

July 5, 1999

CERTIFIED MAIL  
SIGNATURE REQUESTED

Secretary  
Federal Trade Commission, Room H-159  
600 Pennsylvania Ave., NW  
Washington, DC 20580

ORIGINAL  
RL11001  
B25616400048

Re: 16 CFR Part 453

The stated purpose of the Funeral Rule is to lower barriers to price competition in the funeral market and facilitate informed consumer choice. "Casket handling fees" were banned because they served to frustrate the Rule's basic "unbundling" requirement by penalizing consumers who purchase a casket from third party sellers. Some funeral homes get around the ban on "casket handling fees" with a sham "discount package". This tactic is used to force a tie-in casket sale. It works like this. The funeral service price is increased and then a pretend "discount" is offered to those who buy a casket from the funeral home. The illusion of a price reduction creates a likelihood of confusion on the part of the grieving consumer. A simple test is that there is no savings over the usual price. If the consumer does buy a casket from a casket store then the consumer pays the inflated price for funeral home services.

The NFDA Guidelines teach the so called "discount package". The word "discount" is misleading. There are no savings to the consumer. A legitimate discount is a reduction from the **usual price**. A complaint with examples of three Illinois funeral homes practicing the sham "discount package" were submitted to Ms Lorie Mehan of the FTC on 1/26/98 (see enclosures). The sham "discount package" penalizes the consumer who buys from the casket store. It is a predatory tactic that eliminates casket store competition. It denies consumers a choice.

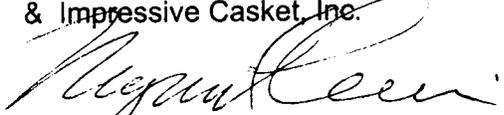
The following is from page 6 of the NFDA "Guidelines for Handling Third Party Caskets"  
"4. Unreasonable Discounts While funeral homes are free to offer discounted packages to encourage families to select a casket from the funeral home, they may not make the discounts **unreasonable**. For example, if a funeral home raised its itemized prices for a typical funeral home to \$10,000 and then offered a \$3,000 funeral package to consumers purchasing a casket from the funeral home, it would open itself up to a claim that it is employing sham discounts. The amount of the discount should have some reasonable relationship to the revenue the funeral home would expect to earn on the sale of the casket."

How can a legitimate discount be unreasonable? The above paragraph really describes a penalty. Who benefits? The phony "discount package" offers no savings or benefits to the consumer. It negates the casket store savings. Do you pay more for the car if you don't buy the CD player from the dealer? Do you pay more for a TV if you don't buy the stand?

Clarity is needed to restore the spirit and purpose of the Funeral Rule. A meaningful ban on casket handling fees is essential for lowering barriers to price competition. We urge the Commission to clarify the ban on casket handling fees by including the following statement:

**"The funeral service must cost the same regardless of where the casket is purchased."**

National Casket Retailers Association, Inc., NCRA  
& Impressive Casket, Inc.

  
Maynard Cheris

original plus five copies

Complaint with Examples dated 1/26/98 enclosed.

# National Casket Retailers Association

1101 N. Estes Ave Gurnee, IL. 60031 Phone (847) 662-4664 Fax (847) 662-4411

January 26, 1998 (Notations have been added to examples on pages 3 & 4)

FAX To: Lorie Mehan @ (202) 326-3395, 4 pages

## COMPLAINT with EXAMPLES

1. This complaint is about an unfair and deceptive practice used by some Funeral Homes described as a "sham discount package". The "sham discount package" is used to make a tie-in casket sale. The alleged violation(s) include the use of false or misleading statements of fact concerning the reasons for or existence of or amounts of price reductions. The illusion of a price reduction is used to create the appearance of "package discounts" which create a likelihood of confusion on the part of the grieving consumer. One test is that there is **no savings over the usual price**. In fact, the offending funeral homes use this for a tie-in sale for their over-priced casket. These acts constitute unfair competition, and false and deceptive trade practices arising under the Uniform Deceptive Trade Practices Act, and MONOPOLIES AND COMBINATIONS IN RESTRAINT OF TRADE, 15 USC Sec. 13a., and violations of the Funeral Rule.

1. One alleged violation is described in the FTC booklet "*Complying with the Funeral Rule*". On page 13 "you should not inflate the prices on any of your price lists in order to offer all or most of your customers a discount." Example: Offending Funeral Homes Itemized prices are inflated on the General Price List, and then a package of the same items is discounted back to the original prices provided the customer buys the casket from the Funeral Home. The NCRA named this deceptive practice a "**sham discount package**". (see page 3 & 4 examples)

2. The Commission is requested to investigate the alleged violations by some Funeral Homes of Section 5 of the FTC Act. The operative sentence of Section 5 reads in full as follows: "Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are declared unlawful." 15 U.S.C. 45(a)(1).

3. The Commission is requested to investigate the alleged violations by some Funeral Homes and their trade associations of 15 USC Sec. 13a. The Statute says in part that "It shall be unlawful for any person engaged in commerce, in the course of such commerce, to be a party to, or assist in, any transaction of sale, or contract to sell, which discriminates to his knowledge against competitors of the purchaser.....for the purpose of destroying competition or eliminating a competitor...."

The NCRA alleges that this "sham discount package" is a deceptive trade practice being used to eliminate competition for the purpose of fixing and/or maintaining inflated casket prices. It is interesting to note that this practice is only used in those areas where there is substantial casket store sales and advertising. This sham allows offending Funeral Homes to keep their casket prices high without having to compete with casket stores.

### FACTUAL BACKGROUND

The National Casket Retailers Association, NCRA, is a non-profit organization engaged in lawfully opposing anti-competitive activity in the Funeral Industry. The NCRA was formed during January, 1998 and is comprised of members from 17 States and Canada.

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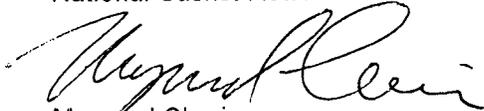
The casket has always been the single most expensive part of a traditional funeral. Casket retail stores have opened in many states and offer caskets to consumers at substantially lower prices than funeral homes. Casket retailers usually advertise price while funeral homes historically oppose price advertising. In areas where casket stores exist funeral providers have a difficult time justifying the huge markup to consumers. This is why casket stores are disliked by funeral homes. That is also why funeral homes are attempting to drive casket stores out of business in areas where the competition is substantial. A recent survey of consumers who used a casket store shows an overwhelming preference for again using and saving with the casket store. The casket store offers vulnerable consumers a viable alternate for the purchase of a casket, and a valuable shopping comparison to Funeral Home pricing.

The Funeral Homes and their associations are using language in *Pennsylvania Funeral Directors Assoc. v. FTC No. 94-3015, 3rd Circuit* to justify "package discounts". The problem arises from the misuse of the word "discount". The FTC distinguished direct casket handling fees from offering discounts to people who buy caskets from the funeral home. The PFDA argued that "the ban will not reduce consumer injury because funeral service providers can circumvent the ban by creating packages, and offering discounts on those packages to those people buying a casket from the Funeral Home. The **FTC did not rule** on the Deceptive Trade Practice heretofore referred to as "sham discount packages" because the practice was not in use at the time. Furthermore the word "discount" sounds pro-competitive; however, in a sham discount there is **no savings**. There is no reduction in the usual price. In fact, the consumer pays more for the package when forced to buy the tie-in of the high priced Funeral Home casket. The NCRA feels that the FTC did not contemplate deceptive acts by Funeral Homes in which they inflate the itemized prices in order to offer a so called "discount" back to the usual price

The National Casket Retailers Association opposes these anti-competitive practices. Some Funeral Homes are practicing a destructive anti-competitive tactic that may spread and do irreparable harm to vulnerable consumers. The NCRA feels that the "sham discount package" is an unfair act or practice of offending funeral homes and meets the following criteria: (1) the act or practice causes or is likely to cause substantial injury to consumers; (2) which is not reasonably avoidable by consumers; and (3) is not outweighed by countervailing benefits to consumers or to competition.

The Commission is urged to apply to the courts for **injunctive relief**, pursuant to the authority granted in section 13 of the Federal Trade Commission Act. The Commission is allowed to make antitrust investigations pursuant to civil investigative demand ("CID) procedures pursuant to the authority granted in section 20 of the FTC Act..

National Casket Retailers Association



Maynard Chervis

ENCL: A sampling of several Chicago area Funeral Homes using the deceptive "sham package discount" follows on page 3 & 4. Clarifying notations have been added to the examples on 1/26/98.

**Congdon & Company (Zion, IL.)**

ITEMIZED PRICES on GPL	9/1/96	6/15/97
Before & after 1997 casket store competition	(usual prices)	(inflated prices)
Basic services of the F.D. and staff	650.00	650.00
Embalming	350.00	350.00
Finishing and casketing	250.00	450.00
Transfer of remains to F.H.	150.00	150.00
Visitation	550.00	600.00
Funeral ceremony	450.00	500.00
Equipment for graveside service	150.00	150.00
Lead Car	Include. in serv Car	100.00
Casket Coach	200.00	200.00
Service Cars	<u>100.00</u>	<u>100.00</u>
<b>A. Total of listed items</b>	<b>\$2,850</b>	<b>\$3,250</b>
(price paid when casket is purchased from 3rd party)		
<b>B. "Discounted" Package price</b>	<b>\$2,850</b>	<b>\$2,925</b>
(requires tie-in purchase of high priced casket from F.H.)		
<b>C. Penalty for casket from 3rd party</b>	no casket store competition in 1996	<b>\$325</b>

**Lloyd Mandel Levayah Funerals (Skokie, IL.)**

ITEMIZED ITEMS on GPL	11/1/96	10/9/97
Before and after 1997 casket store competition	(usual prices)	(inflated prices)
Service of the F.D. and staff	750.00	850.00
Refrigeration	150.00	425.00
Use of Taharah room	175.00	175.00
Bathing and handling	75.00	150.00
Dressing and caskets	75.00	150.00
Equipment for graveside service	50.00	100.00
Transfer of remains to F.H.	175.00	300.00
Hearse	250.00	400.00
Pallbearers Gloves	15.00	15.00
Miscellaneous Material Shiva Pkg.	<u>40.00</u>	<u>40.00</u>
<b>A. Total of listed items</b>	<b>\$1,755</b>	<b>\$2,605</b>
(Price paid when casket is purchased from 3rd party.)		
<b>B. "Discounted" package price</b>	<b>None</b>	<b>\$1,595</b>
(requires tie-in sale of a high priced casket from F.H.)		
<b>C. Penalty for casket from 3rd party</b>	no casket store competition in 1996	<b>\$1,010</b>

Lloyd Mandel Levayah Funerals and the other Funeral Homes shown offer a variety of "sham discount packages". The other "packages" also meet the following three criteria:

1. Inflated itemized prices....
2. Sham discount back to usual prices....no savings to consumer.
3. Tying sale of over-priced casket to qualify for the "sham discount package".

# TYING SALE & "SHAM DISCOUNT" EXAMPLES

Examples revised by NCRA on January 26, 1998

page 4 of 4 pages

## Salata Funeral Homes (Lake County, IL.)

### ITEMIZED PRICES on GPL

Both price lists are after 1997 Casket Store competition

	2/1/97 (inflated over 1996)	5/1/97 (inflated over 2/1/97)
Basic Services of the F.D. and staff	\$995.00	\$1195.00
Embalming	450.00	450.00
Local transfer of remains to F.H.	150.00	150.00
Two hour consultation	None*	100.00
Use of facilities for visitation	400.00	375.00
Funeral service	400.00	375.00
Parking and lounge	200.00	200.00
Two funeral processions	None**	300.00
Hearse	200.00	200.00
Register book	45.00	45.00
Holy cards (2 boxes)	100.00	100.00
Crucifix	25.00	25.00
Acknowledgment cards (2 boxes)	50.00	50.00
Hair style	35.00	35.00
Washing & Disinfecting remains	None***	100.00
Dressing, cosmetizing and casketing	150.00	150.00
Funeral Sedan	100.00	100.00
Service vehicle	100.00	100.00
Misc.	None	200.00
<b>A. Total of inflated listed items</b>	<b>\$3,400</b>	<b>\$4,250</b>
(Price paid when casket is purchased from a 3rd party)		
<b>B. "Discounted" Package Price for listed items</b>		
(requires tie-in purchase of a high priced casket from F.H..)	<b>\$2,395</b>	<b>\$2,395</b>
<b>C. Penalty for buying casket from a 3rd party</b>	<b>\$1,005</b>	<b>\$1,855</b>

\* Only charged if Salata Funeral home not used.

\*\* Not being charged at the time.

\*\*\* Not required unless body not embalmed.

These examples were derived from actual Funeral Home General Price Lists. The original source material is on file and available to governmental agencies.

### DEFINITIONS

- A. A **sham discount** offers no savings...it is a reduction back to the usual price
- B. "(A) **tying** arrangement is when you sell one product but only on the condition the buyer also purchase a different (or tied) product, or at least agrees that he will not purchase that product from any other supplier."
- C. The offense of **attempt to monopolize** has three elements:  
 (1) a specific intent to control prices or destroy competition in the relevant market; (2) predatory or anticompetitive conduct directed at accomplishing the unlawful objective; and (3) a dangerous probability of success in achieving a monopoly in the relevant market.

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