

**Minutes of Meeting**  
**VIRGINIA CEMETERY BOARD**  
**INFORMAL FACT-FINDING CONFERENCES**  
**AUGUST 21, 2003 (9:00 A.M.)**

The Virginia Cemetery Board convened in Richmond, Virginia, for the purpose of holding Informal Fact-Finding Conferences pursuant to the Administrative Process Act.

Kenneth R. Bell, Board Member, Presided. No other Board members were present.

Douglas W. Schroder appeared for the Department of Professional and Occupational Regulation.

The conferences were recorded by Inge Snead & Associates, LTD and the Summaries or Consent Orders are attached unless no decision was made (or Consent Order was not completed and signed at the IFF).

Dis=Disciplinary Case  
Lic=Licensing Application

C=Complainant/Claimant  
A=Applicant  
R=Respondent/Regulant  
CA=Compliance Agent  
O=Cemetery Owner  
P= Cemetery President  
I=Investigator

Participants

- |    |   |  |
|----|---|--|
| 1. | Rosewell Memorial Park (Dis)<br>File Number 2003-02250                  | C. Flippo Hicks - CA<br>Herbert Stanley - W<br>Herbert Nichols - I |
| 2. | Sunset View Memorial Gardens (Dis)<br>File Number 2003-00663            | Herbert Nichols - I  |
| 3. | Virginia Memorial (Dis)<br>File Number 2003-00661<br>(No decision made) | Louis Herrink - CA<br>Michael J. Gannon-W<br>Herbert Nichols - I   |
| 4. | Memorial Gardens New River<br>Valley (Dis)<br>File Number 2003-00665    | Gail Lucas - CA<br>Herbert Nichols - I                             |
| 5. | Jet Industries (Dis)<br>File Number 2003-00545                          | Todd Sexton - CA<br>Herbert Nichols - I                            |

- |     |   |   |
|-----|---|---|
| 6.  | Glen Haven Memory Gardens (Dis)<br>File Number 2003-00666<br>(No decision made) | A. Thomas Embrey – CA<br>Herbert Nichols – I                          |
| 7.  | Dinwiddie Memorial (Dis)<br>File Number 2003-00165                              | Ronald Hess – O<br>Larry Saunders – W<br>Herbert Nichols - Invest     |
| 8.  | Patrick Memorial (Dis)<br>File Number 2002-03420<br>(No decision made)          | Paul S. Bliley, Jr. - AT<br>Robert Jackson – W<br>Herbert Nichols – I |
| 9.  | William Frederick Carter (Lic)<br>File Number 2004-00335                        | William Carter – A  |
| 10. | William Frederick Carter (Lic)<br>File Number 2004-00336                        | William Carter – A  |

The meeting adjourned at 5:30 p.m.

Virginia Cemetery Board



Kenneth R. Bell, Chairman



Louise Fontaine Ware, Secretary

COPY TESTE:

\_\_\_\_\_  
Custodian of Records

COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

CEMETERY BOARD

RE: ROSEWELL MEMORIAL GARDENS, INC.  
LICENSE NUMBER: 4901 000088

FILE NUMBER: 2003-02250

**Summary of the Informal Fact-Finding Conference**

An Informal Fact-Finding Conference (IFF) was convened on August 21, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Rosewell Memorial Gardens, Inc. on June 18, 2003. The following individuals participated at the conference: C. Flippo Hicks, Compliance Agent for Rosewell Memorial Gardens, Inc., Respondent; Herbert Stanley, Jr., CPA; Douglas W. Schroder, Staff Member; Herbert Nichols, Investigator; Kenneth R. Bell, presiding Board Member.

**Background**

On February 14, 2003, the Enforcement Division of the Department of Professional and Occupational Regulation received a written request from Christine Martine (Martine), Cemetery Board Administrator, to investigate possible violations of Virginia Statutes and/or Cemetery Board regulations by Rosewell Memorial Gardens, Inc. (Rosewell), State Route 636, Providence Road, Gloucester, Virginia.

The annual report submitted by Rosewell indicated that the cemetery failed to deposit a minimum of ten percent of the receipts from the sale of graves, above ground crypts and niches in the perpetual care trust fund within thirty days after the close of the month, for April, September, November and December 2001.

**Summation of Facts**

1. The perpetual care trust fund financial report – schedule B, submitted by Rosewell revealed on line 4, column B, that the required deposit for April 2001 was \$809.88. Column C, on the same line, showed that the amount deposited was \$742.50, which resulted in a deposit shortage of \$67.38.

Line 9, of the same report, column B, revealed that the required deposit for September 2001 was \$772.72 and column C showed that the amount

deposited was \$740.00. This resulted in a deposit shortage of \$32.72 for September 2001.

Line 11, column B, revealed that the required deposit for November 2001 was \$17.71 and column C showed that there was no deposit. This resulted in a deposit shortage of \$17.71 for November 2001.

Line 12, column B, revealed that the required deposit for December 2001 was \$7.71 and column C showed there was no deposit. This resulted in a deposit shortage of \$7.71 for December 2001.

Schedule B further revealed on line 13, column B, that the required deposits for fiscal year 2001 was \$4,621.41 and column C, on the same line, revealed that the amount deposited was \$4,896.50. The result being that Rosewell deposited \$275.09 more than the required minimum of ten percent for fiscal year 2001.

2. Rosewell had a problem with some deposit checks going to the wrong P.O. Box within the company and these missing checks caused the deposits to be short for certain months. This problem has been corrected.

### **Conclusion and Recommendation**

Count I: Section 54.1-2319 of the Code of Virginia (5 violations)

Rosewell's failure to deposit a minimum of ten percent in the perpetual care trust fund, within thirty days after the close of the month in which the receipts were paid to it, for the months of April, June, September, November, and December 2001 is in violation of § 54.1-2319 of the Code of Virginia (5 violations).

Further, I recommend that no monetary penalty be imposed for each violation of this regulation.

By: \_\_\_\_\_

**Kenneth R. Bell**  
**Presiding IFF Board Member**  
**Cemetery Board**

**Date: August 21, 2003**

COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

CEMETERY BOARD

RE: SUNSET VIEW MEMORIAL GARDENS, INC.  
LICENSE NUMBER: 4901 000044

FILE NUMBER: 2003-00663

**Summary of the Informal Fact-Finding Conference**

An Informal Fact-Finding Conference (IFF) was convened on August 21, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Sunset View Memorial Gardens, Inc. on June 18, 2003. The following individuals participated at the conference: Douglas W. Schroder, Staff Member; Herbert Nichols, Investigator; Kenneth R. Bell, presiding Board Member. Karen Hart, Compliance Agent for Sunset View Memorial Gardens, Inc., nor anyone on her behalf, appeared at the IFF.

**Background**

On or about August 28, 2002, Christine Martine (Martine), Cemetery Board Administrator, requested an investigation into possible violations of Virginia Statutes and/or Cemetery Board regulations by Sunset View Memorial Gardens, Inc. (Sunset View), 2677 Fravel Road, Woodstock, Virginia.

Martine stated that the annual report submitted by Sunset View indicates a reduction in principal of the perpetual care trust fund. Martine wrote that expenses exceeded income by \$300.38 and \$489.85 and was deducted from the principal for trustee expenses.

**Summation of Facts**

1. The perpetual care trust fund financial report – schedule A, submitted by Sunset View revealed on line 1, column A, shows that \$2,827.64 was the beginning income balance. That total, combined with interest income on Line 3, column A, of \$6,174.19 and realized gains on line 5, column A, of \$89.06, provided a total income for the fiscal year of \$9,090.89.
2. Investment expenses on line 8, column A, of \$146.25, trustee fees on line 10, column A, of \$418.33 and reimbursement of expenses for general care on

line 11, column A, of \$8,826.69, produced total deductions of \$9,391.27, as reported on line 13, column A.

3. Total expenses exceeded income by \$300.38, which resulted in a reduction of principal in this amount.
4. In addition, on line 12, column B, \$489.85 was deducted from principal. The CPA audit shows that this amount was for trustee expenses.
5. Karen Hart (Hart), compliance agent for Sunset View, told the Board's Agent, Investigator Herbert W. Nichols (Nichols) that she could not explain the reduction in principal. Hart advised Nichols that she would have Don Skuropa (Skuropa), Trust Officer for First Virginia Bank, contact him with an explanation of the deduction of the trustee fees. In addition, Hart said that she would have CPA Quinton E. Yancey (Yancey) contact Nichols to discuss the expenses exceeding the income.
6. Skuropa contacted Nichols and advised him that Virginia Code 55-277.1 – Principal and Income Act, allows the deduction of half the trustee fees from principal. Skuropa further stated that the Prudent Investor Act, Virginia Code 26-45.3, allows him to deduct in this manner.
7. Yancey has not contacted Nichols in regards to expenses exceeding income.

### **Conclusion and Recommendation**

Count I: Section 54.1-2322 of the Code of Virginia

Sunset View's actions of deducting expenses, that exceeded their income, resulting in a reduction of principal, and deducting trustee fees directly from principal, is in violation of § 54.1-2322 of the Code of Virginia. Sunset View also shows on Schedule C a deduction of \$6,600.00 for "machine hire opening graves" which is not an allowable maintenance or care expense.

Therefore, I recommend that a monetary penalty of \$250.00 be imposed for a violation of this regulation. Additionally, I recommend that Sunset View be placed on probation for a period of thirty (30) days. During the thirty (30) day probationary period, Schedules A and C of the annual reports for 2001 must be re-filed. Further, payments in the amount of \$300.38 and \$489.85 must be made to the perpetual care trust. Sunset View must provide documentation to the Board, in a form acceptable to the Board, of the appropriate reports and payments made within the thirty (30) day probationary period.

By: \_\_\_\_\_

**Kenneth R. Bell  
Presiding IFF Board Member  
Cemetery Board**

**Date: August 21, 2003**

**FINAL ORDER RECOMMENDATION**

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF LICENSE NUMBER 4901 000044 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

**COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION**

**CEMETERY BOARD**

**RE: MEMORIAL GARDENS OF THE NEW RIVER VALLEY, INC.  
LICENSE NUMBER: 4901 000095**

**FILE NUMBER: 2003-00665**

**Summary of the Informal Fact-Finding Conference**

An Informal Fact-Finding Conference (IFF) was convened on August 21, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Memorial Gardens of the New River Valley, Inc. on June 18, 2003. The following individuals participated at the conference: Gail Lucus, Compliance Agent for Memorial Gardens of the New River Valley, Inc., Respondent; Douglas W. Schroder, Staff Member; Herbert Nichols, Investigator; Kenneth R. Bell, presiding Board Member.

## **Background**

On or about August 29, 2002, Christine Martine (Martine), Cemetery Board Administrator, requested an investigation into possible violations of Virginia Statutes and/or Cemetery Board regulations by Memorial Gardens of the New River Valley, Inc., (Memorial Gardens) 2551 North Main Street, Blacksburg, Virginia

The Board's Agent, Investigator Herbert W. Nichols (Nichols), reviewed the annual report submitted by Memorial Gardens and determined that the preneed trust fund required deposits for the months of September and October 2001, were not made within thirty days after the close of the month in which said receipts were paid to it.

## **Summation of Facts**

1. The preneed trust fund financial report – schedule B, submitted by Memorial Gardens revealed on line 1, column D, that the September 2001 deposit was made on December 21, 2001. That deposit was 52 days late. Line 2, of the same report, column D, revealed that the required deposit for October 2001 was made on December 28, 2001. This deposit was 28 days late.

During the IFF, it was found that this merchandise had been delivered to the cemetery (which constitutes delivery), but had not been installed because of snow.

2. Deposits into the preneed trust fund for fiscal year 2001 exceeded the required deposits by \$568.93.

3. Gail C. Lucas (Lucas), compliance agent for Memorial Gardens, told Nichols that they ordered markers and could not install them within 120 days after their purchase, due to the weather conditions. She said after the markers were not installed within the required time constraints, they deposited forty percent of the installation charges into the preneed trust fund, which resulted in the deposits being late.

## **Conclusion and Recommendation**

Count I: Section 54.1-2325(A) of the Code of Virginia (2 violations)

Based upon the review of the record, including testimony provided at the IFF, I find that Memorial Gardens is not in violation for failing to make deposits in the preneed trust fund for the months of September and October 2001.



By: \_\_\_\_\_

Kenneth R. Bell  
Presiding IFF Board Member  
Cemetery Board

Date: August 21, 2003

IN THE  
COMMONWEALTH OF VIRGINIA  
CEMETERY BOARD

**In Re:**

Jet Industries Inc  
Newport News, Va 23607

File Number 2003-00545  
License Number 4901000023

**CONSENT ORDER NUMBER: 2004-0057**

Respondent Jet Industries Inc ("Jet Industries Inc") was at all times material to this matter a licensed Cemetery Company in Virginia (No. 4901000023).

As a result of this status, Jet Industries Inc recognizes and acknowledges being subject to and bound by the Regulations of the Cemetery Board ("Board"), as well as by all other applicable Virginia laws.

A violation of these Regulations has been reported and investigated. These matters were considered on August 21, 2003 in an Informal Fact Finding Conference ("IFF") pursuant to the Administrative Process Act §§2.2-4019 and 2.2-4021 of the 1950 Code of Virginia, as amended. This IFF was held in Richmond, Virginia and was attended by Todd Sexton. Board Member Kenneth R. Bell presided at the IFF.

The Board's duly designated representative has found sufficient evidence to believe that:

On or about August 21, 2002, Christine Martine (Martine), Cemetery Board Administrator, requested an investigation into possible violations of Virginia Statutes and/or Cemetery Board regulations by Jet Industries, Inc. (Jet Industries), 2700 Parish Avenue, Newport News, Virginia.

Jet Industries, Inc. is the licensee for Greenlawn Memorial Park.

Martine stated that the annual report submitted by Jet Industries indicates that they failed to make deposits to the preneed trust fund within thirty days after the close of the month for January, February, March, May, June, July, August, September, October, November and December 2001.

In addition, she wrote that the annual report indicates that Jet Industries failed to deposit 40 percent of the receipts in the preneed trust fund in January, February, March, May, June, August, October, November and December 2001.

#### **Summation of Facts**

1. The revised preneed trust fund financial report – schedule B, submitted by Jet Industries revealed on line 1, column B that the required deposit for January 2001 was \$510.66. Column C on the same line reveals that no deposit was made. Line 2, column C, revealed that the required deposit for February 2001 was \$348.81 and column C shows that no deposit was made. Line 3, column B, shows that the required deposit for March 2001 was \$1,776.50. Column C shows that \$1,529.79 was deposited and column D shows the deposit date as April 30, 2001. The trust fund transaction statement shows that the March 2001 deposit was made May 31, 2001, which would be 31 days late. On line 5, column B, the required deposit for May 2001 was \$306.25 and column C shows that no deposit was made. On Line 6, column B, the required deposit for June 2001 was \$967.10 and column C shows that \$445.35 was deposited. Column D shows the deposit date as July 31, 2001. The trust fund transaction statement shows that the June 2001 deposit was made on August 23, 2001, which would be 24 days late. Line 7, column B, shows that the required deposit for July 2001 was \$1,790.46 and column C reveals that \$1,790.46 was deposited. Column D shows that the date of deposit as August 30, 2001. The trust fund transaction statement shows that the July 2001 deposit was made on September 7, 2001, which would be 7 days late. On line 8, column B, the required deposit for August 2001 was \$1,092.15 and column C shows that \$1,000.00 was deposited. Column D shows the date of deposit as September 30, 2001. The trust fund transaction statement shows that the August 2001 deposit was made on October 4, 2001, which would be 4 days late. On line 9, column D, the report shows that the September 2001 deposit was made on October 31, 2001. The trust fund

transaction statement shows that the September 2001 deposit was made on November 5, 2001, which would be 6 days late. Line 10, column B, shows that the required deposit for October 2001 was \$1,244.29 and column C shows that no deposit was made. Line 11, column B, revealed that the required deposit for November 2001 was \$2,623.35 and column C shows that \$1,855.35 was deposited. Column D reports that the date of deposit was December 31, 2001. The trust fund transaction statement shows that the November 2001 deposit was made on January 7, 2002, which would be 8 days late. Line 12, column B, shows the required deposit for December 2001 was \$836.37 and column C reports that \$426.63 was deposited. Column D shows the deposit date as January 31, 2002. The trust fund transaction statement shows that the December 2001 deposit was made on February 5, 2002, which would be 6 days late.

2. Todd D. Sexton (Sexton), compliance agent for Jet Industries, told the Board's Agent, Investigator Herbert W. Nichols (Nichols) that funds in the preneed trust fund, which he was eligible to withdraw for products and services delivered, were left in the trust fund and applied towards all or part of the required deposits for fiscal year 2001. Sexton said that this was the reason that no deposits were made some months and only partial payments other months. Sexton provided affidavits showing the products or services delivered and the amounts appropriated for each month.

When combining the amounts deposited with the affidavit amounts, the total deposits into the preneed trust fund for fiscal year 2001 were \$416.00 in excess of the required deposits.

3. In response to the late deposits, Sexton stated that the deposits were mailed on the dates that he reported, but there was some delay in the bank posting them to the trust fund.

4. The second revision of the preneed trust fund financial report – schedule B, submitted by Jet Industries revealed on line 1, column B, that the required deposit for January 2001 was \$510.66. Column C on the same line reveals that no deposit was made. Line 2, column C, revealed that the required deposit for February 2001 was \$348.81 and column C shows that no deposit was made. Line 3, column B, shows that the required deposit for March 2001 was \$1,776.50 and column C reports that \$1,529.79 was deposited, which resulted in a deposit shortage of \$246.71. On line 5, column B, the required deposit for May 2001 was \$306.25 and column C shows that no deposit was made. On Line 6, column B, the required deposit for June 2001 was \$967.10 and column C shows that \$445.35 was deposited, which resulted in a deposit shortage of \$521.75. On line 8, column B, the required deposit for August 2001 was \$1,092.15 and column C shows that \$1000.00 was deposited, which resulted in a shortage of \$92.15. Line 10, column B, shows that the required deposit for October 2001 was \$1,244.29 and column C shows that no deposit was made, which resulted in a

deposit shortage of \$1,244.29. Line 11, column B, revealed that the required deposit for November 2001 was \$2,623.35 and column C shows that \$1,855.35 was deposited, which resulted in a deposit shortage of \$768.00. Line 12, column B, shows the required deposit for December 2001 was \$836.37 and column C reports that \$426.63 was deposited, which resulted in a deposit shortage of \$409.74.

The Board and Jet Industries Inc, as evidenced by the signatures affixed below, enter into this Consent Order. Jet Industries Inc knowingly and voluntarily waives any further proceedings in this matter under Administrative Process Act §§2.2-4020 and 2.2-4021 of the 1950 Code of Virginia, as amended.

Further, by signing this Consent Order, Jet Industries Inc acknowledges an understanding of the charges. Jet Industries Inc hereby admits to the violation(s) of the Board's Regulations and consents to the following term(s) by the Board:

Count 1: Section 54.1-2325(A) of the Code of Virginia (11 violations)

Jet Industries' failure to make deposits in the preneed trust fund, within thirty days after the close of the month in which the receipts were paid to it, for the months of January, February, March, May, June, July, August, September, October, November and December 2001, is in violation of § 54.1-2325(A) of the Code of Virginia (11 violations).

Count 2: Section 54.1-2325(A) of the Code of Virginia (9 violations)

Jet Industries' failure to deposit at least forty percent of the receipts from the sale of property or services, not delivered within 120 days, in the preneed trust fund for the months of January, February, March, May, June, August, October, November and December 2001, is in violation of § 54.1-2325(A) of the Code of Virginia (9 violations).

Based on the violation of Count 1 and Count 2, Jet Industries, Inc. agrees that beginning with the August 2003 Monthly Preneed Merchandise Trust filing, Jet Industries, Inc. will make a cash deposit of the required forty (40) percent deposit for each month thereafter. Jet Industries, Inc. further agrees to comply with § 54.1-2331 of the 1950 Code of Virginia, as amended, to receive specific funds in the trust to be identified to the contract performed which the trustee shall pay to the seller separately..

The above monetary penalties, costs or sanctions are to be paid/performed within thirty days of the effective date of this consent order. Jet Industries Inc acknowledges the monetary penalty and costs as a debt to the Commonwealth and agrees that in the event of a default, or the return of a check for insufficient funds, Jet Industries Inc will be responsible for a penalty fee of 10% and interest at the underpayment rate prescribed in Section 58.1-15 of the 1950 Code of Virginia,

as amended, and for all reasonable administrative costs, collection fees, or attorney's fees incurred in the collection of whatever funds are due.

**Jet Industries Inc acknowledges that failure to pay the penalty, the costs, or to comply with all terms of this Order within the specified time period, shall result in the automatic suspension of Jet Industries Inc's license until such time as there is compliance with all terms of this Order. Jet Industries Inc understands the right to have this automatic suspension considered in an IFF pursuant to the Administrative Process Act §§2.2-4019 and 2.2-4021 of the 1950 Code of Virginia, as amended, but knowingly and voluntarily waives any rights to the proceeding and hereby waives any further proceedings under the Administrative Process Act §§2.2-4020 and 2.2-4021 of the 1950 Code of Virginia, as amended.**

The effective date of this Order shall be the date of execution by the Board.

SEEN AND AGREED TO:

\_\_\_\_\_  
Jet Industries Inc

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name and Title of Person Signing on behalf of Entity

CITY/COUNTY OF \_\_\_\_\_  
COMMONWEALTH OF VIRGINIA

Sworn and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_,  
2003.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**SO ORDERED:**

Entered this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

Cemetery Board

BY: \_\_\_\_\_  
Louise Fontaine Ware, Secretary

COPY TESTE:

\_\_\_\_\_  
Custodian of the Records

COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

CEMETERY BOARD

RE: DINWIDDIE MEMORIAL PARK  
LICENSE NUMBER: 4901 000036

FILE NUMBER: 2003-00165

Summary of the Informal Fact-Finding Conference

An Informal Fact-Finding Conference (IFF) was convened on August 21, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to Dinwiddie Memorial Park on June 24, 2003. The following individuals participated at the conference: Ronald Hess, Part-Owner of Dinwiddie Memorial Park, Respondent; Larry Saunders, Witness; Douglas W. Schroder, Staff Member; Herbert Nichols, Investigator; Kenneth R. Bell, presiding Board Member.

**Background**

On or about July 18, 2002, the Enforcement Division of the Department of Professional and Occupational Regulation received from Christine Martine (Martine), Cemetery Board Administrator, a written request for an investigation into possible violations of Virginia Statutes and/or Cemetery Board regulations by Dinwiddie Memorial Park, Inc (Dinwiddie Memorial), 7324 Church Street, Petersburg, Virginia.

Martine stated that the annual report for fiscal year ending December 31, 2001 submitted by Dinwiddie Memorial indicates that they failed to deposit the minimum of ten percent of the receipts from the sale of graves in the perpetual care trust fund for the months of January and October 2001. In addition, they failed to deposit the August 2001 receipts within thirty days after the close of the month.

Martine further wrote that the cemetery did not provide an audit completed by an independent Certified Public Accountant and they failed to report preneed trust fund information for year ending December 31, 2001. The preneed report for fiscal year ending December 31, 2000 indicated a balance in the preneed trust fund.

## Summation of Facts

1. The second revision of the perpetual care trust fund financial report – schedule B, submitted by Dinwiddie Memorial revealed on line 10, column B, that the required deposit for October 2001 was \$297.50. In column C, on the same line, the amount deposited was \$182.50, which resulted in a shortage of \$115.00.
2. On line 8, of the same report, column D, revealed that the required deposit for August 2001 was made on October 5, 2001. This deposit was 5 days late.
3. On May 31, 2002, the \$115.00 shortage was deposited into the perpetual trust fund. With this deposit, the correct amount was deposited into the perpetual care trust fund for fiscal year 2001.
4. Larry Saunders (Saunders), compliance agent for Dinwiddie Memorial, told the Board's Agent, Investigator Herbert W. Nichols (Nichols) that as of July 17, 2001, Dinwiddie Circuit Court had appointed attorney Eugene R. Marable, Jr. (Marable) as acting custodian/manager of the corporation. Saunders said that Marable handled the deposits and he had nothing to do with them.

During the IFF, Saunders testified that he never was the Compliance Agent for Dinwiddie Memorial.

5. Marable told Nichols that he deposited what was sent to him from the cemetery and he did not know why any deposits were short or late.
6. The preneed trust fund financial report – schedule A, submitted with Dinwiddie Memorial's annual report for the fiscal year ending December 31, 2000, revealed on line 14, column A, an ending income balance of \$47.25. In column B, on the same line, there was a reported principal balance of \$1,050.00.
7. The annual report submitted by Dinwiddie Memorial for fiscal year ending December 31, 2001, did not include any preneed trust fund reports.
8. Geneva Thompson (Thompson), with Larry Saunders & Associates, Inc., who completed the 2001 annual report, told Nichols that Beverly Wilson (Wilson), one of the cemetery owners, advised her that there was no preneed for fiscal year 2001. Thompson said that Wilson told her that the balance in the trust fund was used to buy memorials.
9. Wilson had no knowledge of any preneed trust funds.
10. There were no preneed trust fund records available at the office of Dinwiddie Memorial.



11. Ron Hess (Hess), the new owner of the cemetery, had no knowledge of any preneed trust fund records or trust fund accounts.
12. The original and revised audit reports for fiscal year ending December 31, 2001, submitted with the annual reports for Dinwiddie Memorial were provided by Larry Saunders & Associates. The annual report shows that the compliance agent for Dinwiddie Memorial for fiscal year 2001 was Saunders.
13. Saunders told Nichols that he was employed to do the audit and he had no knowledge that he was the compliance agent until Beverly Wilson, the previous owner of the cemetery, told him that he must sign the annual report as the compliance agent. Saunders said that he had nothing to do with the running of the cemetery.
14. Eugene R. Marable, Jr., Court appointed custodian/manager of the cemetery, stated that Saunders was the compliance agent and bookkeeper for the cemetery when he was appointed. Marable stated that he changed records and made himself the compliance agent on June 26, 2002. He further stated that he was going to have an independent audit conducted.
15. On December 8, 2002, Hess bought out the other owners and took possession of the cemetery. After the cemetery was sold Marable did not have the cemetery books audited.
16. Hess does not feel that it is his responsibility to hire a CPA to audit the 2001 annual report.

### **Conclusion and Recommendation**

#### Count 1: Section 54.1-2319 of the Code of Virginia (2 violations)

Dinwiddie Memorial's failure to deposit the minimum of ten percent of the receipts from the sale of graves into the perpetual care trust fund for the month of October 2001 and the August 2001 deposit into the same trust fund was not made within thirty days after the close of the month, is in violation of § 54.1-2319 of the Code of Virginia (2 violations)

Therefore, I recommend that a monetary penalty of \$100.00 be imposed for the first violation of this regulation and that a monetary penalty of \$100.00 be imposed for the second violation of this regulation.

#### Count 2: Sections 54.1-2333(A)(1), (2), (3), (4), and (6) of the Code of Virginia

Based on a review of the record and testimony provided at the IFF, I recommend a finding of no violation for Dinwiddie Memorial's alleged failure to

report to the Cemetery Board the total amount of principal in the preneed trust fund, the securities in which the preneed trust account is invested, the income received from the trust and the source of the income during the preceding fiscal year, an affidavit executed by the compliance agent that all provisions relating to the preneed trust fund have been complied with and all expenditures from the preneed trust fund for fiscal year January 1, 2001, through December 31, 2001.

Count 3: Sections 54.1-2324.B. of the Code of Virginia

Based on a review of the record and testimony provided at the IFF, I recommend a finding of no violation for Dinwiddie Memorial's alleged failure to employ an independent Certified Public Accountant to perform an audit. It is also recommended that the Board accept Larry Saunders' audit as an independent audit. It is noted that Larry Saunders never knew he was acting in the capacity of Compliance Agent.

By: \_\_\_\_\_

**Kenneth R. Bell**  
**Presiding IFF Board Member**  
**Cemetery Board**

Date: August 21, 2003

**FINAL ORDER RECOMMENDATION**

THE TOTAL MONETARY PENALTY RECOMMENDED HEREIN SHALL BE PAID WITHIN SIXTY (60) DAYS FROM THE DATE OF ENTRY OF THE FINAL ORDER IN THIS MATTER. FAILURE TO PAY THE TOTAL MONETARY PENALTY ASSESSED WITHIN SIXTY (60) DAYS OF THE DATE OF ENTRY OF SAID FINAL ORDER WILL RESULT IN THE AUTOMATIC SUSPENSION OF LICENSE NUMBER 4901 000036 UNTIL SUCH TIME AS SAID AMOUNT IS PAID IN FULL.

**COMMONWEALTH OF VIRGINIA**  
**DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION**

**CEMETERY BOARD**

**IN RE: WILLIAM FREDERICK CARTER**  
**APPLICATION (MOUNT COMFORT CEMETERY)**

**Summary of the Informal Fact-Finding Conference**

An Informal Fact-Finding Conference (IFF) was convened on August 21, 2003, at the Department of Professional and Occupational Regulation, pursuant to a Notice of Informal Fact-Finding Conference sent by certified mail to William Frederick Carter on July 16, 2003. The following individuals participated at the conference: William Frederick Carter, Applicant; Douglas W. Schroder, Staff Member; and Kenneth R. Bell, presiding Board Member.

**Summation of Facts**

1. William Frederick Carter (Carter) applied for a Cemetery sales personnel registration (with Mount Comfort Cemetery) on or about June 16, 2003, and disclosed criminal conviction(s).
2. On or about July 9, 2003, the Board's licensing staff provided the Regulatory Programs Division Application Review Informal Fact Finding Conference Referral Memorandum, which states the reasons the license was not issued.

**Prior Criminal Convictions**

§ 54.1-204 of the Code of Virginia. Prior convictions not to abridge rights.

B. In determining whether a criminal conviction directly relates to an occupation or profession, the regulatory board shall consider the following criteria:

1. The nature and seriousness of the crime;

On or about June 12, 2000, in the United States District Court in the District of Maryland, Carter was convicted of Mail Fraud, Aiding and Abetting, Income Tax Evasion and Aiding and Abetting, Felonies.

2. The relationship of the crime to the purpose for requiring a license to engage in the occupation;

The purpose of licensure is to protect the health, safety, and welfare of the public. I do not find that Carter is a danger to the public.

3. The extent to which the occupation or profession might offer an opportunity to engage in further criminal activity of the same type as that in which the person had been involved;

It does not appear that granting Carter a registration would encourage any further criminal activity.

4. The relationship of the crime to the ability, capacity or fitness required to perform the duties and discharge the responsibilities of the occupation or profession;

I do not find a significant relationship between the crime and Carter's fitness to engage as a cemetery sales personnel.

5. The extent and nature of the person's past criminal activity;

On or about June 12, 2000, in the United States District Court in the District of Maryland, Carter was convicted of Mail Fraud, Aiding and Abetting, Income Tax Evasion and Aiding and Abetting, Felonies.

6. The age of the person at the time of the commission of the crime;

Carter was approximately 43 years old at the time of the crime.

7. The amount of time that has elapsed since the person's last involvement in the commission of a crime;

The last offense, which resulted in Carter's Income Tax Evasion and Aiding and Abetting felony convictions, occurred on or about October 15, 1995.

8. The conduct and work activity of the person prior to and following the criminal activity; and

During the IFF, Carter stated he was in the retail grocery business prior to his conviction and he has worked at a cemetery owned by SCI for the last few years.

9. Evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release.

Carter was placed in a halfway house, on work release, for a period of one year and one day. Following release, Carter was placed on supervised probation for a period of one year, which he completed. Carter stated that he "wasn't brought up to do something like I did", that he still carries the guilt from his actions and was in therapy for almost five years.

## **Conclusion and Recommendation**

Based upon the record, including the information obtained from the Central Criminal Records Exchange, and in consideration of the criteria outlined in § 54.1-204.B, I recommend Carter's application be approved with the stipulation that Carter enter into an Agreement for Licensure (registration) wherein Carter will report to the Board on a quarterly basis for a period of two years.

By: \_\_\_\_\_

Kenneth R. Bell  
Presiding IFF Board Member  
Board for Contractors

Date: August 21, 2003

## **COMMONWEALTH OF VIRGINIA DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION**

### **CEMETERY BOARD**

**IN RE: WILLIAM FREDERICK CARTER  
APPLICATION (STONEWALL MEMORY GARDENS)**

**FILE NUMBER: 2004-00336**

### **Summary of the Informal Fact-Finding Conference**

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B. In determining whether a criminal conviction directly relates to an occupation or profession, the regulatory board shall consider the following criteria:

1. The nature and seriousness of the crime;

On or about June 12, 2000, in the United States District Court in the District of Maryland, Carter was convicted of Mail Fraud, Aiding and Abetting, Income Tax Evasion and Aiding and Abetting, Felonies.

2. The relationship of the crime to the purpose for requiring a license to engage in the occupation;

The purpose of licensure is to protect the health, safety, and welfare of the public. I do not find that Carter is a danger to the public.

3. The extent to which the occupation or profession might offer an opportunity to engage in further criminal activity of the same type as that in which the person had been involved;

It does not appear that granting Carter a registration would encourage any further criminal activity.

4. The relationship of the crime to the ability, capacity or fitness required to perform the duties and discharge the responsibilities of the occupation or profession;

I do not find a significant relationship between the crime and Carter's fitness to engage as a cemetery sales personnel.

5. The extent and nature of the person's past criminal activity;

On or about June 12, 2000, in the United States District Court in the District of Maryland, Carter was convicted of Mail Fraud, Aiding and Abetting, Income Tax Evasion and Aiding and Abetting, Felonies.

6. The age of the person at the time of the commission of the crime;

Carter was approximately 43 years old at the time of the crime.

7. The amount of time that has elapsed since the person's last involvement in the commission of a crime;

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### **Conclusion and Recommendation**

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By: \_\_\_\_\_

Kenneth R. Bell

Presiding IFF Board Member  
Board for Contractors

Date: August 21, 2003



STATE AND LOCAL GOVERNMENT  
CONFLICT OF INTEREST ACT

TRANSACTIONAL DISCLOSURE STATEMENT  
for Officers and Employees of State Government

1. Name: Anton J. Stelly
2. Title: Member
3. Agency: Cemetery Board
4. Transaction: Informal Fact-Finding Conference on August 22, 2003
5. Nature of Personal Interest Affected by Transaction: None

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6. I declare that:

(a) I am a member of the following business, profession, occupation or group, the members of which are affected by the transaction:

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(b) I am able to participate in this transaction fairly, objectively, and in the public interest.

Anton J. Stelly  
Signature

8/22/03  
Date