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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 77-1178

CEMETERY CONSULTANTS, INC.
T/A ROSEWOOD MEMORIAL PARK,
Appellant,

v.

TIDEWATER FUNERAL DIRECTORS
ASSOCIATION, INC.,
Appellees.

JOINT APPENDIX

James P. McGeein
Harry J. Hicks
4316-C Virginia Beach Boulevard
Virginia Beach, Virginia 23452
Counsel for Appellant

Richard G. Brydges
BRYDGES, HUDGINS, EGE,
BURT & O'BRIEN
1369 Laskin Road
Virginia Beach, Virginia 23451
Counsel for Appellees

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VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH

TIDEWATER FUNERAL DEALERS ASSOCIATION, INCORPORATED,	:	
Complainant	:	
v.	:	CHANCERY NO. C-75-1222
CEMETARY CONSULTANTS, INC., Operating as Rosewood Memorial Park Serve: Harry J. Hicks, Registered Agent 524 Independence Boulevard Virginia Beach, Virginia	:	
Defendant	:	

BILL OF COMPLAINT

TO: THE HONORABLE JUDGES OF THE AFORESAID COURT:

Your complainant respectfully represents unto the Court as follows:

1. That the Tidewater Funeral Dealers Association, Incorporated is an existing corporation duly authorized to function in the State of Virginia and has been granted a charter to conduct business by the State Corporation Commission of this State.

2. That the complainant organization consists of duly licensed funeral directors in the Tidewater area who are now properly, legally and actively engaged in the profession of funeral directing as defined under the appropriate code sections of the 1950 Code of Virginia, as amended.

3. That the defendant operates a cemetary located in the City of Virginia Beach, Virginia at 631 North Witchduck Road and is in the business of selling or dispensing to the public in some manner burial plots; caring for those plots and the grounds and environs, both before and after their use by those persons making such a purchase.

GES & HUDGINS

4. That the complainant and its members utilize the services of Rosewood Memorial Park in order to perform their contracts with families of deceased persons, which deceased persons have purchased or acquired property in the Rosewood Memorial Park for the purpose of their interment.

5. Under the appropriate code sections of the 1950 Code of Virginia, as amended, specifically §54-260.67 and §54-260.74 as well as other sections, it is the duty of funeral directors to take charge of a dead body once it is contracted into their care and see to the disposition and burial of that dead human body from the time of its admission to their custody until the time that it is properly and legally interred into the cemetary plot. Any violation of the rights of the family or the decea or any deviation from the standards set by the 1950 Code of Virginia, as amended, will result in the prosecution of any funeral director or the loss of his license under appropriate circumstances.

6. That as a part of the duties and responsibilities of the complainant and its members as outlined herein is the opening and closing the burial plot, the sealing of the vault into which the casket is placed, the selection of the proper vault within the means of and as contracted for by the family of the deceased and not to leave the cemetary grounds unless and until the body is properly interred in its vault under the direction of the funeral director, the vault sealed, placed in the grave and the dirt put in place. The obligation and function of the director as prescribed by law is not finished until this is done.

7. That the defendant is engaged in and has been engaged in the opening and closing of the grave sites, charging a fee for same to the complainant and their members or other duly

authorized funeral directors, which prohibits and deters the complainant and its members and other duly authorized and licensed funeral directors from performing the function for which they are licensed. In addition to this usurpation of the rights of the complainant and its members, the defendant has now advised the complainant that it will charge a fee of $15.00 for the installation and sealing of the vault into which the casket containing the dead human body will be placed and will not permit funeral directors to perform this service at Rosewood Memorial Park. As indicated above, it has been the function and should be the function of the complainant and its members and other duly authorized funeral directors to see to the selection of the vault in conjunction with the family who has contracted for their services and to see that the vault is properly sealed, properly selected and properly placed in the ground.

8. That under the terms of a letter dated August 6th, 1975, Rosewood Memorial Park has directed and decreed that no longer can the complainant or any members of its organization or any other duly authorized funeral director using the services of Rosewood Memorial Park see to the selection, installation, closing and interment of a burial vault. That the said vault should be left at the park on the morning of the funeral and that the personnel of said defendant will then take over and the vault manufacturers or people contracted for by the complainant and its members will not be allowed to furnish the service of sealing the vault and performing other maintenance to the said vault for which their services were contracted by the complainant and its members. The complainant submits that as an intergal part of their function and service to the family and under their duties and committments as outlined by

the Code of Virginia of 1950, as amended, hereinbefore set forth, the complainants do use great diligence and care in advising the family of the deceased on what vaults are safe, secure and free from certain elements which are of concern to those persons contracting the services of the complainant. That the complainant and all of its members are diligent in utilizing the services of certain firms engaged in the manufacture and sale of vaults, who as a part of their services, not only offer the merchandise but the expertise in servicing, sealing and installing same. That under the terms of the letter dated August 6, 1975, taking this function from them, which letter will go into effect on the 15th day of August, 1975, the complainant and its members and all other duly authorized funeral directors will be divested of this right and obligation as set forth above. That in the opinion of the complainant it will also be subject to prosecution under the appropriate code sections for failing to perform the services entrusted to them by law.

9. That in addition to the above usurpation of the rights and obligations of the complainant, the defendant in prohibiting the carrying on of the proper functions of the complainant is in restraint of trade and a violation of the inherent rights of the complainant and its members. The complainant and its members submit that the demands made upon them by the defendant, that the said defendant be the only person to open and close the grave site and now the only person or corporation to install and seal the vault abrogates completely the rights, duties and responsibilities that they have been contracted to perform and are licensed to perform by the appropriate code sections of the 1950 Code of Virginia, as amended, and that they should not and cannot be divested of this right, duty and obligation.

WHEREFORE, your complainant, who is remediless except in equity, prays that this Honorable Court will issue a temporary restraining order and after appropriate hearings, a permanent restraining order, restraining and enjoining the defendant from exercising the aforesaid restraints, both in connection with the opening and closing of the grave site, the sealing and implacement of vaults and in performing any other function properly the function of the complainant, its members and other duly authorized funeral directors.

TIDEWATER FUNERAL DEALERS ASSOCIATION, INCORPORATED

By: BRYDGES & HUDGINS

Of Counsel

Brydges & Hudgins, p.q.
1369 Laskin Road
Virginia Beach, Virginia 23451

ROSEWOOD MEMORIAL PARK
631 NORTH WITCH DUCK ROAD • VIRGINIA BEACH, VIRGINIA 23462 • PHONE 497-8925

BOARD OF DIRECTORS
CHARLES C. KIRKPATRICK, PRESIDENT
ROBERT D. HOWARD, EX. VICE-PRES. · TREA'S.
HARRY J. HICKS, SECRETARY
JAMES P. MCGEEIN, DIRECTOR
ROCCO J. LASSITER, DIRECTOR
FRED G. BASHARA, DIRECTOR

August 6, 1975

Maestas Funeral Home
18th & Baltic Avenue
Virginia Beach, Virginia

Dear Mr. Maestas;

We have just gone through, or are still in, the biggest inflationary period I have known since I have been in business. I am sure I'm not telling you anything new; you have seen increases in your products and services. We sometimes wonder where it's all going to end. You know, as well as I, that the company that cannot render a service and be paid for it and show a little profit after a year's operation will not long be in business.

One of my biggest jobs has been monitoring price increases to us. Our bronze suppliers have changed their prices so fast that there is only one with a printed price list; the rest operate on a percentage increase letter. Fertilizer, lime, labor, tractors and other equipment have all gone up.

We have recently made a substantial investment in lowering devices and we are now in a position to render the service of vault installation. I have recently contacted the vault dealers and informed them that on August 15 the servicing of all vaults installed at Rosewood will be done by Rosewood men and the use of Rosewood equipment. This is being done by adopting a vault installation charge of $15.00 which is a separate entity and is, at no time, to be considered a part of the interment charge. Efficiency of our operation is most important for cost control and was the major reason for taking this route.

MEMBER NATIONAL ASSOCIATION OF CEMETERIES
SOUTHERN CEMETERY ASSOCIATION
PRE-NEED INTERMENT ASSOCIATION OF AMERICA
NORFOLK CHAMBER OF COMMERCE · BETTER BUSINESS BUREAU

In the future, if you elect to collect the installation charge and the interment service charge, we will bill you separately for these charges; one bill for the installation and one bill for the interment service. As I have mentioned on several occasions, we appreciate your assuming this position of collecting these charges from the families we both serve; however, I would be very happy to do all the collection of these charges ourselves and it would not require paper work and possibly tie up some of your funds. If, however, you still prefer to make the collections yourself, we are very happy to go along with that procedure. I hope that any time you feel you don't want to gamble on the family by making the charges together you have only to call us in ample time that we can make the necessary collections prior to the interment. We are equipped and have the facilities and personnel to adequately handle the collection of all our charges.

Enclosed find interment service charge price list which I feel is self-explanatory. If you need more copies for various men in your office, please let Dennis Appell know and he will forward as many copies as you desire. If you would like to discuss our new service, Mr. Appell, Mr. Howard, or I am as close as the telephone to you. If you prefer a person-to-person meeting, drop in the office at any time.

I want to commend you for the fine service and spirit of cooperation we have all had this past year.

I remain

Sincerely,

CC Kirkpatrick

C. C. Kirkpatrick
President

nc

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH

APR 22 1977

TIDEWATER FUNERAL DEALERS ASSOCIATION, INCORPORATED,	:	
Complainant,	:	
vs.	:	IN CHANCERY NO. C-75-1222
CEMETERY CONSULTANTS, INC., T/A ROSEWOOD MEMORIAL PARK,	:	
Respondent.	:	

DECREE

This cause came on this day to be heard upon the pleadings previously filed, and a jury not having been demanded, the whole matter of law and fact having been previously submitted to the court for consideration, and after hearing the evidence and argument of counsel, and reading the briefs submitted by counsel and further the agreements of counsel that certain questions of law and fact, not specifically alleged in the pleadings, should be heard and passed upon by the court, the court doth find that four specific questions are properly raised and the court doth find as follows:

1. Does the Complainant have a legal right to question the regulations, charges and practices of the Respondent? The court doth overrule the Respondent's Motion to Dismiss on the basis of lack of privity and doth rule that included in the Complainant's sales price of a burial vault is the cost of installing and sealing the vaults and therefore the Complainants have a financial interest in the rates and regulations of the Respondents and therefore standing to bring this litigation.

2. Can only the Complainant (licensed funeral directors) sell burial vaults? The court doth find that the statutes cited do not support the Complainant's allegations and the court doth rule that the sale of burial vaults is not restricted to funeral directors.

3. Is the opening and closing of the grave (digging the grave and covering it with dirt) solely the Complainant's (licensed funeral directors) function? The court doth find that the statute relied upon by the Complainant does not support this contention that only funeral directors can open and close graves.

4. Can the Respondent legally require that the burial vaults be left at the Cemetery and be placed in the ground and sealed by only the Respondent's (cemetery) personell and the burial vault purchaser be charged therefore a $15.00 fee? The court doth find that when a funeral director sells a burial vault the overall charge for the vault includes its installation and sealing; therefore, the court doth find that the Respondent's fee of $15.00 imposed for installing and sealing burial vaults is unreasonable and unenforceable, except as to vaults sold by Respondent.

The Respondent having indicated its intention to seek a writ of error, the court doth set its bond at $500.00.

ENTER: 4/22/77

JUDGE

SEEN AND OBJECTED TO IN PART:

James P. McGeein

Harry J. Hicks

A Copy Teste John W. Tenbess, Clerk
By _____ D.C.

SEEN AND OBJECTED TO IN PART:

Richard G. Brydges

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF VIRGINIA BEACH

TIDEWATER FUNERAL DEALERS ASSOCIATION, INCORPORATED, Complainant,	)
vs.	) IN CHANCERY NO. C-75-1222
CEMETERY CONSULTANTS, INC. T/A ROSEWOOD MEMORIAL PARK, Respondent.	)

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

The Respondent, Cemetery Consultants, Inc. T/A Rosewood Memorial Park, does hereby give notice of appeal to the Supreme Court of Virginia, from a final decree entered in the above captioned matter on the 22nd day of April, 1977; and in support thereof does hereby set forth the following assignments of error:

1. The Court erred in overruling the Respondent's Motion to Dismiss, and in holding that the Complainant had standing to bring and maintain its cause of action.

2. The Court erred in holding that the Respondent's fee of $15.00 imposed for installing and sealing burial vaults was unreasonable and unenforceable, except as to vaults sold by the Respondent; based on the contention that when a funeral director sells a burial vault the overall charge for the vault includes its installation and sealing.

3. A transcript of the proceedings in the trial court will be subsequently submitted pursuant to Rule 5:6 of the Rules of the Supreme Court of Virginia.

CEMETERY CONSULTANTS, INC.

By _____
OF COUNSEL

James P. McGeein
4316-C Virginia Beach Boulevard
Virginia Beach, Virginia 23452

I hereby certify that a true copy of the foregoing pleading was mailed, postage prepaid to Richard G. Brydges, Esquire, Brydges and Hudgins, Attorneys at Law, 1369 Laskin Road, Virginia Beach, Virginia 23451, Counsel of record for the Complainant herein, this the 19th day of May, 1977.

James P. McGeein

THE COURT: Either way. I don't care. Well, maybe just an ordinary opening statement.

MR. BRYDGES: That may cover it, Your Honor.

THE COURT: Okay.

(Mr. Brydges made an opening statement on behalf of the complainant.)

(Mr. McGeein made an opening statement on behalf of the respondent.)

MR. BRYDGES: The complainant will call Louis Jones, Your Honor.

-----oOo-----

LOUIS RAY JONES, called as a witness on behalf of the complainant, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BRYDGES:

Q Mr. Jones, will you give us your full name for the record, please, sir?

A Louis Ray Jones.

1 Q And your occupation, Mr. Jones?
2 A I am a licensed funeral director and
3 embalmer and the president of Hollomon-Brown Funeral Home,
4 Incorporated.
5 Q How long have you been licensed as a funeral
6 director?
7 A Since 1960.
8 Q Can you tell us briefly, Mr. Jones, what the
9 educational and training requirement is for someone in your
10 field?
11 A Yes. The first requirement is that we be
12 a high school graduate or equivalent, that we have -- that we
13 register with the State Board of Embalmers and Funeral
14 Directors, and in doing so we have to have three letters of
15 reference to our moral character. We have to have a
16 certificate of high school equivalency. We have to serve a
17 two-year trainee program or apprenticeship on the approval of
18 the State Board of Embalmers and Funeral Directors in which
19 we enter quarterly reports every six months under the direction
20 of a licensed embalmer and funeral director. We have to have
21 embalmed personally a minimum of twenty-five bodies under the
22 supervision of a licensed embalmer. We have to have directed
23 personally a minimum of twenty-five funerals under the
24 direction of a licensed funeral director. We have to attend
25 a year under the new law now. We have to attend a year of

1 embalming school, college of mortuary science; and we have
2 to stand a state board examination under the State Board of
3 Embalmers and Funeral Directors to certify our qualifications
4 and abilities as a licensed funeral director. The present
5 license reads funeral service licensee for both licenses.
6 Q Included in your requirement and
7 apprenticeship program do you have any particular instruction
8 in vaults?
9 A We have a -- a part of an educational --
10 some hours of education on the different types of vaults.
11 Yes.
12 Q Are you as a funeral director familiar with
13 the type of vaults that are used throughout the country and
14 the placement of the casket in that particular receptacle?
15 A I am familiar with the type that we use in
16 this area. Yes.
17 Q What type do you use in this area? What
18 has the area got to do with it as a matter of fact?
19 A Well, in some area of the country, for
20 instance, steel -- all metal vaults have some type of use for
21 the most part. In other areas concrete vaults are used.
22 In this area concrete vaults are used primarily.
23 A And what is the reason for that?
24 Q Water table mostly and also the desires of
25 families as to how they feel about what type of vault they

1 want to use.

2 Q Do you have any regulations governing your
3 organization or your special field, Mr. Jones, involving the
4 solicitation of business? Are you able to do that?

5 A We are not able to solicit business through
6 any other means other than advertising.

7 Q You could not, for example, go to a family
8 and suggest preneed to them?

9 A No, sir, we could not do that.

10 Q How about if a family came to you?

11 A Then we could talk to them about preneed
12 funeral arrangements. Yes.

13 Q To your knowledge are there any other
14 restrictions in solicitation upon the cemeteries for the
15 sale of lots? And if the Court doesn't rule with us --
16 crypts or vaults?

17 A Well, as far as cemetery lots, I know of no
18 restrictions. As far as funeral service, I would assume
19 that they come under the Code the same as a licensed funeral
20 director would as far as soliciting funeral service or any
21 of the supplies.

***

CERTIFIED SHORTHAND REPORTERS
COURT REPORTERS
NORFOLK, VIRGINIA

***

12 BY MR. BRYDGES:

13 Q Can you tell us something, Mr. Jones, about
14 your relationship with, for example, a client who comes to
15 see you who has had a death in his family? What are your
16 duties and obligations to him?

17 A Under the Code of the State of Virginia we
18 have a responsibility to carry out the instructions of the
19 next of kin of the deceased to the fullest.

20 Q How do you take that body into custody once
21 your services have been engaged?

22 A Well, we take it into custody on the basis
23 of the trust in which we actually make the removal of the
24 body from wherever it is at the time the family instructs
25 us to do so, and we are responsible for the body from that

1 point on.

2 Q All right. Now, at what point in time do

3 you discuss the arrangements with the family?

4 A As soon as we can get in touch with them.

5 Q All right. What are the arrangements that

6 they either request or normally would request or that you

7 would recommend for the disposition of this body?

8 A Well, our first step would be to ascertain

9 what the desires of the family are. In other words, what

10 type of burial they want or cremation perhaps. For instance,

11 if a family should decide that they want ground burial, then

12 we would go through the procedure of describing to them what

13 the necessary steps are for ground burial including and/or

14 whether they need a vault.

15 Q Now, the suggestion about vaults -- if that

16 comes up, what do you normally recommend to the client?

17 A Well, we have a -- as many funeral homes do,

18 we have an assortment of vaults that we have available for

19 the families to select from, and we don't really suggest to

20 them what vault they use. We present to them what is

21 available and allow them to make the decision.

22 Q Do you make any -- do they ask you any

23 questions normally about the type of vaults as you have shown

24 them?

25 A Yes, they do.

1 Q And when they do that, do you make any
2 recommendations or give them any instructions?
3 A Yes. There are some vaults that we feel
4 are better from the standpoint of durability and if the
5 family is interested in some degree of protection and that
6 aspect as far as protection is concerned.
7 Q That was my next question. What is the
8 purpose of the vault? The vault as opposed to the casket
9 itself?
10 A The purpose of the vault is to maintain the
11 stability of the grave itself. In other words, to keep it
12 from sinking in.
13 Q As Mr. McGeein --
14 A As Mr. McGeein referred to earlier.
15 Secondly, in the minds of many of the public and in my own
16 mind, the purpose of the vault is to protect the casket and
17 the body that is within the casket.
18 Q Are there any of the facilities in connection
19 with the vaults? First of all let me ask you this. Do you
20 have brochures and pictures of these items to show the public?
21 A We have miniatures of the vaults themselves
22 that we show the public.
23 Q All right. Included in your fee arrangements
24 with them should they select a vault are the vault and its
25 sealing included?

1 A Yes.
2 Q How do you go about including that? Give
3 me the name of a vault that you might recommend.
4 A Well, basically we carry the Wilbert vault
5 or the Eagle vault.
6 Q Is there anything unique about those two
7 vaults?
8 A One of them is an asphalt-sealed vault.
9 The other is a thermoplastic seal vault. Both of them are
10 concrete type vaults. One of them has a plastic lining on
11 the inside of it, and some of them in addition to the plastic
12 lining have -- have metal linings also.
13 Q Are you able to furnish to the family any
14 manufacturers' expertise in the closing of these at the grave?
15 A Yes. As a matter of fact, the Wilbert
16 vault -- vaults that we use are sealed by the manufacturer
17 themselves and the warranty that the vault company supplies
18 for the vault is not in force unless the manufacturer seals
19 the vault.
20 Q Are you familiar with the -- the vaults that
21 are required by the defendant Cemetery Consultants in their
22 cemetery? In Rosewood?
23 A Would you state the question --
24 Q Are you familiar with the type of vault that
25 they require at Rosewood? The defendant requires at

1 Rosewood Memorial Park?

2 A Well, to my knowledge they do not require

3 a vault at the cemetery, but they do require some type of a

4 concrete container.

5 THE COURT: Let me ask you this, Mr. Jones,

6 to see if I understood you. I believe that you

7 said that the Wilbert vaults are sealed by the

8 manufacturer themselves -- himself -- whatever?

9 THE WITNESS: Yes, sir.

10 THE COURT: And that the warranty is not

11 in effect unless they do so. Are you saying that

12 every time that a client of yours uses a Wilbert

13 vault that the representative of the manufacturer

14 is right there to seal that vault?

15 THE WITNESS: Yes, sir.

16

17 BY MR. BRYDGES:

18 Q When you engage in the carrying out of a

19 funeral contract where does it begin and where does it end

20 for the benefit of the Court, Mr. Jones?

21 A (No response)

22 Q Naturally it begins with the picking up of

23 the body?

24 A As far as we are concerned, it begins from

25 the initial time that we speak with the family, the picking

1 up of the body, through the burial and the closing of the
2 grave.
3 Q What do you mean by burial as indicated --
4 I'm not asking you to interpret the Code, but what do you
5 mean by burial?
6 A By burial I mean the placement of the body
7 in the vault, the lowering of the vault into the grave and
8 the actual putting of the dirt on the grave over the vault.
9 Q All right. There has been some question
10 about the ability of your facility to open and close graves.
11 Do you do that as a part of your service?
12 A We as a normal rule hire the cemetery as an
13 agent to open and close the grave for us. However, if there
14 is any question as to our ability to open and close graves,
15 I personally open and close graves myself with a shovel.
16 Q Calling your attention to a private cemetery--
17 not private cemeteries necessarily but Eastern Shore and
18 Nimmo's Church. Who takes care of the opening and closing
19 of graves there?
20 A Normally we ask our vault man to take care
21 of that.

***

***

8

9 BY MR. BRYDGES:

10 Q At that time is the burial complete when

11 the dirt is back on the grave and covering the vault?

12 A The burial is complete with the exception

13 of possibly placing the flowers on the grave. Yes.

14 Q What do your men -- your staff do in

15 connection with the supervision of the closing -- opening

16 and closing of this grave at a funeral? Say in Rosewood

17 Memorial Park where their people dig it I assume? What do

18 you do with regard to seeing through the burial of the dead?

19 A Our men remain at the grave.

20 Q Are they allowed at that particular park to

21 participate in the closing of it?

22 A No, not from the physical standpoint of

23 closing.

24 Q I hand you a letter dated August 6, 1976,

25 Mr. Jones, addressed to your attention from Rosewood Memorial

1 Park and ask you if you received that letter?

2 A Yes, I did.

3 Q Can you read that letter to the Court?

***

14 ***

15 BY MR. BRYDGES:

16 Q You testified that is a letter that you

17 received?

18 A The letter is dated August the 6th, 1975,

19 addressed Hollomon-Brown Funeral Home, Mr. Louis Jones,

20 8464 Tidewater Drive, Norfolk, Virginia.

21 "Dear Mr. Jones: We have just gone through

22 or are still in the biggest inflationary period I have known

23 since I have been in business. I am sure I'm not telling

24 you anything new; we have seen increases in your products

25 and services. We sometimes wonder where it's all going to

1 end. You know as well as I that the company that cannot
2 render a service and be paid for it and show a little profit
3 after a year's operation will not long be in business.
4 "One of my biggest jobs has been monitoring
5 price increases to us. Our bronze suppliers have changed
6 their prices so fast that there is only one with a printed
7 price list; the rest operate on a percentage increase letter.
8 Fertilizer, lime, labor, tractors and other equipment have
9 all gone up.
10 "We have recently made a substantial
11 investment in lowering devices and we are now in a position
12 to render the service of vault installation. I have
13 recently contacted the vault dealers and informed them that
14 on August 15th the servicing of all vaults installed at
15 Rosewood will be done by Rosewood men and the use of Rosewood
16 equipment. This is being done by adopting a vault
17 installation charge of $15.00 which is a separate entity
18 and is at no time to be considered a part of the interment
19 charge."
20 Q What is the difference -- if I can interrupt
21 you there -- in interment and the vault charge?
22 A Well, the interment charge is the charge
23 for the actual opening and closing of the grave.
24 Q Who customarily pays that?
25 A We pay the cemetery for doing that.

1 Q Is that part of your total fee to the client?
2 A Yes, it is.
3 Q All right. Go ahead. And the other then --
4 the vault -- the interment was one term. What was the other?
5 The vault fee?
6 A The vault installation charge is the
7 terminology used.
8 Q All right. Go ahead.
9 A "Efficiency of our operation is most
10 important for cost control and was the major reason for taking
11 this route.
12 "In the future if you elect to collect the
13 installation charge and the interment service charge, we will
14 bill you separately for these charges; one bill for the
15 installation and one bill for the interment service. As I
16 have mentioned on several occasions, we appreciate your
17 assuming this position of collecting these charges from the
18 families we both serve; however, I would have been happy to
19 do all the collection of these charges ourselves and it would
20 not require paper work and possibly tie up some of your funds.
21 If, however, you still prefer to make the collections yourself
22 we are very happy to go along with that procedure. I hope
23 that any time you feel you don't want to gamble on the family
24 by making the charges together you have only to call us in
25 ample time that we can make the necessary collections prior

1 to the interment. We are equipped and have the facilities
2 and personnel to adequately handle the collection of all our
3 charges.
4 "Enclosed find interment service charge
5 price list which I feel is self-explanatory. If you need
6 more copies for various men in your office, please let
7 Dennis Appell know and he will forward as many copies as you
8 desire. If you would like to discuss our new service,
9 Mr. Appell, Mr. Howard or I am as close as the telephone to
10 you. If you prefer a person-to-person meeting, drop in the
11 office at any time. I want to recommend -- I want to
12 commend you for the fine service and spirit of cooperation
13 we have all had this past year.
14 "I remain, sincerely, Charles C. Kirkpatrick,
15 President."
16 Q And that came from Rosewood Memorial Park?
17 A That came from Rosewood Memorial Park. Yes.
18 Q Did all of your organization, the
19 complainants in this case, receive such a letter?
20 A Several of them did. I don't know that all
21 of them did.
22 MR. BRYDGES: I would like to introduce
23 that if Your Honor please.
24 MR. McGEEIN: No objection, Your Honor.
25 THE COURT: All right. The letter dated

1 August 6, 1975, which was just read by Mr. Jones
2 will be marked Complainant's Exhibit Number 1.
3 (Marked in evidence by the Court as
4 Complainant's Exhibit Number 1.)
5
6 BY MR. BRYDGES:
7 Q Wherein, Mr. Jones, if anywhere, did that
8 letter change the procedure heretofore in use at Rosewood
9 Memorial Park as it affected you?
10 A I'm sorry. I am not sure I understood.
11 Q Wherein did it change the association that
12 you had with this particular cemetery, the receipt of this
13 letter? What did it change?
14 A Well, it changed our relationship with the
15 cemetery as far as the opening and closing of the grave was
16 concerned and for one respect because in the past we had
17 concern because we were paying the cemetery and -- for opening
18 and closing the grave, and they did not open and close the
19 grave prior to our notifying them to do so. We had
20 considered them as our agents in opening and closing the
21 grave. However, the letter made it clear to us that they
22 did not consider themselves our agents and, therefore, we
23 made it a point to see that one of our men was there at all
24 times to supervise the closing of graves. That letter
25 eliminated their relationship with us as far as the confidence

1 that we had as far as them acting on our part.
2 Q How about with regard to the vault?
3 A The relationship with regard to the vault
4 was not changed in that the vault man always sealed the vault
5 for us before as our agent and, therefore, as far as we were
6 concerned there was no change in the relationship.
7 Q How about the charge?
8 A The charge to our way of thinking is an
9 unnecessary charge because the vault man is already being paid
10 to do that. It is his responsibility to do that as our
11 agent.
12 Q Upon whose shoulders does this extra $15.00
13 fall?
14 A In our -- in our thinking the extra $15.00
15 fee falls on our shoulders.
16 Q And what do you base that upon?
17 A Because we have a responsibility to carry
18 out the instructions of the next of kin of the deceased.
19 Entirely -- in the entirety. And in the event that a
20 family selects a vault for burial, then it is our responsibility
21 to see that the vault is sealed.
22 Q Would it also impose upon you a duty to go
23 back after you had set your fee for an additional fee of
24 $15.00?
25 A No.

1 Q How would the $15.00 eventually get into the
2 hands of Rosewood Memorial Park?
3 A Well, in our case we would feel that we would
4 have to pay the Rosewood Memorial Park for that service if it
5 was paid.
6 Q Having already billed the family?
7 A Having already contracted with the family
8 to perform that service. Yes.
9 Q How would you categorize a vault or a
10 receptacle for the casket? What type of equipment would
11 that be?
12 A I would call it funeral supply.

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16 THE COURT: All right, sir.

17

18 BY MR. BRYDGES:

19 Q In the carrying out of the ethical standards

20 prescribed therein is there any policing of those who do not

21 do it properly?

22 A Yes, sir.

23 Q And what is the result of that or what could

24 be the result?

25 A Well, the result could be losing your license

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1 with the state board.

2 MR. BRYDGES: All right. Answer

3 Mr. McGeein if you will, Mr. Jones.

4 THE WITNESS: Thank you.

5

6 CROSS-EXAMINATION

7

8 BY MR. McGEEIN:

9 Q Mr. Jones, unless I misunderstood you, you

10 said under the state Code we have a duty to carry out the

11 instructions of the next of kin and follow the wishes of the

12 family; is that correct?

13 A Yes, sir.

14 Q Where in the state Code does it say that?

15 A If you will let me have the Code I will be

16 glad --

17 Q 54-260.67. There by Page 16.

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BY MR. McGEEIN:

Q Now, sir, you first stated on examination that only a licensed funeral director can handle and dispose of the body of a dead person; is that correct?

A I didn't say that.

Q You said that no one else can do it other than a licensed funeral director?

A I said that we act as a contractor with the family and act in their behalf. Now, nobody else can do it as a contract with the family to do that.

Q Okay. Isn't it a fact that a family can bury its own dead?

A Yes, they can.

Q Isn't it a fact that a body does not have to be embalmed unless some type of disease is present?

A Yes, that's correct.

Q And isn't it a fact that there is no state Code requiring the burial of bodies?

A I know of no state Code that requires the burial of bodies.

Q Okay. Now, with reference to Rosewood Memorial Park, which is a trade name of the property owned by Cemetery Consultants, Inc., are you aware that the deceased or a member of his family has purchased the rights of sepulcher there at the time you are called upon the scene?

1 A Yes.
2 Q Who makes you aware of that?
3 A At the time we are called upon the scene?
4 Q Um-hum.
5 A The family.
6 Q Now, being aware of that, it is then your
7 obligation to contact Rosewood?
8 A Yes, sir. If we are instructed to do so.
9 Q In other words, you would be violating your
10 obligation if the family told you that they had made
11 arrangements for the sepulcher of the body or the burial of
12 the body at Rosewood -- you would be violating your ethical
13 code to contact Forest Lawn and make arrangements to bury
14 there; is that correct?
15 A If the family instructed us to bury the
16 body in Rosewood we would be violating it to instruct Forest
17 Lawn to open the grave. Yeah.

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BY MR. BRYDGES:

Q Mr. Jones, can you give us an -- an example of the way certain vaults are sealed?

24 A Yes. The Wilbert vaults which we been

25 referring to here are generally sealed above ground on what

is referred to as a lowering device. The vault is suspended in the grave -- the base of the vault is suspended in the grave and the lid of the vault is moved over the top of it on a rolling mechanism.

Q So that the base of the vault -- that is, the part that the casket would go into is extended above the ground to some extent?

A Yes, but -- yes, it is extended to some extent above the ground, and then the casket is lowered into it by another cable type mechanism in which -- and then the lid is placed onto -- onto the base of the vault, and there is grooves that run around the rim, under the rim of the lid of the vault; and the weight of the vault is -- the weight of the lid is placed on the grooves that go into a lip that -- it projects on the bottom of the vault, the base of the vault; and the lip goes up into the groove that exists around the rim of the vault; and the thermoplastic sealant is in the groove of the lid of the vault, and the pressure of the vault lid itself seals the vault when it's pushed down on the base.

Q Do the Wilbert people that you speak of supervise this?

A Yes, they do.

Q Is this what you tell the family despite what is in the document?

A Right.

1 Q Do they consistently do it? They or the
2 employees?
3 A Yes.
4 Q This is what you refer to as above the
5 ground sealing?
6 A Yes, that is correct.
7 Q Is there another type?
8 A Yes. There are vaults that are sealed in
9 the ground itself.
10 Q All right. How is that done, Mr. Jones?
11 A Normally the base of the vault is already
12 lying on the bottom or the earth in the bottom of the ground.
13 Q Is this true when the family gets there for
14 the service?
15 A Yes.
16 Q In other words, the family can see the vault
17 above the ground or they can see the vault down below the
18 casket?
19 A Yes.
20 Q In the one below the ground sealing?
21 A Yes.
22 Q Tell me about the underground sealing then
23 if you will.
24 A Well, the underground sealing -- the seal
25 method can be basically the same as the above-the-ground

1 seal method of the lid going down and the lip going up into
2 the outer rim of the vault or in -- there are some vaults
3 that are sealed down in the grave with a cement seal. In
4 other words, there is a -- the lid is placed with another
5 low -- with a type of lowering mechanism that is on some
6 type of a wheel so it can be moved, and it's lowered down onto
7 the top of the vault, and then a cement seal is -- is placed
8 in with some type of a masonry tool, and usually there is
9 some type of an asphalt or paper type of material that is
10 placed over the cement to keep the dirt from mixing with the
11 cement.
12 Q Is there any type of possibility of or have
13 you ever experienced or seen any damage done in the completion
14 of the arrangements either above or below ground?
15 A I have seen water entering the vaults.
16 Q As a result of that do you or your staff
17 stay there while the operation is being done whether you are
18 doing it or whether you have been told not to do it and the
19 cemetery does it?
20 A As a result of that we are -- our people
21 stay. Yes.
22 Q Whose responsibility would it be if something
23 happened to the sealing or to the vault per se when it was
24 being sealed or lowered?
25 A We feel the family would hold us responsible

1 for it. Yes.

2 Q Do members of the family stay after the

3 sermon is over or after the funeral rites are over and

4 observe any of this?

5 A On occasion they do, but not necessarily

6 on all occasions. I would say that even in most occasions

7 they do not.

8 Q Is it a -- is it a subject that comes up

9 with the family, postinterment after it's over, as to how

10 that particular procedure went?

11 A Sometimes it does. Sometimes it doesn't.

12 If a family has reason to believe that it was not done

13 properly, of course, they will bring the subject up.

14 Q In a situation where as in the defendantts

15 case here they insist upon the closing -- opening of the

16 grave and closing the grave and also now the sealing and

17 disposition of the vault, would there be any responsibility

18 from your client, your customer, your family next of kin to

19 them or would they come to you?

20 A They would come to us.

21 Q Would you say that is part of your whole

22 arrangement?

23 A That's a part of our whole arrangement, and

24 I am sure they do consider it part of our whole arrangements.

25 Q Under the arrangements now in Rosewood

1 Memorial Park or if this suit is decided in their behalf,
2 would you have anything to do with it at all?
3 A Under the arrangements as we see it, our
4 agents would not be able to conduct the actual sealing of the
5 vault. Is that what you mean?
6 Q Yes, sir. Or placement of the body inside
7 of it?
8 A Or placement of the body inside.

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1 BONNIE R. SMITH, called as a witness on behalf of
2 the complainant, having been first duly sworn, was examined
3 and testified as follows:
4
5 DIRECT EXAMINATION
6
7 BY MR. BRYDGES:
8 Q Mr. Smith, may we have your full name, please
9 sir?
10 A Bonnie R. Smith.
11 Q And your occupation?
12 A I am a funeral director.
13 Q And where is your place of business,
14 Mr. Smith?
15 A I am the owner of the Graham Funeral Home
16 at 1302 Jefferson Street, Chesapeake.
17 Q How long have you been a licensed funeral
18 director?
19 A Since 1959.
20 Q Have you been operating in the Chesapeake
21 area since that time?
22 A I have only been in the Chesapeake area for
23 about fifteen months. I been in the Norfolk area since that
24 time.
25 Q And where did you receive your training,

1 Mr. Smith?

2 A At the Echols College of Mortuary Science

3 in Philadelphia, Pennsylvania.

4 Q And that consisted of approximately what

5 duration of training?

6 A The schooling itself consisted of nine

7 consecutive months.

8 Q Did you have to take an examination in

9 Virginia to become licensed?

10 A Yes, I did.

11 Q I hand you a document marked as Plaintiff's

12 Exhibit -- Complainant's Exhibit Number 1 and ask you if in

13 your capacity as proprietor of the Graham Funeral Home if you

14 received such a document.

15 A Yes, I did.

16 Q And on the basis of that document did you

17 together with the other members of your association institute

18 this particular cause of action?

19 A Yes, I did.

20 Q Calling your attention, Mr. Smith, to the

21 imposition of the $15.00 fee set forth in that letter, what

22 does -- what does that do to your association, if anything,

23 with the family that you are servicing?

24 A In my opinion, Mr. Brydges, it puts me in the

25 position of having to deal with my family relative to being

1 charged double for the same service. At the time we have
2 arranged or they have arranged through my firm for the purchase
3 of a burial vault, the charge for that vault includes the
4 installation. Therefore, in this case they are going to be
5 charged a second time for the installation. The second thing
6 it does, it deprives me of affording my family -- again, in
7 my professional opinion -- the expertise of having that vault
8 installed. These folks, of course, at this particular
9 cemetery or any other cemetery are in no way qualified to
10 install the particular vault that I have furnished the family.
11 Q Do you have at your disposal or in your
12 employ people that do have the expertise to deposit these
13 bodies in these vaults and put them in the ground?
14 A At my disposal. Yes, I do.
15 Q Is the interment of that body into the ground --
16 into the vault and then ultimately into the ground part of
17 your burial service that you render?
18 A Absolutely. Yes.

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