

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Deborah Platt Majoras, Chairman**
 Orson Swindle
 Thomas B. Leary
 Pamela Jones Harbour
 Jon Leibowitz

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In the Matter of)	
)	
VIRGINIA BOARD OF FUNERAL DIRECTORS AND EMBALMERS.)	Docket No. C-4124
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)	

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, 15 U.S.C. § 41, *et seq.*, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the Virginia Board of Funeral Directors and Embalmers violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this Complaint stating its charges in that respect as follows:

NATURE OF THE CASE

This matter concerns horizontal agreements among competing funeral directors, as members of the Virginia Board of Funeral Directors and Embalmers (the "Board"), that restricted price competition in the provision of funeral products and services in the Commonwealth of Virginia. The funeral directors, through the regulations of the Board, restricted price competition in the provision of funeral products and services in Virginia by restricting the advertising of prices, and discounts off of ordinary prices, for funeral products and services.

RESPONDENT AND ITS MEMBERS

1. The Board is organized, exists, and transacts business under and by virtue of the laws of the Commonwealth of Virginia, with its principal office and place of business located at 6603 West Broad St., 5th Fl. Richmond, VA 23230-1712.
2. The Board was created by the legislature of the Commonwealth of Virginia to supervise the provision of funeral products and services and the preneed provision of funeral products and services.
3. By statute, the Board is composed of nine members, seven of whom must be funeral service licensees of the Board with at least five consecutive years of funeral service practice in the Commonwealth immediately prior to appointment. The Board is further composed of two “citizen members.” Members of the Board are appointed by the Governor.
4. While serving their membership terms, funeral director members of the Board may, and do, continue to engage in the business of providing funeral products and services and preneed funeral products and services for a fee. Compensation for being on the Board is limited to expenses plus \$50 per day of work done for the Board.
5. Except to the extent that competition has been restrained as alleged below, and depending on their geographic location, licensed funeral directors in Virginia compete with each other and with funeral director members of the Board.
6. The Board promulgates regulations, including the regulation at issue in this Complaint by majority vote of the members of the Board.
7. The Board is the sole licensing authority for the provision of funeral directing services in Virginia. It is unlawful for an individual to practice or to offer to practice funeral directing in Virginia unless he or she holds a current license to practice from the Board.
8. The Board is authorized by Virginia law to take disciplinary action against any licensee who violates any rule or regulation promulgated by the Board. Disciplinary action by the Board may include the suspension or revocation of a license, or other limitations or restrictions on a licensee.

JURISDICTION

9. The Board is a state regulatory body and is a “person” within the meaning of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

10. The acts and practices of the Board, including the acts and practices alleged herein, have been or are in or affecting “commerce” within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44. In particular, funeral directors perform funerals for residents of other states, receive substantial sums of money that cross state lines in payment for those services and as payment for otherwise in-state funeral products and services from preneed funeral arrangements, and purchase and use supplies and equipment that are shipped across state lines. Furthermore, the regulation at issue prevents the flow of price information across state lines, and affects interstate commerce in funeral supplies and services in neighboring states.

STATE REGULATION OF ADVERTISING FOR FUNERAL SERVICES

11. With the exception of the requirement that no direct initial solicitation of any consumer be in person, the requirement that no direct initial solicitation for at-need funeral products and services be done by any means, and the requirement that all advertising be truthful and not misleading, Virginia statutes do not restrict advertising or solicitation relating to the ordinary prices of funeral products and services or discounts off of ordinary prices of funeral products and services.

BOARD CONDUCT

12. For many years and continuing up to and including the date of the filing of this Complaint, the Board has restrained competition in the provision of funeral and preneed funeral products and services in Virginia by combining and agreeing with its members or others, or by acting as a combination of its members or others, to restrict access to price information relating to funeral products and services and preneed funeral products and services by prohibiting truthful and non-misleading advertising of members’ prices, and discounts from their usual prices.
13. For many years and continuing up to July 28, 2004, the Board had engaged in various acts or practices in furtherance of this combination, including, among other things, the following:
 - A. The Board promulgated and implemented a regulation that prohibits funeral licensees from advertising the prices of the products and services they sell for preneed funeral services;
 - B. The Board actively disseminated its rules, including the prohibition on advertising prices or discounts, by, among other means: mailing the rules to licensees, making speeches to local associations of funeral licensees, and publishing newsletters regarding its rules.

EFFECTS

14. The effects of the combination and acts or practices described above have been to restrain competition unreasonably and injure consumers in the following ways, among others:
- A. Consumers were deprived of truthful information about prices for funeral products and services;
 - B. Funeral licensees were prevented from disseminating truthful information about their prices for funeral products and services;
 - C. Consumers were deprived of the benefits of vigorous price competition among Board licensees; and
 - D. Some consumers paid higher prices for funeral products and services than they would have paid in the absence of the combination, acts, and practices alleged in this Complaint.

VIOLATION

15. The combination, acts, and practices described above constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45. Such combination, acts, and practices, or the effects thereof, may continue or recur in the absence of the relief herein requested.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this first day of October, 2004, issues its Complaint against Respondent Virginia Board of Funeral Directors and Embalmers.

By the Commission, Commissioner Leibowitz not participating.

Donald S. Clark
Secretary

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