

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

ARKANSAS INSURANCE DEPARTMENT,)
Petitioner)
)
vs.)
)
LYLES FUNERAL HOME, INC.,)
Respondent)
)

A.I.D. NO. 2013 - 052

ORDER

On this day, the matter of Lyles Funeral Home, Inc. (“Respondent”), came before Jay Bradford, Arkansas Insurance Commissioner (“Commissioner”). A hearing was held at 1:00 p.m. on April 2, 2013 in the Hearing Room of the Arkansas Insurance Department (“Department”) pursuant to a Notice of Hearing dated March 14, 2013. The hearing was held before Chief Deputy Commissioner Lenita Blasingame (“Hearing Officer”), pursuant to her appointment by the Commissioner in accordance with Arkansas Code Annotated § 23-61-103. The Department was represented by Amanda J. Andrews, Associate Counsel.

FINDINGS OF FACT

1. Respondent is a funeral home located in Texarkana, Arkansas, and is licensed to sell prepaid funeral benefit contracts in this state under a permit issued to it by the Department. Roy Lyles is Respondent’s owner and authorized representative.

2. A statutory examination of Respondent’s prepaid funeral benefits contracts and trust account was conducted on June 14, 2012, and a Report of Examination was sent to Respondent on June 26, 2012. The Report stated that Respondent’s prepaid funeral trust account was deficient in the amount of \$35,453.73, and Respondent was instructed to provide the

Department with a written submission or rebuttal to the Report within thirty (30) days of the date of the Report.

3. Respondent's Rebuttal and Plan of Action were submitted to the Department on August 17, 2012, approximately fifteen (15) days late, and did not adequately address how Respondent intended to reduce or cure the deficiency in the trust account.

4. On December 7, 2012, Roy Lyles met with staff of the Department to discuss the deficiency in the prepaid funeral trust account and Respondent's failure to remedy the deficiency. At the meeting, Mr. Lyles promised to deposit into the trust account an amount of money equal to the deficiency within forty-five (45) days of the meeting, with the agreement that after the deposit, the Department will reconcile the account and return to Respondent any overage in the account. Respondent failed to make the deposit as promised and did not provide the Department with the funeral home's financial statements, as requested at the meeting.

5. A follow-up examination of Respondent's prepaid funeral benefits contracts and trust account was conducted on March 6, 2013, and the examination revealed that the trust account was deficient in the amount of \$33,783.79.

6. The Department held an administrative hearing on April 2, 2013, and Respondent appeared through its representative, Roy Lyles.

7. Rick Toland, Manager of the Department's Prepaid Funeral Benefits Section, testified to the examinations of Respondent's prepaid funeral benefits contracts and trust account and that the shortage in the account had not been cured by the date of the hearing.

8. Mr. Lyles presented evidence of modifications he made to the funeral home's building to provide more security for prepaid funeral benefits contracts transactions, and he testified that his accountant found errors in his records that would reduce the deficiency.

Specifically, in a number of instances, the amount paid by a customer for a prepaid funeral benefits contract was less than the amount listed in Respondent's records.

9. Respondent was ordered to produce documentation to support the claim that Respondent's records contained errors of the amounts received for prepaid funeral benefits contracts, and it did so timely.

10. The Department reviewed the supplemental documentation provided by Respondent and determined that Respondent's prepaid funeral trust account was deficient in the amount of \$23,651.31. Respondent was ordered by letter dated April 12, 2013 to cure the deficiency in the trust account by May 2, 2013. Following discussions with Respondent and proof of an additional deposit, the final calculation for the trust account is a deficiency in the amount of \$16,845.19.

CONCLUSIONS OF LAW

11. The Commissioner has jurisdiction over the parties and the subject matter pursuant to Arkansas Code Annotated §§ 23-61-103 and 23-40-108.

12. The Commissioner may suspend or revoke a prepaid funeral benefits permit or impose an administrative penalty against a licensee for any of the following: 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; 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. Ark. Code Ann. § 23-40-111(b)(2).

13. Further, all contract proceeds collected under contracts for prepaid funeral benefits shall be deposited with a trustee within twenty (20) business days after receipt of

proceeds, to be held, invested, and administered in a trust fund for the benefit and protection of the contract purchasers pursuant to this chapter. Ark. Code Ann. § 23-40-114(a).

14. Respondent's prepaid funeral trust account is deficient in the amount of \$16,845.19, and Respondent has not cured the deficiency since it was notified of the deficiency on June 26, 2012.

RECOMMENDATIONS OF THE HEARING OFFICER

WHEREFORE, based upon the foregoing Findings of Fact, Conclusions of Law, and other matters before him, the Hearing Officer recommends:

15. I find that Respondent is in violation of Arkansas law, specifically, Arkansas Code Annotated §§ 23-40-111(b)(2) and 23-40-114, for failing to promptly cure the deficiency in the prepaid funeral trust account after being notified of the deficiency on July 26, 2012, and after promising to cure the deficiency on December 7, 2012. On April 12, 2013, Respondent was ordered to cure the deficiency by depositing \$16,845.19 into the prepaid trust account by May 2, 2013, and provide proof of the deposit to the Department.

In the event Respondent cures the deficiency in the prepaid funeral trust account by May 2, 2013, I recommend that Respondent be placed on probation for twelve (12) months, and during the probation period, implement an auditable accounting system that will properly track prepaid funeral benefits contracts and payments.

In the event Respondent does not cure the deficiency in the prepaid funeral trust account by May 2, 2013, I recommend revocation of its prepaid funeral benefits permit.


LENITA BLASINGAME
CHIEF DEPUTY COMMISSIONER

CERTIFICATION

I, Jay Bradford, Insurance Commissioner for the State of Arkansas, do hereby certify that the above Findings of Fact, Conclusions of Law, and Recommendations of the Hearing Officer were made by and under my authority and supervision by Lenita Blasingame, Chief Deputy Commissioner and Hearing Officer in this proceeding. I hereby adopt the Hearing Officer's Findings of Fact, Conclusions of Law, and Recommendations in full and enter this Order.

THEREFORE, based on Respondent's violation of Arkansas Code Annotated §§ 23-40-111(b)(2) and 23-40-114 for failing to promptly cure the deficiency in the prepaid funeral trust account after being notified of the deficiency on July 26, 2012, and after promising to cure the deficiency on December 7, 2012, it is hereby ORDERED that Respondent cure the deficiency in the prepaid funeral trust account by May 2, 2013. Respondent is placed on probation for a period of twelve (12) months, and during the probation period, Respondent is ordered to implement an auditable accounting system that will properly track prepaid funeral benefits contracts and payments. If Respondent fails to cure the deficiency in the prepaid funeral trust account by May 2, 2013, Respondent's prepaid funeral benefits permit will be revoked.

IT IS SO ORDERED THIS 30th DAY OF April, 2013.



JAY BRADFORD
INSURANCE COMMISSIONER
STATE OF ARKANSAS