108576-10-FC, 108567-10-FC, 108566-10-FC, 113854-10-FC, 113857-10-FC, 113855-10-FC, and 113856-10-FC. The Board ordered SARASOTA MEMORIAL to do the following:

- (a) Place grass in areas around the cemetery where there are bare patches or dead grass as provided in the Settlement Stipulation in paragraph 9(a)(IV)(6),
- (b) Correct all violations from the 2010 Inspection to the satisfaction of the Division as provided in the Settlement Stipulation in paragraph 9(a)(IV)(2). Specifically, Respondent failed to affix death dates to several crypt faces,
- (c) Correct all violations pertaining to the care and maintenance of the cemetery to the satisfaction of the Division. Specifically, these violations pertained to the Peace L-3 and Devotion M garden burial areas on the property of Sarasota Memorial Cemetery, as provided in the Settlement Agreement in 9(a)(IV)(6), and
- (d) Comply with all applicable state laws in the care and maintenance of the cemetery grounds.

The Consent Order, on page ten (10), specifically provides that Respondents shall correct all violations indicated above within sixty (60) days after execution of the Consent Order.

22. SARASOTA MEMORIAL has failed to correct all of the above-stated violations within sixty (60) days of the execution of the Consent Order filed on August 4, 2011. SARASOTA MEMORIAL has failed to maintain the cemetery grounds in a reasonable condition, failed to place grass in the cemetery, and failed to repair multiple mausoleums.

23. Thus, SARASOTA MEMORIAL has materially failed to comply with the terms and conditions as ordered by the Board pursuant to the Consent Order in Department case numbers 113856-10-FC and 113857-10-FC.

IT IS THEREFORE CHARGED that SARASOTA MEMORIAL has violated the following provisions of the Act which constitute sufficient grounds for discipline, including suspension or revocation of its Cemetery License.

(a) Section 497.152(1)(a), Florida Statutes, which provides that it is a violation to fail to comply with any provision of Chapter 497, Florida Statutes, or any lawful order of the board or department, or of the statutory predecessors to the board or department.

(b) Section 497.005(9), Florida Statutes, which provides that "Care and maintenance" means the perpetual process of keeping a cemetery and its lots, graves, grounds, landscaping, roads, paths, parking lots, fences, mausoleums, columbaria, vaults, crypts, utilities, and other improvements, structures, and embellishments in a well-cared-for and dignified condition, so that the cemetery does not become a nuisance or place of reproach and desolation in the community. As specified in the rules of the licensing authority, "care and maintenance" may include, but is not limited to, any or all of the following activities: mowing the grass at reasonable intervals; raking and cleaning the grave spaces and adjacent areas; pruning of shrubs and trees; suppression of weeds and exotic flora; and maintenance, upkeep, and repair of drains, water lines, roads, buildings, and other improvements. "Care and maintenance" may include, but is not limited to, reasonable overhead expenses necessary for such purposes, including maintenance of machinery, tools, and equipment used for such purposes. "Care and maintenance" may also include repair or restoration of improvements necessary or desirable as a result of wear, deterioration, accident, damage, or destruction. "Care and maintenance" does not include expenses for the construction and development of new grave spaces or interment structures to be sold to the public.

#### COUNT TWO (Royal Palm North)

24. The above General Allegations are hereby re-alleged and fully incorporated herein by reference.

25. On June 14, 2011, a Settlement Stipulation for Consent Order ("Settlement Stipulation") was entered into between Cliff Work, on behalf of ROYAL PALM NORTH, and

the Department to resolve the violations alleged in the Administrative Complaint in Department case numbers 108567-10-FC and 113854-10-FC.

26. On June 23, 2011, the Settlement Stipulation was presented to the Florida Board of Funeral, Cemetery and Consumer Services ("the Board") for consideration for final action. The Board accepted the Settlement Stipulation for resolution of the administrative matters filed against ROYAL PALM NORTH in Department case numbers 108567-10-FC and 113854-10-FC.

27. On August 4, 2011, the Consent Order was filed in the matter of BRADENTON FUNERAL HOME (License Number F041688), ROYAL PALM SOUTH (License Number F039669), ROYAL PALM NORTH (License Number F039668), and SARASOTA MEMORIAL (License Number F039746), Department case numbers: 108576-10-FC, 108567-10-FC, 108566-10-FC, 113854-10-FC, 113857-10-FC, 113855-10-FC, and 113856-10-FC. The Board ordered ROYAL PALM NORTH to correct the following violations as alleged in the Administrative Complaint in case numbers 108567-10-FC and 113854-10-FC :

- (a) Correct the leak and rotten wood on the mausoleum roof as alleged in paragraph numbers 47, 72, 105 and 147,
- (b) Correct the cracked pavements and numerous potholes as alleged in paragraph number 93,
- (c) Repair and have on site an operating roll-out sprinkler system as alleged in paragraph number 29,
- (d) Sod or seed the grounds as alleged in paragraph number 145,



(e) Repair the Upper Devotion niches which had loose and cracked fronts, and loose, missing, or improperly installed name plates as alleged in paragraph numbers 48, 73, 106 and 148, and

(f) Repair the broken irrigation system as alleged in paragraph numbers 107 and 149.

The Consent Order, on page ten (10), specifically provides that Respondents shall correct all violations indicated above within sixty (60) days after execution of the Consent Order.

28. ROYAL PALM NORTH has failed to correct all the above-stated violations within sixty (60) days of the execution of the Consent Order filed on August 4, 2011, in the matter involving ROYAL PALM NORTH. ROYAL PALM NORTH failed to repair the mausoleums, failed to maintain the cemetery grounds in a reasonable condition, and failed to have an operational sprinkler system on the cemetery grounds.

29. Thus, ROYAL PALM NORTH has failed to comply with the terms and conditions as ordered by the Board pursuant to the Consent Order in Department case numbers 108567-10-FC and 113854-10-FC.

IT IS THEREFORE CHARGED that ROYAL PALM NORTH has violated the following provisions of the Act which constitute sufficient grounds for discipline, including suspension or revocation of its Cemetery License.

(a) Section 497.152(1)(a), Florida Statutes, which provides that it is a violation to fail to comply with any provision of Chapter 497, Florida Statutes, or any lawful order of the board or department or of the statutory predecessors to the board or department.

(b) Section 497.005(9), Florida Statutes, which provides that "Care and maintenance" means the perpetual process of keeping a cemetery and its lots, graves, grounds, landscaping, roads, paths, parking lots, fences, mausoleums, columbaria, vaults, crypts, utilities, and other

improvements, structures, and embellishments in a well-cared-for and dignified condition, so that the cemetery does not become a nuisance or place of reproach and desolation in the community. As specified in the rules of the licensing authority, "care and maintenance" may include, but is not limited to, any or all of the following activities: mowing the grass at reasonable intervals; raking and cleaning the grave spaces and adjacent areas; pruning of shrubs and trees; suppression of weeds and exotic flora; and maintenance, upkeep, and repair of drains, water lines, roads, buildings, and other improvements. "Care and maintenance" may include, but is not limited to, reasonable overhead expenses necessary for such purposes, including maintenance of machinery, tools, and equipment used for such purposes. "Care and maintenance" may also include repair or restoration of improvements necessary or desirable as a result of wear, deterioration, accident, damage, or destruction. "Care and maintenance" does not include expenses for the construction and development of new grave spaces or interment structures to be sold to the public.

#### COUNT THREE (Royal Palm South)

30. The above General Allegations are hereby re-alleged and fully incorporated herein by reference.

31. On June 14, 2011, a Settlement Stipulation for Consent Order ("Settlement Stipulation") was entered into between Cliff Work, on behalf of ROYAL PALM SOUTH, and the Department to resolve the violations alleged in the Administrative Complaint in Department case numbers 108566-10-FC and 113855-10-FC.

32. On June 23, 2011, the Settlement Stipulation was presented to the Florida Board of Funeral, Cemetery and Consumer Services ("Board") for consideration for final action. The Board accepted the Settlement Stipulation for resolution of the administrative matters filed

against ROYAL PALM SOUTH in Department case numbers 113855-10-FC and 108566-10-FC.

33. On August 4, 2011, the Consent Order was filed in the matter of BRADENTON FUNERAL HOME (License Number F041688), ROYAL PALM SOUTH (License Number F039669), ROYAL PALM NORTH (License Number F039668), and SARASOTA MEMORIAL (License Number F039746), Department case numbers 108576-10-FC, 108567-10-FC, 108566-10-FC, 113854-10-FC, 113857-10-FC, 113855-10-FC, and 113856-10-FC. The Board ordered ROYAL PALM SOUTH to do the following pertaining to the Settlement Agreement in Department case numbers 108566-10-FC and 113855-10-FC:

- (a) Correct the leak and rotten wood on the mausoleum roof at Royal Palm South as provided in the Settlement Agreement in paragraph number 9(a)(iii)(3),
- (b) Correct all violations from the 2009 Inspection conducted at Royal Palm South to the satisfaction of the Division. Specifically, Respondent failed to fix the potholes and cracks in the pavement, and maintain the cemetery roads in a reasonable condition, as provided in the Settlement Agreement in paragraph number 9(a)(iii)(3),
- (c) Correct all violations from the 2009 Inspection conducted at Royal Palm South to the satisfaction of the Division. Specifically, Respondent failed to maintain an operational sprinkler system at the cemetery, as provided in the Settlement Agreement in paragraph number 9(a)(iii)(6),
- (d) Correct all violations from the 2009 Inspection conducted at Royal Palm South to the satisfaction of the Division. Specifically, Respondent failed to keep accurate records of every burial in the cemetery as provided in the Settlement Agreement

in paragraph number 9(a)(iii)(3), and

- (e) Comply with all applicable state laws in the care and maintenance of the cemetery grounds.

The Consent Order, on page ten (10), specifically provides that Respondents shall correct all violations indicated above within sixty (60) days after execution of the Consent Order.

34. ROYAL PALM SOUTH has failed to correct all the above-stated violations within sixty (60) days of the execution of the Consent Order filed on August 4, 2011.

35. Thus, ROYAL PALM SOUTH has failed to materially comply with the terms and conditions as ordered by the Board pursuant to the Consent Order in Department case numbers 108566-10-FC and 113855-10-FC.

36. Additionally, in the biannual inspection, performed on January 25, 2013, it was determined that ROYAL PALM SOUTH failed to maintain the cemetery in a reasonable condition, specifically pertaining to the condition of the Baby Land section of the cemetery and the removal of numerous dead trees throughout the cemetery.

37. ROYAL PALM SOUTH has failed to correct violations found in the biannual inspection within sixty (60) days after receiving notice, in violation of the Consent Order filed against ROYAL PALM SOUTH in Department case numbers 108566-10-FC and 113855-10-FC. ROYAL PALM SOUTH failed to repair the mausoleums, failed to maintain the cemetery grounds in a reasonable condition, failed to keep accurate burial records, and failed to have an operational sprinkler system on the cemetery grounds.

IT IS THEREFORE CHARGED that ROYAL PALM SOUTH has violated or is accountable under the following provisions of the Act which constitute sufficient grounds for discipline, including suspension or revocation of its Cemetery License.

(a) Section 497.152(1)(a), Florida Statutes, which provides that it is a violation to fail to comply with any provision of Chapter 497, Florida Statutes, or any lawful order of the board or department or of the statutory predecessors to the board or department.

(b) Section 497.005(9), Florida Statutes, which provides that "Care and maintenance" means the perpetual process of keeping a cemetery and its lots, graves, grounds, landscaping, roads, paths, parking lots, fences, mausoleums, columbaria, vaults, crypts, utilities, and other improvements, structures, and embellishments in a well-cared-for and dignified condition, so that the cemetery does not become a nuisance or place of reproach and desolation in the community. As specified in the rules of the licensing authority, "care and maintenance" may include, but is not limited to, any or all of the following activities: mowing the grass at reasonable intervals; raking and cleaning the grave spaces and adjacent areas; pruning of shrubs and trees; suppression of weeds and exotic flora; and maintenance, upkeep, and repair of drains, water lines, roads, buildings, and other improvements. "Care and maintenance" may include, but is not limited to, reasonable overhead expenses necessary for such purposes, including maintenance of machinery, tools, and equipment used for such purposes. "Care and maintenance" may also include repair or restoration of improvements necessary or desirable as a result of wear, deterioration, accident, damage, or destruction. "Care and maintenance" does not include expenses for the construction and development of new grave spaces or interment structures to be sold to the public.

#### COUNT FOUR (Bradenton Funeral Home)

38. The above General Allegations are hereby re-alleged and fully incorporated herein by reference.

39. On or about November 2, 1994, Ms. Thelma Sluyter entered into a preneed contract with Bradenton Funeral Home for the purchase and sale of funeral services and funeral

merchandise in the amount of \$1,775.

40. On or about May 3, 2012, Lois Sluyter, Ms. Thelma Sluyter's daughter and agent, pursuant to a power of attorney, mailed a written cancellation requesting a refund to BRANDENTON FUNERAL HOME.

41. Having received no response, on or about August 8, 2012, Ms. Sluyter filed a complaint (Department Complaint number ATN-18948) requesting the Department's assistance in obtaining the refund due to Ms. Sluyter.

42. BRADENTON FUNERAL HOME is responsible for refunding cancelled preneed contracts.

43. BRADENTON FUNERAL HOME failed to refund any money on the preneed contract to the Sluyter Family.

IT IS THEREFORE CHARGED that BRADENTON FUNERAL HOME has violated the following provisions of the Act which constitute sufficient grounds for discipline, including suspension or revocation of its license as a Funeral Establishment in this state:

(a) Section 497.152(1)(a), Florida Statutes, which provides that it is a violation to fail to comply with any provision of this chapter or any lawful order of the board or department or of the statutory predecessors to the board or department.

(b) Section 497.152(1)(b), Florida Statutes, which provides that it is a violation to commit fraud, deceit, negligence, incompetency, or misconduct in the practice of any of the activities regulated under this chapter.

(c) Section 497.152(13)(b), Florida Statutes, which provides that it is a violation to fail to honor preneed contract cancellation requests and make refunds as required by the chapter.

(d) Section 497.459(2)(a), Florida Statutes, which provides that a purchaser, by

providing written notice to the preneed licensee, may cancel the services, facilities, and cash advance items portions of a preneed contract at any time, and shall be entitled to a full refund of the purchase price allocable to such items. Any accumulated earnings allocable to such preneed contract shall be paid to the preneed licensee upon such cancellation.

COUNT FIVE (Bradenton Funeral Home)

44. The above General Allegations are hereby re-alleged and fully incorporated herein by reference.

45. In 1999, Ronald and Sallie Bish entered into two preneed contracts with Skyway Memorial Gardens for the purchase of funeral services and funeral merchandise. The services were to be provided by BRADENTON FUNERAL HOME.

46. BRADENTON FUNERAL HOME is responsible for fulfilling the preneed contracts of Ronald and Sallie Bish.

47. BRADENTON FUNERAL HOME received the funds from Skyway Memorial Gardens and the Bish family for the preneed contracts.

48. On or about June 2, 2011, Mrs. Bish mailed a notarized cancellation letter for the two preneed contracts requesting a refund from BRADENTON FUNERAL HOME.

49. BRADENTON FUNERAL HOME is responsible for refunding cancelled preneed contracts.

50. On or about March 18, 2012, BRADENTON FUNERAL HOME refunded the Bish family only \$2,487.88 of the total amount owed.

51. BRADENTON FUNERAL HOME failed to fully refund the Bish family the entire amount of the two preneed contracts.

52. On or about April 19, 2012, Mrs. Bish filed a complaint (Department Complaint

number ATN-18492) requesting the Department's assistance in obtaining the remaining refund due to the Bish Family.

53. During the investigation it was determined that BRADENTON FUNERAL HOME received payments from Skyway Memorial Gardens and the Bish family that exceeded the \$2,487.88 that was refunded.

54. BRADENTON FUNERAL HOME has failed to refund the entire amount due to the Bish family as a result of the cancelled preneed contracts.

IT IS THEREFORE CHARGED that BRADENTON FUNERAL HOME has violated the following provisions of the Act which constitute sufficient grounds for discipline, including suspension or revocation of its license as a Funeral Establishment in this state

(a) Section 497.152(1)(a), Florida Statutes, which provides that it is a violation to fail to comply with any provision of this chapter or any lawful order of the board or department or of the statutory predecessors to the board or department.

(b) Section 497.152(1)(b), Florida Statutes, which provides that it is a violation to commit fraud, deceit, negligence, incompetency, or misconduct in the practice of any of the activities regulated under this chapter.

(c) Section 497.152(13)(b), Florida Statutes, which provides that it is a violation to fail to honor preneed contract cancellation requests and make refunds as required by the chapter.

(d) Section 497.459(2)(a), Florida Statutes, which provides that a purchaser, by providing written notice to the preneed licensee, may cancel the services, facilities, and cash advance items portions of a preneed contract at any time, and shall be entitled to a full refund of the purchase price allocable to such items. Any accumulated earnings allocable to such preneed contract shall be paid to the preneed licensee upon such cancellation.



COUNT SIX (Bradenton Funeral Home)

55. The above General Allegations are hereby re-alleged and fully incorporated herein by reference.

56. On or about February 16, 1993, Eleanor Petersen entered into a preneed contract with BRADENTON FUNERAL HOME in the amount of \$805.00.

57. On or about August 19, 2012, Don Petersen, son of Eleanor Peterson, mailed a written cancellation requesting a refund to BRADENTON FUNERAL HOME.

58. On or about November 17, 2012, Mr. Petersen filed a complaint (Department Complaint number ATN-19738) requesting the Department's assistance in obtaining the refund due to Ms. Petersen.

59. BRADENTON FUNERAL HOME is responsible for refunding cancelled preneed contracts.

60. BRADENTON FUNERAL HOME failed to refund any money previously paid on the preneed contract to the Petersen Family.

IT IS THEREFORE CHARGED that BRADENTON FUNERAL HOME has violated one or more of the following provisions of the Florida Statutes, which constitutes sufficient grounds for the suspension or revocation of its license as a Funeral Establishment in this state:

(a) Section 497.152(1)(a), Florida Statutes, which provides that it is a violation to fail to comply any provision of this chapter or any lawful order of the board or department or of the statutory predecessors to the board or department.

(b) Section 497.152(1)(b), Florida Statutes, which provides that it is a violation to commit fraud, deceit, negligence, incompetency, or misconduct in the practice of any of the activities regulated under this chapter.

(c) Section 497.152(13)(b), Florida Statutes, which provides that it is a violation to fail to honor preneed contract cancellation requests and make refunds as required by the chapter.

(d) Section 497.459(2)(a), Florida Statutes, which provides that a purchaser, by providing written notice to the preneed licensee, may cancel the services, facilities, and cash advance items portions of a preneed contract at any time, and shall be entitled to a full refund of the purchase price allocable to such items. Any accumulated earnings allocable to such preneed contract shall be paid to the preneed licensee upon such cancellation.

COUNT SEVEN (Bradenton Funeral Home)

61. The above General Allegations are hereby re-alleged and fully incorporated herein by reference.

62. On or about March 30, 1992, Malene Jenkins entered into a preneed contract with BRADENTON FUNERAL HOME in the amount of \$730.00.

63. On or about June 30, 2012, Mrs. Jenkins passed away. Baylor Jenkins, Mrs. Jenkins' husband, mailed a written cancellation requesting a refund to BRADENTON FUNERAL HOME.

64. On or about November 7, 2012, Judith Abbot, daughter of Mrs. Jenkins, filed a complaint (Department Complaint number ATN-19568) requesting the Department's assistance in obtaining the refund due to the Jenkins family.

65. BRADENTON FUNERAL HOME is responsible for refunding cancelled preneed contracts.

66. BRADENTON FUNERAL HOME failed to refund any money previously paid on a preneed contract to the Jenkins Family.

IT IS THEREFORE CHARGED that BRADENTON FUNERAL HOME has violated

one or more of the following provisions of the Florida Statutes, which constitutes sufficient grounds for the suspension or revocation of its license as a Funeral Establishment in this state:

(a) Section 497.152(1)(a), Florida Statutes, which provides that it is a violation to fail to comply with any provision of this chapter or any lawful order of the board or department or of the statutory predecessors to the board or department.

(b) Section 497.152(1)(b), Florida Statutes, which provides that it is a violation to commit fraud, deceit, negligence, incompetency, or misconduct in the practice of any of the activities regulated under this chapter.

(c) Section 497.152(13)(b), Florida Statutes, which provides that it is a violation to fail to honor preneed contract cancellation requests and make refunds as required by the chapter.

(d) Section 497.459(2)(a), Florida Statutes, which provides that a purchaser, by providing written notice to the preneed licensee, may cancel the services, facilities, and cash advance items portions of a preneed contract at any time, and shall be entitled to a full refund of the purchase price allocable to such items. Any accumulated earnings allocable to such preneed contract shall be paid to the preneed licensee upon such cancellation.

WHEREFORE, the Department respectfully requests that the Board enter an order imposing one or more of the following penalties: revocation or suspension of the Respondents' Cemetery and/or Funeral Establishment licenses; imposition of an administrative fine not to exceed five thousand dollars (\$5,000) for each count or separate offense; placement of Respondents' licenses on probation; assessment of costs associated with the investigation and prosecution; requiring Respondents to make restitution; imposition of any or all penalties delineated within Section 497.153(5), Florida Statutes; and any other relief that the Board is authorized to impose pursuant to the Act.

### NOTICE OF RIGHTS

Pursuant to Sections 120.569 and 120.57, Florida Statutes, and Rule 28-106, Florida Administrative Code, you have the right to request a proceeding to contest this action by the Department of Financial Services ("Department"). The proceeding request must be in writing, signed by you, and must be filed with the Department within twenty-one (21) days of your receipt of this notice. Completion of the attached Election of Proceeding form and/or a petition for administrative hearing will suffice as a written request. The request must be filed with Julie Jones, Agency Clerk, Florida Department of Financial Services, 200 East Gaines Street, Tallahassee, Florida 32399-0390. Your written response must be received by the Department no later than 5:00 p.m. on the twenty-first day after your receipt of this notice. Mailing the response on the twenty-first day will not preserve your right to a hearing.

**YOUR FAILURE TO RESPOND IN WRITING WITHIN TWENTY-ONE (21) DAYS OF YOUR RECEIPT OF THIS NOTICE WILL CONSTITUTE A WAIVER OF YOUR RIGHT TO REQUEST A PROCEEDING ON THE MATTERS ALLEGED HEREIN AND AN ORDER OF SUSPENSION OR REVOCATION WILL BE ENTERED AGAINST YOU.**

If you request a proceeding, you must provide information that complies with the requirements of Rule 28-106.2015, Florida Administrative Code. As noted above, completion of the attached Election of Proceeding form conforms to these requirements. Specifically, your response must contain:

- (a) The name, address, and telephone number, and facsimile number (if any) of the respondent (for the purpose of requesting a hearing in this matter, you are the "respondent").

(b) The name, address, telephone number, facsimile number of the attorney or qualified representative of the respondent (if any) upon whom service of pleadings and other papers shall be made.

(c) A statement requesting an administrative hearing identifying those material facts that are in dispute. If there are none, the petition must so indicate.

(d) A statement of when the respondent received notice of the administrative complaint.

(e) A statement including the file number to the administrative complaint.

If a hearing of any type is requested, you have the right to be represented by counsel or other qualified representative at your expense, to present evidence and argument, to call and cross-examine witnesses, and to compel the attendance of witnesses and the production of documents by subpoena.

If a proceeding is requested and there is no dispute of material fact, the provisions of Sections 120.57(2) and 497.153(4)(b), Florida Statutes, apply. You may either submit a written statement and documentary evidence to the Board in lieu of a hearing, or personally attend a hearing conducted by the Board at the location of a regularly scheduled Board meeting.

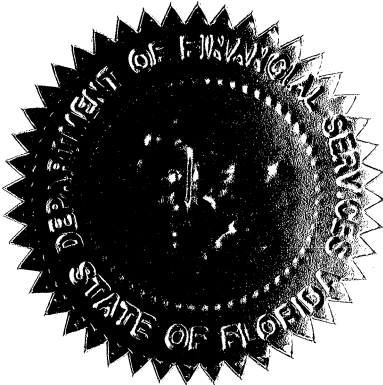
However, if you dispute material facts that are the basis for the Department's action, you must request an adversarial proceeding pursuant to Sections 120.569 and 120.57(1), Florida Statutes. These proceedings are held before a State Administrative Law Judge of the Division of Administrative Hearings. Unless the majority of witnesses are located elsewhere, the Department will request that the hearing be conducted in Tallahassee, Florida.

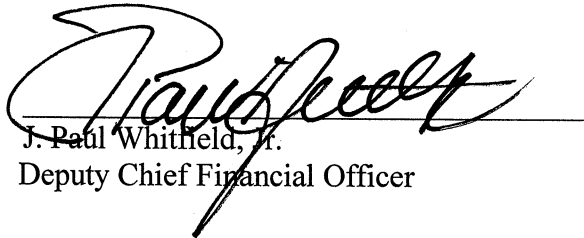
Failure to follow the procedure outlined with regard to your response to this notice may result in the request being denied. All prior oral communication or correspondence in this matter

shall be considered freeform agency action, and no such oral communication or correspondence shall operate as a valid request for an administrative proceeding. Any request for an administrative proceeding received prior to the date of this notice shall be deemed abandoned unless timely renewed in compliance with the guidelines as set out above.

Mediation of this matter pursuant to Section 120.573, Florida Statutes, is not available. No Department attorney will discuss this matter with you until the response has been received by the Department.

DATED and SIGNED this 9th day of February, 2013.



  
J. Paul Whitfield, Jr.  
Deputy Chief Financial Officer

CERTIFICATE OF SERVICE

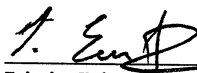
I HEREBY CERTIFY that a true and correct copy of the foregoing ADMINISTRATIVE COMPLAINT and ELECTION OF PROCEEDING FORM has been furnished by U.S. Certified Mail, return receipt requested this 26<sup>th</sup> day of February, 2013, to:

WORK & SON SARASOTA MEMORIAL  
d/b/a SARASOTA MEMORIAL  
5833 South Tamiami Trail  
Sarasota, Florida 34231

WORK & SON-OSIRIS  
d/b/a ROYAL PALM CEMETERY (NORTH)  
2600 Gandy Boulevard  
St. Petersburg, Florida 33702

WORK & SON-ROYAL PALM ACQUISITION, INC.  
d/b/a ROYAL PALM CEMETERY (SOUTH)  
101 55<sup>th</sup> Avenue South  
St. Petersburg, Florida 33707  
WORK & SON-MEMORIAL SERVICES, INC.  
d/b/a BRADENTON FUNERAL HOME  
5827 14<sup>th</sup> Street West  
Bradenton, Florida 34207

Wendy R. Wiener, ESQ., as Registered Agent  
Gardner, Bist, Wiener, Wadsworth & Bowden, P.A.  
1300 Thomaswood Drive  
Tallahassee, Florida 32308



Linje Rivers  
Assistant General Counsel  
Fla. Bar. No. 79063  
Mary K. Surles  
Assistant General Counsel  
Fla. Bar No. 230560  
Florida Department of Financial Services  
200 E. Gaines St., Suite 624  
Tallahassee, FL 32399-0390  
Phone (850) 413-4180  
Fax: (850) 488-0697  
Counsel for the Department

STATE OF FLORIDA  
DEPARTMENT OF FINANCIAL SERVICES  
DIVISION OF LEGAL SERVICES

IN THE MATTER OF:

CASE NO.: 123568-12-FC  
124587-12-FC  
129486-12-FC  
129488-12-FC  
129489-12-FC  
129510-12-FC  
124590-12-FC  
129904-12-FC  
129906-12-FC  
129910-12-FC  
130906-12-FC  
130912-12-FC  
130915-12-FC  
130917-12-FC  
130918-12-FC

WORK & SON SARASOTA MEMORIAL  
d/b/a SARASOTA MEMORIAL,

WORK & SON-OSIRIS  
d/b/a ROYAL PALM CEMETERY (NORTH)

WORK & SON-ROYAL PALM ACQUISITION, INC.  
d/b/a ROYAL PALM CEMETERY (SOUTH)

WORK & SON-MEMORIAL SERVICES, INC.  
d/b/a BRADENTON FUNERAL HOME

ELECTION OF PROCEEDING

I have received and have read the Administrative Complaint filed by the Florida Department of Financial Services ("Department") against me, including the Notice of Rights contained therein, and I understand my options. I am requesting disposition of this matter as indicated below. **(CHOOSE ONE)**

1. ☐ I do not dispute any of the Department's factual allegations and I do not desire a hearing. I understand that by waiving my right to a hearing, the Board of Funeral, Cemetery and Consumer Services ("Board") may enter a final order that adopts the Administrative Complaint and imposes the sanctions sought, including suspending or revoking my license(s) as may be appropriate.
2. I do not dispute any of the Department's factual allegations and I hereby elect a proceeding to be conducted in accordance with Sections 120.57(2) and 497.153(4)(b), Florida Statutes. In this regard, I desire to:  

☐ Submit a written statement and documentary evidence to the Board in lieu of a hearing;      or  
☐ Personally attend a hearing conducted by the Board at the location of a regularly scheduled Board meeting.
3. ☐ I do dispute one or more of the Department's factual allegations. I hereby request a hearing pursuant to Section 120.57(1), Florida Statutes, to be held before the Division of Administrative Hearings. I have attached to this election form the information required by Rule 28-106.2015, Florida Administrative Code, as specified in subparagraph (c) of the Notice of Rights. Specifically, I have identified the disputed issues of material fact in the response attached hereto.

TO PRESERVE YOUR RIGHT TO A HEARING, YOU MUST FILE YOUR RESPONSE WITH THE DEPARTMENT OF FINANCIAL SERVICES WITHIN TWENTY-ONE (21) DAYS OF YOUR RECEIPT OF THE ADMINISTRATIVE COMPLAINT. THE RESPONSE MUST BE RECEIVED BY THE DEPARTMENT NO LATER THAN 5:00 P.M. ON THE TWENTY-FIRST DAY AFTER YOUR RECEIPT OF THE ADMINISTRATIVE COMPLAINT.

The address for filing is: DFS Agency Clerk, Julie Jones, Florida Department of Financial Services, 612 Larson Building, 200 East Gaines Street, Tallahassee, Florida 32399-0390.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

Date: \_\_\_\_\_

Address: \_\_\_\_\_

Date Administrative  
Complaint Received: \_\_\_\_\_

**If you are represented by an attorney or qualified representative, please attach to this election form his or her name, address, telephone and fax numbers**

Phone No.: \_\_\_\_\_

Fax No.: \_\_\_\_\_