

Arkansas Insurance Department

Mike Beebe
Governor



Jay Bradford
Commissioner

July 22, 2013

Certified Return Receipt 7009 1680 0002 2604 6254 and U.S. Mail

Mr. Jonathan Stuart
Jones-Stuart Mortuary, Inc.
115 East 9th Street
P.O. Box 801
Texarkana, AR 75504

Dear Mr. Stuart:

Please find the following Notice of Hearing on the Pre-Paid Funeral Benefits Permit held by Jones Stuart Mortuary, based upon information we have received.

NOTICE OF HEARING

Please be advised that an administrative hearing will take place on **August 14, 2013, at 1:00 p.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, Jay Bradford, or his designated Hearing Officer, concerning the following matters. The Hearing is your opportunity to defend yourself against the following allegations, and the revocation of your producer's licenses.

ALLEGATIONS

1. The Commissioner has jurisdiction over the parties and subject matter pursuant to Ark. Code Ann. § 23-61-103 and the authority to place on probation, suspend, or revoke an insurance producer's license under Ark. Code Ann. § 23-64-216(e) and § 23-64-512(a).
2. Jones Stuart Mortuary, Inc., (the Company) has a current Pre-Paid Funeral Benefits Permit in the State of Arkansas. Respondent holds an active Resident Limited Lines Arkansas Producer's license for Funeral Expense granted by the Department, License No. 368235.
3. The Respondent's mailing address of record, is 115 E. 9th Street, Texarkana, AR 71854.
4. Respondent took ownership of the Company's prepaid contracts and trust fund account as of October 7, 2009.

5. The December 31, 2010 annual report, filed by Respondent, showed that the Company's Prepaid Funeral Benefits Trust Account was in balance.

6. The Company's Prepaid Funeral Benefits Trust Account statement dated June 30, 2011, showed a periodic distribution of net income of -\$2,499.62 made to Respondent on June 2, 2011. The statement also showed that bank fees were deducted from the Trust Account.

7. Pursuant to Ark. Code Ann. § 23-40-120, the Commissioner, or his representatives, are required to conduct an examination of the records of each organization which has outstanding contracts for prepaid funeral benefits.

8. Said examination was commenced by the Department on April 17, 2013, and covered the Company's business through the period ending March 31, 2013.

9. The verified Report of Examination was filed with the Department on April 22, 2013; it was then forwarded to the Company via certified mail on April 22, 2013.

10. The Report of Examination contains the following comments and discrepancies concerning the Company's operations:

- a. Ark. Code Ann. § 23-40-110(a) and (c) – The Company was delinquent in filing applications for renewal of its permit to sell prepaid funeral benefits contracts for the years 2012/2013, 2011/2012 and 2010/2011. The Company was assessed administrative penalties for two of the delinquent filings.
- b. Ark. Code Ann. § 23-40-119(d)(1) – The Company delinquently filed its quarter per contract fee reports for the 1st and 4th quarters of 2012 and the 1st quarter of 2011.
- c. Ark. Code Ann. § 23-40-119(a) – The Company delinquently filed its 2012 annual report and the Company filed an incomplete annual report for 2011.
- e. Ark. Code Ann. § 23-40-114 (a) – According to the prepaid funeral benefits contracts records and trust account statements presented for examination, the Company's prepaid trust fund account was found to be deficient in the amount of <\$12,072.76> as of March 31, 2013.

11. On May 14, 2013, Rick Toland, Manager of the Prepaid Funeral Benefits Division, sent a letter to the Company advising that the Department had not received the certified mail receipt nor a response to the Report of Examination by the Company. The letter further detailed that the original Report of Examination letter gave the Company thirty (30) days to provide a rebuttal to the exam finding of the \$12,072.76 deficiency in the Company's prepaid trust account or after 30 days, the Company was required to provide written verification of a deposit for the deficiency.

12. Respondent responded on May 20, 2013, and made a rebuttal to the Examiner's comment on the Company's prepaid trust fund deficiency. However, Respondent's statements did nothing to refute the finding of a deficiency.

13. On May 28, 2013, Mr. Toland, sent a second letter to the Company again advising that unless Respondent could provide specific problem areas to the Examiner, verification that the trust fund had been made "whole and intact" would be required within thirty (30) days of the letter.

14. Currently, more than thirty (30) days have lapsed and Respondent has failed to comply with the Department's request to return \$12,072.76 to the prepaid trust account with Regions Bank.

15. The Department avers that the actions of Respondent and the Company, as described in the preceding paragraphs, are in violation of the Arkansas Insurance Code for: Failing to comply with the Department's request to return \$12,072,76 to the prepaid trust account, in violation of Ark. Code Ann. § 23-40-114(a); Failing to submit timely renewal applications for multiple years, in violation of Ark. Code Ann. § 23-40-110(c); Failing to comply with the trust fund disbursement limitation by allowing bank fees to be deducted from the Trust Fund Account, in violation of Ark. Code Ann. § 23-40-116; Failing to notify the Department of an agent responsible for deposit of contract proceeds, in violation of Ark. Code Ann. § 23-40-118(a); Failing to timely remit quarterly per-contract fee reports, in violation of Ark. Code Ann. § 23-40-119(d)(1); and Failing to properly file annual reports for the Company, in violation of Ark. Code Ann. § 23-40-119(a).

16. Pursuant to Ark Code Ann. § 23-40-111(b)(2), "after notice to the license and after hearing, 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: the licensee has failed to comply with any material provision of the chapter or any valid rule or order that the Commissioner has prescribed; an officer, director, or owner of the licensee has improperly withheld, misappropriated, or converted any moneys received in the course of prepaid funeral contracts business to the licensee's own use; or the licensee has refused to be examined or produce any of his or her accounts, records, and files for examination or has failed to cooperate with the Commissioner in an investigation when requested by the Commissioner or his or her representative."

17. Pursuant to Ark. Code Ann. § 23-40-111(b)(3)(A), "If the Commissioner finds that one (1) or more grounds exist for the suspension or revocation of any license, the Commissioner may impose upon the licensee an administrative penalty in the amount of up to one thousand dollars (\$1,000.00) per violation."

18. Pursuant to Ark. Code Ann. § 23-40-111(b)(3)(B), "If the Commissioner finds willful misconduct or willful violation on the part of the licensee, the Commissioner may impose upon the licensee an administrative penalty of up to five thousand dollars(\$5,000.00) per violation."

19. At the upcoming hearing, the Department seeks administrative penalties and sanctions, up to and including revocation of the Arkansas Pre-Paid Funeral Benefits Permit previously granted to the Company, Jones Stuart Mortuary, Inc., based on the above allegations.

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 help to subpoena any needed witnesses or records.

Your written notification by mail 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.

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

Sincerely,

A handwritten signature in blue ink, appearing to read 'Nina Samuel Carter', with a long horizontal flourish extending to the right.

Nina Samuel Carter
Associate Counsel/Legal Division
(501) 371-2820

cc: Rick Toland, Manager, Prepaid Funeral Benefits
Howard Richard II, Senior Auditor, Prepaid Funeral Benefits
Alice Jones (via e-mail)
Sandy Currington (via e-mail)
LoRraine Rowland (via e-mail)
Correspondence File