

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

**IN THE MATTER OF
LARRY BROWN,
License No. 1657129**

and

**BROWN'S CHRISTIANWAY HOME
FOR FUNERALS, INC.
RESPONDENTS**

AID ORDER NO. 2018- 032

**ORDER FOR RESTITUTION AND REVOKING PRODUCER'S LICENSE AND
PREPAID FUNERAL BENEFITS PERMIT**

On this day, the matter of Larry Brown and Brown's Christianway Home for Funerals, Inc., came before Allen Kerr, Arkansas Insurance Commissioner ("Commissioner"). A hearing was held at 1:00 p.m. on March 6, 2018, in the First Floor Hearing Room of the Arkansas Insurance Department ("Department") pursuant to the Amended Notice of Hearing dated February 13, 2018. 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.

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 Brown is the owner of Brown's Christianway Home for Funerals, Inc. ("Brown's Christianway").

3. Respondent Brown's funeral expense license lapsed in 2006.
4. Respondent Brown's Christianway's prepaid funeral benefits permit is current and expires on June 1, 2018.
5. Respondents were paid in cash for a funeral service performed for decedent Dennis Nelson in August 2014. The service was performed on an at need basis.
6. Respondents subsequently were paid again, for the same funeral service, by way of a life insurance policy.
7. The Complainant, Dienice Nelson, the decedent's daughter, was the beneficiary of a life insurance policy issued by Lincoln Heritage Life Insurance Company ("Lincoln Heritage"), in the amount of \$8,000.00.
8. The Complainant executed an Irrevocable Assignment of Life Insurance Proceeds and Limited Power of Attorney in favor of the funeral home. This document was page 13 of Exhibit 4 and assigned the full policy amount of \$8,000.00.
9. Respondents advised the decedent's family that the life insurance policy was contestable, and that they would need to pay for the service by other means.
10. The Complainant paid the Respondents \$200.00 and other family members, Alvin Nelson and Sharonda Nelson paid the Respondents \$7,416.00.
11. Evidence was presented that Heritage Memorial Funding ("Heritage Memorial"), the funding company used by Respondent Brown's Christianway, wired the proceeds of the policy to Respondents on September 11, 2014. Notwithstanding the evidence, Respondent Brown testified that he had no knowledge of Heritage Memorial's payment of the death benefit until August of 2017, when the complaint was filed.

12. The evidence showed that \$7,665.00 was wired to the funeral home from Heritage Memorial Funding. This amount represents the \$8,000.00 policy amount, less a 4% fee and a \$15.00 wire fee.

13. In addition to the assignment of the policy proceeds to the funeral home, evidence was presented that the complainant ceded any remainder of the proceeds to Alvin Nelson and Sharonda Nelson. The evidence was admitted as Respondent's Exhibit 2.

CONCLUSIONS OF LAW

1. 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; ... (8) Using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, lack of good personal or business reputation, or financial irresponsibility.” Respondents’ conduct as detailed above in Findings of Fact 5, 6 and 11 are therefore in violation of Ark. Code Ann. § 23-64-512(a).

2. Ark. Code Ann. § 23-64-512(e) provides that “The commissioner shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by this subchapter and the Arkansas Insurance Code against any person who is under investigation for or charged with a violation of this subchapter or the Arkansas Insurance Code, even if the person’s license or registration has been revoked, surrendered, or has lapsed by operation of law.” The

Commissioner therefore has authority to revoke Respondent Brown's funeral expense license even though it has lapsed.

3. 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." (emphasis added). Respondents' conduct as detailed above in Findings of Fact 5, 6 and 11 is therefore in violation of Ark. Code Ann. § 23-64-506(c) and (e).

4. Ark. Code Ann. § 23-64-512(a)(4) allows the Commissioner to sanction a producer for "improperly withholding, misappropriating, or converting any moneys or properties received in the course of doing insurance business". Respondents' conduct as detailed above in Findings of Fact 5, 6 and 11 is therefore in violation of Ark. Code Ann. § 23-64-512(a)(4).

5. Ark. Code Ann. § 23-40-101 *et seq.* governs Respondent Brown's Christianway prepaid funeral benefits permit. Specifically, Ark. Code Ann. § 23-40-111(a)(2) requires the prepaid funeral benefit organization to be "deemed by the commissioner to be competent, trustworthy, and financially responsible to engage in the sale of prepaid funeral contracts in this state." Respondents' conduct as detailed above in Findings of Fact 5, 6 and 11 is therefore in violation of Ark. Code Ann. § 23-40-111(a)(2) because they are no longer qualified to hold a prepaid funeral benefits permit.

6. Ark. Code Ann. § 23-40-111(b)(3)(C) provides that "the commissioner may also order restitution of actual losses to affected persons". Respondents should therefore be required to make restitution to the decedent's family.

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. That the Producer's License (Funeral Expense License) of Larry Brown be revoked;
2. That the prepaid funeral benefits permit of Brown's Christianway Home for Funerals, Inc. be revoked;
3. That the 4% fee (\$320.00) and the \$15.00 wire fee are administrative costs that are to be born by Respondents. Those fees cannot reduce the \$8,000.00 benefit that the beneficiary of the policy is entitled to receive.
4. That the benefit amount of \$8,000.00 is \$384.00 more than the actual funeral cost of \$7,616.00 which was paid in cash by the decedent's family. Because Dienice Nelson is the sole beneficiary on the \$8,000.00 policy, she would be entitled to the remainder amount of \$384.00. However, Complainant had previously agreed to cede the remainder of the proceeds to Alvin Nelson and Sharonda Nelson.
5. That Respondents shall make restitution via cashier's checks within 45 days of the date of receipt of this Order, as follows:
 - a. To Dienice Nelson: \$200.00.
 - b. To Alvin Nelson and Sharonda Nelson: \$7,800.00 (the sum of \$7,416.00 paid in cash and the remainder of the benefits in the amount of \$384.00).



**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 Respondent Brown's funeral expense license is REVOKED, that Respondent Brown's Christianway Home for Funerals, Inc.'s prepaid funeral benefits permit is REVOKED, and that restitution be made as recommended above by the Hearing Officer.

IT IS SO ORDERED THIS 12th DAY OF MARCH, 2018.


ALLEN KERR
INSURANCE COMMISSIONER
STATE OF ARKANSAS