

# Arkansas Insurance Department

Asa Hutchinson  
Governor



Allen Kerr  
Commissioner

November 4, 2016

**Certified Return Receipt 7009 1680 0002 2606 5842 and U.S. Mail**

Mr. Roy Dean Hearn  
Perry Funeral Home  
1402 W. 2<sup>nd</sup> Ave.  
Pine Bluff, AR 71601

**RE: In the Matter of Roy Dean Hearn and Perry Funeral Home**

Dear Mr. Hearn:

Please find the following Notice of Hearing:

**NOTICE OF PUBLIC HEARING**

You are advised that an administrative hearing will take place on **December 7, 2016, at 10:00 a.m.** in the First Floor Hearing Room of the Arkansas Insurance Department ("Department"), 1200 West Third Street, Little Rock, AR 72201-1904. The hearing will be held before Insurance Commissioner, Allen Kerr, or his designated Hearing Officer, concerning the following matters. The Hearing is your opportunity to defend yourself against the following allegations, and against the possible revocation of your funeral expense license.

**ALLEGATIONS**

1. Respondent Roy Dean Hearn owns Perry Funeral Home located in Pine Bluff, Arkansas.
2. Respondent Hearn currently resides in Pine Bluff.
3. Perry Funeral Home has not had a permit to sell prepaid funeral benefit contracts since 1998.
4. Respondent Hearn, on behalf of the funeral home, has been selling prepaid contracts, without the requisite permit.
5. An investigative conference was held in this matter on May 10, 2016.

6. Around the time the investigative conference was held, the Department was aware of one contract sold by Respondent, and upon requiring Respondent to refund the money and cancel the contract, the Department received confirmation of same.
7. During the investigative conference, Respondent denied that he was engaged in the prepaid contract business, and he denied having sold any other contracts besides the one contract that the Department had knowledge of.
8. During the investigative conference, Respondent admitted he used money received from one consumer in order to pay for another consumer's funeral services.
9. The Department conducted an examination at the funeral home on July 19, 2016 and Respondent advised that he had no prepaid contract files.
10. On August 29, 2016, the Department learned that Respondent had forty-two active policies written by a life insurance company.
11. On September 23, 2016, the Department conducted another examination at the funeral home. During that examination, the Respondent denied having written any prepaid contracts but eventually agreed to allow Department representatives to examine his files. Department representatives at that time seized eight files from Respondent that contained prepaid funeral benefits contracts and payment information.
12. Respondent collected \$21,505.00 in consumer funds, none of which were forwarded to a life insurance company in order to initiate a policy or annuity in which to fund a prepaid funeral benefits contract.
13. The funeral home's status with the Secretary of State has been listed as revoked at least since May 11, 2016.

### APPLICABLE LAW AND CHARGES

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 pursuant to Ark. Code Ann. §§ 23-40-101 *et seq.*, and 23-61-103.
3. The Arkansas Producer Licensing Model Act, codified at Ark. Code Ann. § 23-64-501 *et seq.*, governs Respondent’s funeral expense license.
4. More specifically, Ark. Code Ann. § 23-64-506(e)(1) requires that in order to obtain or renew a producer’s license, the producer “must be deemed by the commissioner to be competent, trustworthy, financially responsible, and of good personal and business reputation.” Further, Ark. Code Ann. § 23-64-506(e)(2) provides that “qualifications for licensure under this section *must continue* in order to remain licensed.” (emphasis added).
5. Ark. Code Ann. § 23-64-512(a) allows the Commissioner to “place on probation, suspend, revoke, or refuse to issue or renew an insurance producer’s license or may levy a civil penalty in accordance with § 23-64-216 or any combination of actions for any one (1) or more of the following causes:... (8)...demonstrating incompetence, untrustworthiness, lack of good personal or business reputation, or financial irresponsibility”.
6. Respondent’s conduct as detailed in allegations 4, and 7 through 13, are in violation of Ark. Code Ann. § 23-64-512(a)(8) because his actions exhibit dishonest and financially irresponsible behavior, to include misappropriation of a significant amount of consumer funds.

7. Respondent's conduct as detailed in the allegations 4, and 7 through 13, are in violation of Ark. Code Ann. § 23-64-506(c) and (e)(2) because his actions exhibit that he is no longer fit to hold a producer's license.

8. Respondent's conduct as detailed in allegation 4 violates Ark. Code Ann. § 23-40-109(c), which provides that, "it shall be unlawful to sell prepaid funeral benefits unless the seller holds a valid, current permit at the time the contract is made."

9. Respondent's conduct as detailed in allegation 12 violates Ark. Code Ann. § 23-40-109(b), which provides that, "An organization desiring to sell prepaid funeral benefits shall file...proof that the establishment is duly authorized and licensed to do such business in the State of Arkansas."

10. Respondent's conduct as detailed in allegation 4, exposes him to liability as provided in Ark. Code Ann. § 23-40-106(a)(1), "Any officer, director, agent or employee of any organization subject to the terms of this chapter who makes, or attempts to make, any contract in violation of this chapter...shall be punished by a fine of not less than one thousand (\$1,000) and not more than ten thousand (\$10,000), or by imprisonment in the county jail for not fewer than six (6) months and not more than twelve (12) months, or by both fine and imprisonment."

NOTICE:

You have the right to be represented by counsel of your own choosing at this proceeding. Additionally, the Commissioner will obtain a competent reporter to record the hearing. You may avail yourself of other privileges, including the Department's assistance to subpoena any needed witnesses or records.

Your written notification by mail, email or facsimile, that you have received this Notice of Hearing, must be received in this office within **ten (10) days of your receipt** of this notice. If your written notification is not received by the Department within ten (10) days, any and all expenses incurred by the Department in continuing the hearing or in notification of witnesses, including, but not limited to, phone calls, issuance of subpoenas and postage, will be charged to

the party or parties requesting such continuance. If you or your attorney determines that a continuance is necessary, please call me at (501) 371-2820.

The Department will make all Hearing Exhibits available to you upon timely request, as required by and in conformity with the Arkansas Administrative Procedures Act., Ark. Code Ann. § 25-15-208.

In lieu of a hearing, you may dispose of this matter by signing a consent order. Please call me for details at 501-371-2820.

Sincerely,



Amanda Gibson  
Associate Counsel/Legal Division  
(501) 371-2820

cc: Robert Akers, Manager, Prepaid Funeral Benefits Division  
Marjorie Farmer, Investigator, Legal Division  
LoRraine Rowland (via e-mail)  
Ryan James (via e-mail)  
Correspondence File