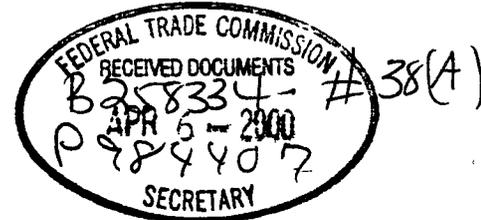


ORIGINAL

January 19, 2000



**Hand-Delivered**

Eileen Harrington, Esq.  
Associate Director for Marketing Practices  
Federal Trade Commission  
6<sup>th</sup> and Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

Re: In the Matter of the Funeral Rule Review

Dear Mrs. Harrington:

By letter dated January 6, 2000, FTC Assistant General Counsel James M. Giffin sent the ICFA a supplemental response to its Freedom of Information Act ("FOIA") request, dated April 30, 1999. We had asked the Commission for any complaints it received concerning cemeteries during the last four years. The FTC staff's original response, dated May 3, 1999, stated that "knowledgeable staff failed to locate any records that are responsive to your request." Mr. Giffin's subsequent January 6<sup>th</sup> response stated that 29 (actually 30) complaints relating to cemeteries from the period of September 1997 to the present were found and that records prior to September 1997 are no longer accessible.

In view of this belated discovery and to avoid prejudice in the rulemaking record, the ICFA wishes to amend its comments including my testimony during the November 18, 1999 public workshop by addressing these complaints. A review of the rulemaking record and consumer complaints submitted to the Cemetery Consumer Service Council not only indicate a low level of complaints overall but virtually none relate to issues covered under the Funeral Rule. This finding has apparently been confirmed by the recent report from the U. S. General Accounting Office ("GAO") on funeral-related industries (pp. 8-13).

The ICFA has compiled a listing of the 30 complaint reports provided by FTC staff. The list and copies of the reports are attached for your review. Please note that three of the reports appear to involve the same complaint, likewise for two others, bringing the total number to 26 or less than one complaint per month over the relevant time period on a national basis. Also, a few complaints do not directly involve the cemetery. Therefore, this low complaint level corroborates our earlier findings.

Mrs. Eileen Harrington  
January 19, 2000  
Page Two

Of greater importance is the extent to which the complaints would be covered under the Funeral Rule assuming the Rule were extended to include cemeteries. Our review indicates that virtually none of the complaints would be prevented, remedied, or in any way addressed by the Funeral Rule. Possible exceptions exist at Nos. 7 and 25 but a determination is not possible in the absence of additional information. For example, is either cemetery operated as part of a combined funeral home-cemetery operation, thus presumably covered by the Rule presently? Is either cemetery a nonprofit or religious entity, thus raising jurisdictional issues?

We submit that this new data supports the ICFA position that consumer cemetery complaints involving Funeral Rule-related issues are sufficiently isolated as to be statistically equivalent to zero. Corroboration was also found in the rulemaking record through the AARP Mystery Shop Report whereby 96% of the shoppers said that all of their questions about cemetery prices and products were answered and 87% said that they felt no pressure to buy anything. Only 1% reported a great deal of pressure to buy.

For these reasons, the ICFA confirms its position that the Funeral Rule is an inappropriate regulatory vehicle to extend to cemeteries and urges the Commission to refrain from taking this action. We respectfully request that this letter and its attachments be made part of the rulemaking record in this proceeding. Thank you.

Very truly yours,



Paul M. Elvig  
Chairman  
Funeral Rule Review Subcommittee

**Attachments**

cc: Alan Hile, Esq.  
Myra Howard, Esq.

## FTC Cemetery Complaints

September 1997 - January 2000

<u>Reference No.</u>	<u>Comments</u>
1. 762522	Nonprofit cemetery restricts types of vaults it permits.
2. 759551	Monument retailer entered into sale with consumer who is restrained by court order from entering into contracts, complicating authorization.
3. 757857 732741 722082	Free space offer by cemetery. This complaint appears to have been filed three times.
4. 753530	Grave site filled with water. The complaint appears to involve a funeral home and a vault company, not the cemetery.
5. 741141	Funeral home/cemetery employee alleges employer is engaging in bait and switch tactics in sale of vaults.
6. 721287	Consumer wants refund because no grass is growing on mother's grave.
7. 707132	Cemetery selling caskets without a price list. No other information given.
8. 686006	Unknown type of seller sold urn and crypt to consumer who later wanted substitution of merchandise, then cancellation of contract.
9. 658138	Complaint against funeral director and a Catholic cemetery for not closing grave after burial.
10. 653972	Cemetery has \$725 non-declineable service charge; details unclear.
11. 633379	Daughter paid burial fee after parents' death. Parents owned the lots. Details unclear.
12. 626561	Consumer dislikes new cemetery owners, they want more money. No details.

13. 622944 Municipal cemetery requires funeral director to be in attendance at grave side service.
14. 601595  
572455 Consumer didn't realize that she was buying a marker when buying a lot; not advised of her rights. Seems to be same complaint.
15. 593033 Consumer bought marker from retailer but must pay cemetery to install it on grave site.
16. 513260 Cemetery changed the required dimensions of its markers since consumer purchased it - but purchased from where and when?
17. 512987 Mishandling of body shipped from Tennessee to Kansas; seems to involve a funeral home.
18. 511673 Funeral home has a discount arrangement with a cemetery for at-need arrangements; details unclear.
19. 480480 Consumer was overcharged by cemetery - for what? No details.
20. 455519 Vault dealer complains that cemetery is exclusive seller of vaults in its own cemetery.
21. 452014 Cemetery assesses uniform fee regardless of who installs markers; no additional details.
22. 448521 Cemetery won't allow consumer to resell block of graves he bought in the 1960s. Also, cemetery failed to notify consumer when a relative was being buried.
23. 429440 Harassment; no details.
24. 385823 Casket retailer gives away a free marker with every casket purchased (!). Cemetery requires that markers must be purchased from it.
25. 363243 Cemetery has deficient funeral price list (?). No details.
26. 331166 Cemetery continues to telephone sick person disregarding requests to place on Do-Not-Call list.



UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
WASHINGTON, D.C. 20580

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Office of General Counsel

January 6, 2000

Mr. Robert M. Fells  
General Counsel  
International Cemetery and Funeral Association  
Audubon III, Suite 220  
1895 Preston White Drive  
Reston, VA 20191

Re: Freedom of Information Request No. 1999-665  
Cemetery Complaints

Dear Mr. Fells:

This is in further response to your letter dated April 30, 1999, in which you requested access, under the Freedom of Information Act ("FOIA"), to complaints received by the Federal Trade Commission concerning cemeteries.

We initially indicated that we had no responsive documents, because we found no complaints coded under "cemeteries" in our automated consumer complaint system. This office has subsequently learned, however, that any complaints relating to cemeteries are coded in the system under "funerals" and that there are, in fact, documents that are responsive to your request. I regret any inconvenience to you caused by this belated discovery.

We have individually reviewed each complaint coded under "funerals" in our system from September 1997 through the present. (Records of consumer complaints received before September 1997 are no longer accessible.) From that group, we have identified 29 complaints that relate to cemeteries. I am granting partial access to, and am enclosing copies of, those records. I am denying access, however, to consumers' names and addresses, and any other identifying information. This information is exempt from release under FOIA Exemption 6, 5 U.S.C. § 552(b)(6), because individuals' right to privacy outweighs the general public's interest in seeing personally identifying information.

If you have any questions about the way we handled your request, or about our FOIA regulations or procedures, please contact Kathy Milton at (202) 326-3253.

Sincerely,

  
James M. Giffin  
Assistant General Counsel