

LATE



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LAWRENCE M. REIFURTH
DIRECTOR
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DEPUTY DIRECTOR

**PRESENTATION OF THE
PROFESSIONAL AND VOCATIONAL LICENSING DIVISION**

**TO THE SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION**

**TWENTY-FIFTH LEGISLATURE
Regular Session of 2010**

**Thursday, February 4, 2010
9:00 a.m.**

**TESTIMONY ON SENATE BILL NO. 2516, RELATING TO THE FUNERAL
INDUSTRY.**

**TO THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND MEMBERS OF THE COMMITTEE:**

My name is Candace Ito, Executive Officer of the Cemetery and Funeral Trusts Program in the Department of Commerce and Consumer Affairs ("Department"). We appreciate the opportunity to present testimony on Senate Bill No. 2516, Relating to the Funeral Industry.

The purpose of Senate Bill No. 2516 is to require the audited financial statement and actuarial report to be submitted within ninety days after the close of the authority's books, require the audit of the trust on an accrual basis, create a standardized form for

the audited financial statements and actuarial reports, assess a late fee for the late filing of audited financial statements and actuarial reports, and to require the Department of Commerce and Consumer Affairs ("DCCA") to report to the legislature on the status of the audited financial statements and actuarial reports.

The Department's positions on the various amendments proposed in Senate Bill No. 2516 are as follows:

SECTION 2 – Amendment to HRS §441-24.5 page 2, lines 6 and line 8: "pre-need sales [er] and holds money in trust". We object to this amendment because this has the effect of excluding licensees that no longer actively sell pre-need plans but are holding money in trust to honor contracts.

SECTION 2 – Submit actuarial report within ninety days after close of authority's books: We object to this amendment because of the practical consequences that the actuarial report is based upon information provided from the audited financial statements which would be due at the same time.

SECTION 2 – Accounting methodology for the audited financial statement: We reiterate that the benefit of using the accrual method for the audit of the trust would only be fully realized if the licensee is also audited using the accrual method. As the law does not require an audit of the licensee operation but only of the trusts, there would be no valid information to be gained with only an audit of the trust on an accrual basis. Also, the Department's CPA consultant concurs that cash basis should continue to be used for the audit of the trust.

SECTION 2 – Standardized audited financial statements created by DCCA: As we have previously testified, we have consulted with accountants familiar with the industry on this subject and have not been able to develop such a form to date due to the numerous variables involved. Incorporating such a provision in the law will create expectations that we are unlikely to be able to meet.

SECTION 2 – Sanctions for late filing of an audited financial statement or actuarial report: The DCCA does not object to assessing a late fee for the late filing of the audited financial statement and actuarial report. However, the process in subsection (c) is confusing and we recommend further clarification. We also request an amendment be made to lines 14-15, page 4 as follows: “The ~~director~~ trustee shall authorize withdrawals from the trust in order to fulfill these contracts”. The trustee is the fiduciary of the trust, not DCCA or its Director.

Section 4 – Annual report to the legislature: We need to bring to the Committee’s attention that items 5 and 6 is not information that is provided to us in any form. Therefore we believe it should be mandated somewhere in the bill that the information be provided to us. We also ask that item 7 is mandated to be provided to us so that we can get the complete set of information from the licensee which will facilitate the compilation of the report.

Thank you for the opportunity to testify on Senate Bill No. 2516.

LATE

Larry Geller
Honolulu, HI 96817

SB2516
CPN
Thursday, February 4, 2010
9:00 a.m.
Room 229

COMMITTEE ON COMMERCE AND
CONSUMER PROTECTION

Senator Rosalyn H. Baker, Chair
Senator David Y. Ige, Vice Chair

February 2, 2010

Re: SB2285—Relating to Pre-Need Funeral Plans
SB2516—Relating to the Funeral Industry

In Support

Dear Senator Baker, Senator Ige, and members of the Committee:

There's nothing like having a loved one pass away and being told by the funeral home that they have no record of the pre-paid contract that was supposed to cover all funeral costs. This happens in Hawaii at present, according to family reports.

Still others, in the midst of their grief, have been asked to pay additional sums because, they are told, their pre-paid plan no longer covers the cost at current rates.

Additionally, the plans skim 30% off the top for doing nothing at all and retain the interest accumulated over the years. The plans are non-transportable in the event someone leaves Hawaii or wishes to obtain a refund to purchase a plan in another state.

Consumers can be protected and assured that their last wishes will be carried out. These two bills go a long way to providing that protection.

New York State has what is considered to be a good law. When my mother passed away several years ago in NY, the funeral home delivered exactly what was in the contract. Over the years, of course the cost went up, but there was no attempt to escape from any aspect of the contract nor to extract additional payments from the family. The ceremony and indeed all of the arrangements were top notch. I'm sure it was just what my mother hoped for. It definitely was what she paid for.

Hawaii residents deserve no less protection than the New York law provides. Similar laws in other states demonstrate that there should be no hardship to the industry for simply being held to what they have contracted to do. The two bills together provide procedures and safeguards that are long overdue.

I urge the committee to pass both of these bills.

Larry Geller

Attached: Sample complaints received in answer to a UIPA request

STATE OF HAWAII
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
REGULATED INDUSTRIES COMPLAINTS OFFICE

OAHU OFFICE

www.state.hi.us/dcca/rico

2008 APR -9 P 4:43

COMPLAINT FORM
Case No. *CEN 2007-1-F*

CONSUMER COMPLAINTS SECTION
For Official Use Only

The company/individual you complained against will be informed of this complaint in order to facilitate resolution of this matter. Your complaint may also be referred to mediation, if appropriate. This complaint will not be processed unless this form is complete, legible, signed, dated and includes copies of all available evidence.

YOUR NAME

Please print legibly or type (Last) (First) (Middle)

Mr.
 Ms.
 Mrs.

Social security number (optional, for identification purposes only):

Address: Telephone number where you may be reached (8:00am-4:30pm):
Residence number:
Business number:

NAME OF COMPANY OR INDIVIDUAL YOUR COMPLAINT IS AGAINST

Mr.
 Ms.
 Mrs.

Memorial Mortuary

Address: Phone number:
Fax number:
Name of person you dealt with:
License number:

Briefly explain your complaint (attach separate sheet if necessary):

I bought a funeral plan 9/19/89 for both my husband & myself. My husband's plan was honored by after the state was involved. I now feel that the state took the funds from my plan & should refund my money as it will not be able to take care of my funeral costs. I need to get another plan with Dodo mortuary.

REDACTED

OTHER INFORMATION

1. Have you contacted the company/individual to try and resolve your complaint?

If you have not done so, please attempt to resolve your complaint with the company/individual before you file this complaint.

I am unable to contact the company/individual.

Yes (Please tell us what happened. Include names of persons contacted and dates of contact.)

I went to office on 202 MAKA'ALA St. about a month after state involved. He said "he was sorry he could not refund my plan cost as state took the funds, however he said he would take care of my funeral as the plan is. If he is still in business. He suggested I write to state + request full refund plus interest."

2. What documents do you have to support your complaint? Please attach **COPIES** of all documents. Do not submit originals; they will not be returned to you.

Contract

Cancelled checks (front and back)

Credit card statements

Receipts

Invoices

Correspondence

Warranty/Guarantee

Advertisement and/or business card

Other (please list)

(1) Mail envelop. (2) Business envelop. (3) Plan #295 card

3. What are you seeking as a resolution to your complaint? Please remember that what you are seeking may not be within the jurisdiction of this office.

(2) Full refund of \$1,100.00 or (1) Guarantee that my plan is still active + honored upon my death.

I certify that all statements in this complaint are true and correct to the best of my knowledge. I understand that RICO is unable to represent private parties in court.

Sign here:

Date:

April 5, 2008

*Please submit this form with your **original** signature (failure to do so may delay the processing of your complaint).

This printed material can be made available for individuals with special needs in braille, large print or audio tape. Please submit your request to the Complaints and Enforcement Officer at 586-2666.

REDACTED

STATE OF HAWAII
 DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
 REGULATED INDUSTRIES COMPLAINTS OFFICE
 CONSUMER RESOURCE CENTER
 OAHU OFFICE
 235 SOUTH BERETANIA STREET, 9TH FLOOR
 HONOLULU, HI 96813
 www.hawaii.gov/dcca/rico

SHL
 DEPARTMENT OF COMMERCE
 AND CONSUMER AFFAIRS
 2008 APR 21 A 11:33
 For Official Use Only
 CONSUMER COMPLAINTS
 SECTION

COMPLAINT FORM
 Case No.

The company/individual you complained against will be informed of this complaint in order to facilitate resolution of this matter. Your complaint may also be referred to mediation, if appropriate. This complaint will not be processed unless this form is complete, legible, signed, dated and includes copies of all available evidence.

YOUR NAME

Please print legibly or type (Last) (First) (Middle)
 Mr.
 Ms.
 Mrs.

Social security number (optional, for identification purposes only):

Address: Telephone number where you may be reached (8:00am-4:30pm)
 Residence number:
 Business number:

NAME OF COMPANY OR INDIVIDUAL YOUR COMPLAINT IS AGAINST

Mr. Right Star Management Inc
 Ms.
 Mrs.
 Address: Phone number: 739-8811
 47-277 Kahakili Hwy Fax number:
 Kaneohe, HI 96744 Name of person you dealt with: (Customer Service)
 License number: (General Manager)

Briefly explain your complaint (attach separate sheet if necessary): Could not be reached.

See attachment.

OTHER INFORMATION

1. Have you contacted the company/individual to try and resolve your complaint?

If you have not done so, please attempt to resolve your complaint with the company/individual before you file this complaint.

I am unable to contact the company/individual.

Yes (Please tell us what happened. Include names of persons contacted and dates of contact.)

I sent a letter on 30 March 2008, no response

I called Right Star asking to talk to
In a meeting, please try again
later. On the telephone!

2. What documents do you have to support your complaint? Please attach **COPIES** of all documents. Do not submit originals; they will not be returned to you.

Contract

Cancelled checks (front and back)

Credit card statements

Receipts

Invoices

Correspondence

Warranty/Guarantee

Advertisement and/or business card

Other (please list)

Pre-Purchased Funeral Services
Certificate

What are you seeking as a resolution to your complaint? Please remember that what you are seeking may not be within the jurisdiction of this office.

Public notification that certain funeral plans are
not being honored, Full or partial refund
of five thousand dollars.

certify that all statements in this complaint are true and correct to the best of my knowledge. I understand that RICO is unable to present private parties in court.

Sign here:

Date:

15 Mar 08

Please submit this form with your **original** signature. (failure to do so may delay the processing of your complaint)

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REDACTED

Chronological Events

15 Apr 2008

purchases Funeral Service plan from Hawaiian Memorial Services on 02 Oct 1987. It entitled her to one complete Funeral Service, Cremation, and Bronze Urn. It was sold to her by . My mother believed this plan included a service and burial at Hawaiian Memorial Park.

On 05 March 2008 I met with (Mortuary Representative) who looked over the paperwork and told me that everything (service, cremation, and burial) is paid for except the food. At that time we reserved the Chapel for the 29th of March 2008. During this time Mother () was already in the Kailua Hospice house. She wanted to make sure everything was what she had planned for.

On 08 March 2008 my mother passed away. The Hospice nurses called (number provided by) Hawaiian Memorial Mortuary to pick my mother.

On 13 March 2008 I met with , a funeral director. At that time informed me that the plan my mother had purchased was no longer being honored. The mortuary was sold to another company and no longer run by the Ordenstein family. I later found out it was sold to RightStar Management Inc. brief my wife and I that they (RightStar) changed the policy on the 1st of March 2008, no longer honoring certain plans. I knew I was being violated but I felt obligated to give my mother the kind of service and burial she wanted. explained that the mortuary before it was sold was honoring this funeral plan but now we had to go with Borthwick Mortuary in Honolulu. I kept telling her this was not an option because my mother wanted everything at Hawaiian Memorial Park.

I ended up pay \$4,189.48 for the service and burial the way my mother wanted.

On 30 March 2008 I sent a letter to Hawaiian Memorial Park Mortuary (enclosed). I gave them to the 14th of April 2008 to respond, they did not.

On 02 April 2008 I contacted who still works for Borthwick and told her what had happened. She said she would do some research and get back to me.

REDACTED

STATE OF HAWAII
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DEPARTMENT OF COMMERCE
 AND CONSUMER AFFAIRS
 2009 MAY 28 P 1:38
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 REGULATED COMPLAINTS

COMPLAINT FORM

Case No.

The company/individual you complained against will be informed of this complaint in order to facilitate resolution of this matter. Your complaint may also be referred to mediation, if appropriate. This complaint will not be processed unless this form is complete, legible, signed, dated and includes copies of all available evidence.

YOUR NAME

Please print legibly or type (Last) (First) (Middle)
 Mr.
 Ms.
 Mrs.

Address: Telephone number where you may be reached (8:00am-4:30pm)
 Residence number: same as above
 Business number: none

NAME OF COMPANY OR INDIVIDUAL YOUR COMPLAINT IS AGAINST

Mr. DIEGO MORTUARY, INC.; dba Memorial Mortuary
 Ms. 297 Waiannuue Ave
 Mrs.
 Address: 297 Waiannuue Ave
 Hilo, HI 96720
 Phone number: (808) 935-1257
 Fax number: (808) 969-9574
 Name of person you dealt with:
 License number:

Briefly explain your complaint (attach separate sheet if necessary): I called in 2005 when I read in the Hawaii Tribune-Herald that her parents were being charged with stealing money from their customers that had paid ahead of time for their funeral plans. Well one of them was my dad. At that time I asked her about my dad's plan + she told me "oh he's fine you need not to worry he's OK". So I asked her "are you folks going to shut down?" and she said "No" Now they got caught in 2004 + this conversation was the end of 2005. Last weeks Tribune-Herald said that they had shut down in 2006. I was mad. She knew who my dad was, she was the one that dealt with him. She signed the receipt. She told me "he's OK," and they shut down a few months after. She lied to me. I should have known better they took money from every one that had paid for their funeral plan. One hundred of them are getting some money back but my dad is not part of the 100. Hope you can help me.

OTHER INFORMATION

1. Have you contacted the company/individual to try and resolve your complaint? *Yes. Their phone is no longer in service.*
If you have not done so, please attempt to resolve your complaint with the company/individual before you file this complaint.

I am unable to contact the company/individual. *I was just informed that their business had been shut down in 2006 but I called the phone number anyway*
 Yes (Please tell us what happened. Include names of persons contacted and dates of contact.)

2. What documents do you have to support your complaint? Please attach **COPIES** of all documents. Do not submit originals; they will not be returned to you.

- Contract
- Canceled checks (front and back)
- Credit card statements
- Receipts
- Invoices
- Correspondence
- Warranty/Guarantee
- Advertisement and/or business card

Other (please list) Receipt of a Funeral Plan

3. What are you seeking as a resolution to your complaint? Please remember that what you are seeking may not be within the jurisdiction of this office.

It's a funeral plan that my dad had paid for in cash and I want him to get his money back if possible. I am his daughter one whom they was supposed to contact if they were any changes.

If you believe that this complaint involves issues particularly affecting the elderly, please check here:

I certify that all statements in this complaint are true and correct to the best of my knowledge. I understand that RICO is unable to represent private parties in court.

Sign here:

Date:

5/26/09

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REDACTED