

**DIVISION OF PROFESSIONAL REGULATION
BOARD OF FUNERAL DIRECTORS AND EMBALMERS**

IN THE MATTER OF MARK LAUZON

A.H. FILE NO. (HSR) 2002-34

ADMINISTRATIVE DECISION

This matter came before the Department of Health pursuant to an Administrative Hearing Notice dated 24 June 2002 that set a hearing date for 23 July 2002. There were continuances granted to October 3, 2002. The Respondent is charged with violations of §5-33.2-17(2) for "unprofessional conduct" involving deceptive newspaper and radio advertisements attempting to procure business from the DiPardo Funeral Home, Woonsocket, Rhode Island. Additionally, the Respondent is charged with co-mingling 4 separate "pre-need" funeral contracts on or about March of 1999. The Respondent is charged with violation of the provisions of § 5-33.2-17(2)(3)&(4).

The Respondent was represented by Mark Smith, Esq. The Board was represented by Gregory Madoian, Esq.

Facts and Case Travel

Funeral Director Marc Lauzon, owner and operator of Lauzon Funeral Home, and Jim DiPardo entered into a multifaceted scheme designed to take funeral business away from the DiPardo Funeral Home. Ultimately, a civil action was filed in the Superior Court by Egidio DiPardo and Sons against Marc Lauzon. The Plaintiff's prevailed in the civil action and the Lauzon operating bank account was frozen and the assets were eventually

delivered to a receiver. When the court ordered the business account of Lauzon frozen, the money belonging to four individuals was frozen also because Lauzon placed the funds in the operating account rather than an escrow account as required by law. These matters were brought to the attention of the regulatory Board of Funeral Directors and Embalmers. The Board preferred the charges leading to this administrative hearing.

Summary of the Testimony

The first witness called by the Board was Stanley Larson, a funeral director and embalmer who has been licensed since 1964. Mr. Larson described pre-arranged funerals as a service provided to individuals and their families in which they set forth their wishes and desires regarding the type of service to be rendered and often "prepay" the expenses. He said that the state law requires that when "prepayment" is made the funeral director must put those funds into an escrow account in a financial institution such as a bank or trust unit. He testified that there are no instances when a funeral director can put these funds directly into a funeral home business operating account. Under cross-examination, Mr. Larson admitted that the current rules and regulations for funeral directors do not delineate the manner in which prepaid funeral funds must be handled by funeral directors. Following this statement by Mr. Larson, defense counsel requested that judicial notice be made that the rules and regulations pertaining to embalmers, funeral directors and funeral establishments. Mr. Madoian countered by arguing that the regulations applied to R.I.G.L. § 33.2 only and that the statute for prepaid funerals was contained in § 33.1-4. Judicial notice was taken of the rules and regulations as requested by defense counsel. A ruling was made that adequate notice was served upon the Respondent due to the fact that § 5-33.1-10 (b) provides that any complaint filed for a violation of this section follow the

same form and procedure as § 33.2. Accordingly, funeral directors are help to have constructive knowledge of how to handle client's escrow accounts.

Mr. Larson then testified that even a situation in which a client presented with cash to the funeral home would require deposit into the escrow account and not the business operating account. Larson indicated that a prepaying client would have the opportunity to change his/her mind within three days of payment. Upon presentation of a death certificate, the funds become payable to the funeral director. Mr. Larson conceded that a three-day delay in depositing the funds would be acceptable. He reiterated that there was no situation in which these funds could be deposited in an operating account of the funeral establishment.

The Respondent was sworn under oath next and testified that he held a license in Rhode Island since 1978. He acknowledged that DiPardo Funeral Home sued him and that a large judgement was entered against him and others. Since then, he has retained a license as a funeral director but works for his son. He testified that his former company, Lauzon Memorial, Inc., had about \$850,000 in pre-paid funeral accounts. He said his practice was to have the clients make the checks payable to the financial institutions in which the accounts were held. He said that on 5 or 6 occasions, individuals would bring cash for the pre-paid funerals and he would deposit the money in the business operating account and then write a check to the bank or institution. He said that other funeral directors with whom he had spoken operated the same way. He testified that as a result of these conversations, he never changed the way he did business regarding cash receipts.

Regarding the four specific charges, the Respondent claimed that one was a cash receipt, another was a settlement check, and two others were checks made out to the wrong people. He testified that he handled these four prepaid funerals in the same manner: "I deposited it in my business account. I wrote out checks payable to the institutions where they were going, then I found out the day I was going to mail them, earlier that morning - - -I had a funeral---that checks were bouncing." He said it was because his business account was frozen to litigation between he and DiPardo. He claimed that he gave a copy of those checks to Richard Mittleman, Esq., an attorney handling receivership of his business. He testified that he still has not changed his procedure for doing business for prepaid funerals.

On cross-examination, Mr. Lauzon testified that there was nothing stopping him from getting a certified check to these financial institutions without depositing the money into the business operating account. Lauzon testified that he had filled out all the paperwork required to insure the money went into the appropriate accounts and he intended to provide the funeral service. He said he did provide one of the funerals for the decedent of a prepaid funeral that is one of the subjects of this hearing. He said he intends to provide the services of the other prepaid funerals even though the money went to creditors of the now defunct funeral establishment.

Findings of Facts

1. That Marc Lauzon is a licensed funeral director who has held licensure in Rhode Island since 1978.
2. That he was a principal in Lauzon Memorial, Incorporated, a funeral establishment that accepted prepaid funeral arrangements.

3. That Marc Lauzon admitted co-mingling pre-paid funeral funds with the operating funds of the funeral establishment
4. That Marc Lauzon intended to deposit the money in the escrow accounts and provide the funeral services
5. That Marc Lauzon had sufficient notice by virtue of his continued licensure that depositing prepaid funeral funds in the funeral establishments operating account was illegal and unethical.
6. That despite the illegal practice of other funeral directors which whom Marc Lauzon had spoken regarding prepaid funds, the legislature made is abundantly clear to all funeral directors that prepayment funds must be deposited in escrow accounts within 15 days of receipt.
7. That § 5-33.2-17(16) provides grounds for revocation or suspension of a license if the provisions of chapter 33.1 regarding Funeral Services Contracts is violated.
8. That Marc Lauzon violated the provision of chapter 33.1 by co-mingling funds.
9. That the Administrative Hearing Notice served on Marc Lauzon provided adequate notice of the charges.
10. That Marc Lauzon participated in solicitation of business through radio advertisements that were designed to destroy the DiPardo family funeral business.
11. That Marc Lauzon was involved in a multi-faceted plan to steal funeral business from DiPardo Funeral Home which became the subject of an interlocutory order of the court in the civil action. The interlocutory order failed to deter the Respondent's efforts to harm the DiPardo Funeral Home business.

12. That Marc Lauzon deposited prepaid funeral funds in the operating account of his business against the backdrop of this civil action with a reckless disregard for the law and his ethical responsibilities to the prepaid funeral clients.

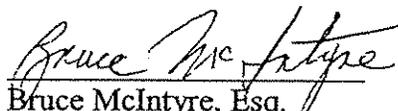
Mitigation

The Respondent has honored one of the prepaid funerals that were the subject of this administrative hearing. This mitigates the damage to the public in some respect.

Therefore, the Board's recommendation of an 18 months suspension of the Respondent's license will be reduced to a one-year suspension.

Order

Based upon the foregoing, Respondent's license as a Funeral Director and Embalmer is suspended for one year. During this year he shall complete a course in ethics conducted by ProBe, a New Jersey based educational program.


Bruce McIntyre, Esq.
Hearing Officer


Date

Certification

I hereby certify that on the 12th day of Novemebr 2002 a copy of this order was sent to Gregory Madoian, Esq., Division of Professional Regulation, Department of Health, 3 Capitol Hill Providence, RI 02903 and Mark Smith, 176 Eddie Dowling Highway, North Smithfield, RI 02896

