

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

**IN THE MATTER OF
PRESIDENTIAL FUNERAL HOMES
OF ARKANSAS, INC. d/b/a
GUNN FUNERAL HOME**

and

**DERRICK GUNN
RESPONDENTS**

AID ORDER NO. 2019-73

CONSENT ORDER OF REVOCATION OF PERMIT

Now on this day before Allen Kerr, the Insurance Commissioner for the State of Arkansas (“Commissioner”) came Presidential Funeral Homes of Arkansas, Inc. d/b/a Gunn Funeral Home and Derrick Gunn (“Respondents”), who have reached an agreement concerning the prepaid funeral benefit permit (“prepaid permit”) issued to Respondents by the Arkansas Insurance Department (“Department”). The Commissioner is represented by Amanda Gibson, Associate Counsel. Respondents are represented by Kevin Keech and Emily Reynolds, and voluntarily waived their right to a hearing and consent to the entry of this Consent Order of Revocation of License. From the facts and law before the Commissioner, he finds as follows:

GENERAL STIPULATIONS

1. It is expressly understood that this Consent Order is subject to the Commissioner’s acceptance and has no force or effect until such acceptance is evidenced by the entry of the Commissioner.
2. This Consent Order is executed for the purpose of avoiding further administrative time, expense, and action with respect to this cause.

3. Respondents fully understand that this Consent Order will in no way preclude additional proceedings by the Commissioner against the Respondents for acts or omissions not addressed or reviewed during the course of the investigation which led to this Order, or for facts and/or omissions that do not arise from the facts or transactions herein addressed.

4. The Department expressly provides that by entry of this Consent Order, it shall not commence additional proceedings against Respondents for acts or omissions within the Department's knowledge at this time, as evidenced by documents obtained pursuant to this investigation. Respondents are hereby released, and discharged of and from any and all claims, actions, penalties, of whatever kind or nature for or because of any act or omission learned of by or through the investigation which led to this Order, particularly, as relates to prepaid funeral benefits contracts.

5. Having the right to consult with legal counsel, Respondents expressly waive all further procedural steps, and expressly waive all rights to seek judicial review of, or to otherwise challenge or contest the validity of this Consent Order, the stipulations and imposition of discipline contained herein, and the consideration and entry of said Order by the Commissioner. This Order is executed in the public interest, in the best interests of the parties hereto, and it represents a compromise and settlement of the controversy between the parties. This Order is for settlement purposes only.

6. By their signatures affixed below, Respondents affirmatively state that they have freely agreed to the entry of this Consent Order, that they have been advised that they may consult legal counsel and have had the opportunity to consult with legal counsel, that they waive their right to a hearing on the matters underlying this Consent Order, and that no threats or promises of any kind have been made by the Commissioner, the Department, or any agent or representative thereof.

7. The parties, by executing this Consent Order, affirmatively state their agreement to be bound by the terms of this Order and aver that no promises or offers relating to the circumstances described herein have been made, other than the terms of settlement set forth in this Order, are binding upon them.

8. Respondents acknowledge that they are no longer able to meet the requirements necessary to qualify for a prepaid permit. Accordingly, they voluntarily agree to revocation of their prepaid permit pursuant to Ark. Code Ann. § 23-40-111(b)(2)(A).

9. Respondents acknowledge that the purpose of this Consent Order is to revoke their prepaid permit.

10. Respondents acknowledge that the Board of Embalmers, Funeral Directors, Cemeteries and Burial Services has authority to take action against the licenses held by them, pursuant to Ark. Code Ann. § 17-29-311(a)(15). Respondent Gunn is licensed individually as a funeral director and embalmer, and the funeral home is licensed as Type A (full service) and Type C (crematory) Establishment. Nonetheless, the Commissioner has agreed to forego referring this case to the Board for action on licenses held by the Respondents.

FINDINGS OF FACT

1. Respondent Derrick Gunn owns Presidential Funeral Homes of Arkansas, Inc. d/b/a Gunn Funeral Home, located in Little Rock, Arkansas.

2. Respondent Gunn currently resides in Little Rock, Arkansas.

3. Respondent funeral home previously held a prepaid funeral benefits permit.

4. Respondent Gunn holds no other licenses issued by the Department.

5. Respondents failed to renew the permit by the deadline of May 31, 2018. On August 3, 2018, Respondents attempted to renew the permit by submitting the renewal application form and

check for the fees. However, the check was returned on or around September 12, 2018 due to the account being either frozen or blocked. Respondent Gunn was notified of this occurrence, and he was given until October 7, 2018 to submit the fees.

6. Respondents' failure to renew the prepaid funeral benefit permit caused the permit to lapse on June 1, 2018.

7. On or around October 5, 2018, Respondents submitted a money order to the Department for the renewal fee and late fee. However, the Department returned those funds to Respondents and refused to renew Respondents' permit because they were under investigation for possible violations of Arkansas Prepaid Funeral Benefits Law.

8. Also, on August 3, 2018, the Department received a complaint from a consumer, Allene Williams, who was concerned about her money. She had previously paid Respondents \$705.00 on April 1, 2013 for a direct cremation. She had asked Respondents for a refund of her money and they failed to refund her money until on or about October 5, 2018 when Respondents sent a money order to the Department in the amount of \$705.00. The Department refunded Ms. Williams' money to her, and she verified receipt.

9. Respondents failed to report Ms. Williams' contract, and to pay the required contract fee related thereto.

10. Moreover, the prepaid contract was not written on a form preapproved by the Department.

11. Upon receipt of Ms. Williams' funds, Respondents failed to deposit them into a trust account.

12. On August 24, 2018, Respondent Gunn came to the Department to hand deliver the 2nd Quarter 2018 report, which was due on August 15, 2018. At that time Respondent also attempted to submit the 3rd and 4th Quarter 2018 reports, which were not due until November 15, 2018 and

February 15, 2019, respectively. Respondent purported to submit reports showing zero contracts sold for quarters that had not yet concluded or occurred. (3rd Quarter runs from July 1 through September 30, and 4th Quarter runs from October 1 through December 31.)

13. Also, during the visit to the Department on August 24, 2018, Respondent Gunn became disruptive and used profanity and abusive language with Prepaid Division staff. Staff from that Division ultimately had to escort Respondent out of the building.

14. An examination of Respondents' prepaid permit files revealed missing files, empty files, and files missing copies of insurance applications.

15. The examination also revealed that Respondents sold a prepaid funeral benefit contract on December 3, 2018 to a consumer, Marty Guajardo. The date of that sale was after Respondent's prepaid permit had lapsed.

CONCLUSIONS OF LAW

1. Ark. Code Ann. §§ 23-61-101, *et seq.*, assigns the responsibility for administration of the Arkansas Insurance Code to the Arkansas Commissioner of Insurance (hereinafter referred to as the "Commissioner"). The Department is the lawful agency through which the Commissioner administers the Arkansas Insurance Code, and the Department is authorized to bring this action for the protection of Arkansas consumers.

2. The Commissioner has jurisdiction over the parties and subject matter.

3. Ark. Code Ann. § 23-40-101 *et seq.* governs Respondent funeral home's sale of prepaid funeral benefit contracts.

4. Respondents' failure to timely renew the permit which included submission of the required fee, as detailed in Findings of Fact 5 and 6 above, are in violation of Ark. Code Ann. § 23-40-110(b) and (c).

5. With regard to Finding of Fact 7, the Department's basis for refusing to issue the renewal license, is the criteria provided in Ark. Code Ann. § 23-40-111(a)(2), which requires prior to the issuance of a renewal permit: that the licensee "be deemed by the commissioner to be competent, trustworthy, and financially responsible to engage in the sale of prepaid funeral contracts in this state." At that time, the Department had opened an investigation with regard to the complaint from Ms. Williams, the lapse of Respondents' prepaid permit, and the inability to process the untimely remitted renewal fee because of Respondents' bank account being blocked or frozen.

6. Respondents' failure to allow Ms. Williams to cancel her contract as detailed in Finding of Fact 8 above, is in violation of Ark. Code Ann. § 23-40-122(a) and Department Rule 63, Section 7. C.

7. Respondents' failure to report Ms. Williams' contract and to pay the contract fee related thereto, as detailed in Finding of Fact 9 above, is in violation of Ark. Code Ann. § 23-40-119(a) requiring annual reports be submitted. This conduct also violates § 23-40-119 (d)(1)(B) and (C) requiring the per-contract fees to be remitted quarterly to the Department no later than 45 days after the end of the quarter.

8. Respondents' issuance of the prepaid contract to Ms. Williams on a form that had not been preapproved for use as detailed in Finding of Fact 10 above, is in violation of Ark. Code Ann. § 23-40-112(a)(2).

9. Respondents' failure to deposit Ms. Williams' funds as detailed in Finding of Fact 11 above, into a trust account, is in violation of Ark. Code Ann. § 23-40-106(a)(2)(A)(i).

10. Respondents' failure to timely submit the 2nd Quarter 2018 Report as detailed in Finding of Fact 12 above, is in violation of Ark. Code Ann. § 23-40-119(d)(1)(B) as the form as prescribed by the commissioner contained the deadline for submission. Respondents' attempt to submit

reports for quarters that had not yet concluded or even occurred is in violation of Ark. Code Ann. § 23-40-111(a)(2).

11. Respondents' conduct as detailed in Findings of Fact 13 and 14 above is in violation of Ark. Code Ann. § 23-40-111(a)(2).

12. Respondents' conduct as detailed in Finding of Fact 15 above is in violation of Ark. Code Ann. § 23-40-109(c) in that they did not possess "a valid, current permit at the time the contract is made."

13. Pursuant to Ark. Code Ann. § 23-40-111(b)(2), "...the commissioner may suspend any permit under this chapter for up to thirty-six (36) months or may revoke or refuse to continue any permit under this chapter if the commissioner finds that: (A) the licensee has failed to comply with any material provision of this chapter or any valid rule and regulation or order that the commissioner has prescribed".

14. In light of the foregoing Findings of Fact, Respondents do not meet the statutory prerequisites and qualifications to hold a prepaid permit.

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

ORDER

NOW THEREFORE, on the basis of the foregoing and the waiver of the Respondents of their rights to a hearing and appeal under the Arkansas Administrative Procedure Act, Ark. Code Ann. §§ 25-15-201 *et. seq.*, and the admission by Respondents of the jurisdiction of the Commissioner, the Commissioner finds that the Respondents have consented to entry of this Order, and that the following Order is appropriate and in the public interest.

IT IS HEREBY ORDERED that:

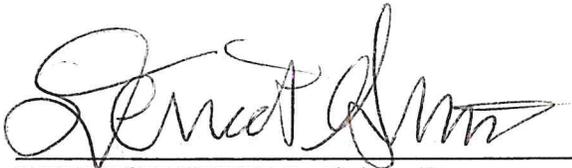
1. Respondents' request to renew their prepaid funeral benefit permit that expired on May 31, 2018, is hereby **DENIED**;
2. Respondents' prepaid funeral benefit permit that expired on May 31, 2018 is hereby **REVOKED**; and
3. Respondents are prohibited from selling any prepaid funeral benefit contracts in the State of Arkansas.

The Department reserves the right to amend and/or supplement the facts contained in his Order to include violations of state law, with notice to Respondents.

IT IS SO ORDERED, DIRECTED AND AGREED TO AS OF THE 28th DAY OF OCTOBER, 2019.



**ALLEN KERR
INSURANCE COMMISSIONER
STATE OF ARKANSAS**



**DERRICK GUNN, Individually,
and on behalf of
Presidential Funeral Homes of Arkansas, Inc.,
d/b/a Gunn Funeral Home**

Date: _____