

061

August 11, 1999

David N. Swim
President - Casket Gallery Showrooms
540 Broadway Avc.
El Cajon, CA 92021
(619) 444-4442



The Honorable Donald S. Clark
Secretary
Federal Trade Commission
Room H-159
600 Pennsylvania Ave., N. W.
Washington, D.C. 20580

RE: 16 CFR Part 453
Comments concerning Trade Regulation Rule on Funeral Industry Practices

Dear Secretary Clark:

As a former employee within the Funeral Industry for over 17 years, there are practices and policies regularly followed by them that need nothing less than full review. Currently as the owner of three- (3) retail Casket and Funeral merchandise stores in California, and a fully licensed state Cemetery Broker, we receive daily confirmation of the continuing need for the FTC Funeral Rule. In fact, there is also a need for expansion of the rule.

The Need to Continue the Funeral Rule & Expansion

Over the last 20 years, there has been an unprecedented expansion of corporate conglomerates that are trying to both limit and eliminate competition in the funeral industry. By purchasing family owned funeral homes, retaining the "store front" name (usually the funeral home founder's name), and then shipping in out of state management to enforce their financial profit policies (usually over a 50% net bottom line), they have quickly gained access into this billion dollar market. Usually when corporate costs are significant, there is a sharing of some of this gain passed on to both consumers and employees, but in the case of the funeral industry, only a few "at the top" are benefiting.

The business practices of these companies are what need further review by the commission. It is not uncommon for them to engage in restriction of trade practices by the elimination of choices for the consumer. Attached are letters sent recently by the 3 SCI mortuary/cemetery combination operations in San Diego County. Knowing that no alternative exists for installation of burial vaults purchased from someone other than the cemetery, they implemented this policy ONLY in San Diego County. Thus any choice other than that cemetery's vaults are now available to a grieving family. Memorial

marker restriction of trade is in practice through the development of gardens where only a particular granite or bronze marker is allowed. Another Memorial Marker tactic is to waive the installation fee in the 1st 30 days from time of death, ONLY if the marker is purchased from the cemetery. Under state law in California, this is illegal. Since the current Funeral and Cemetery Programs in California have been so neutralized, they have no affect upon these illegal practices against consumers. Retail casket providers and memorial monument dealers such as ourselves, are receiving an unprecedented attack upon our credibility with slander, misinformation, and outright harassment. Harassment takes place against both the vendor and the consumer. Consumers receive phone calls at home warning of bogus claims, are met in the cemetery on the grounds and intimidated to believe they are making a mistake. Since commission employees are mobilized to prey on these people, the "sale" even takes greater significance.

Please know that rather than compliance by the funeral industry after all of these years of the Funeral Rule, there is more violation with impunity than ever before!

Should the Funeral Rule be expanded to cemeteries, monument dealers, etc?

At this time, if enforcement and compliance was the norm, then perhaps this should be the case. Rather, there is so much that needs to be done within the current framework, that this would tend to dilute the current need for regulation. Cemeteries not owned and operated by the large corporate conglomerates are very consumer friendly. Only when owned and operated by the same violators with Funeral Home ownership is there widespread abuse. The same with monument shops and casket retailers. Owned and operated by private individual families, they are simply trying to compete against business that seem to operate without restraint or concern for the families they serve.

Casket Handling Fees

Currently the Funeral Rule prohibits casket-handling fees outright. Even with this, mortuaries, through the encouragement of their legal departments and the National Funeral Directors Association, have disguised their current casket handling practices through the disguise of "discounts". Under these "bundling" policies, ONLY the families purchasing a casket from the funeral home receive this "discount". All this does is provide a "penalty" to the family who simply does not want to buy their casket, and/or can not afford to buy their casket. This way, the family is penalized twice - first without the funeral charge discount, and second with the overpriced casket.

They are so bold in their practice that several corporations have even posted these on their price lists. Others even openly advertise in the newspaper. The intent is simply to eliminate competition. Prior to caskets becoming available to consumers directly, the opportunity to receive a discount would have been laughed at! Prior to casket stores, the caskets in most mortuaries were priced almost 25% higher than today! We have documented price lists in San Diego that show a steady decline in these mortuaries casket prices only after the steady competition from our casket stores. They don't like it! It's important that ANY reduction from the funeral service prices be available to ALL

families. This practice by the funeral homes becomes more onerous when the funeral home already has possession of the deceased loved one. Usually the family will not allow a conflict with the funeral home over price, because the funeral home has them hostage. Moving their loved one to another mortuary is usually not a desired option. Thereby paying more for services, and choosing a casket elsewhere becomes a negative option. The funeral homes then play on the emotions, and ask the family to throw out the caution with their checkbook! Generally, families pay MORE under this practice whether they pay the "penalty" for not buying the casket from them, or they pay more for buying an overpriced casket through inflated prices that are then discounted. We have also documented price lists that show increases of almost \$1000 to the Non-declinable fee overnight, with the "bundling" of services and caskets that followed the increase immediately!

Please consider a full review of these practices that are endorsed and practiced by the National Funeral Directors Association and their followers!

What revisions should be made to the General and Casket Price List?

The California Casket Retail Association recently introduced a bill, AB 828, that required the disclosure to families that outside options for purchase of caskets, memorial markers, and burial vaults was an option available without penalty and protected by the Funeral Rule. We attempted to have this right published on the General Price List and the Casket Price List. SCI California Funeral Services, the California Funeral Directors Association, the Mortuary Alliance, and the California Interment Association vehemently opposed the bill successfully. Currently the California Monument Dealers attempted to gather support from the State Department of Consumer Affairs for the same disclosure language regarding the purchase of monuments and headstones. So far, the opposition is fierce due to the attempts of the above lobby groups to prevent competition. Restriction of trade is their desire. Misinformation and lies is their regular practice. Complete control without honest disclosure and consumer protections are their ethics.

Only the inclusion of disclosure language regarding the right to purchase 3rd party merchandise elsewhere without a penalty will help the consumer!

Has the Funeral Rule benefited consumers?

Yes, and it needs to continue with a renewed vigor. The original drafters of the Rule were exposed to abuses that dwarf what is practiced now. Due to pressure from Wall Street for higher profits from these companies, renewed draconian sales tactics and pressures are now common place. Ethnic families are especially the targets of these practices. It is my opinion that bilingual price lists should also be required to prevent misrepresentation.

What significant burdens or costs has the Rule imposed on funeral providers?

Having worked for the largest of these providers, I can only say that costs could only be attributed to training that should be a requirement anyway. Without the training that

involved compliance to these rules, the chance that employees would be trained properly is slim. The training we received to make sure the company would not be "stung" by non-compliance resulted in some enlightenment as to proper education.

How has the Funeral Rule benefited consumers?

In many ways! Without the Funeral Rule, disclosure would be non-existent!

How has the NFDA's Funeral Rule Offenders Program affected compliance?

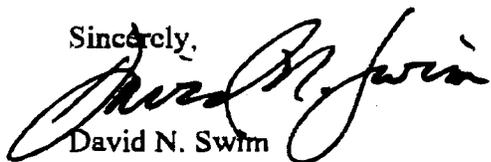
The association with the NFDA denies understanding. Due to the association with the FTC, the NFDA seems to have taken a stronger position of attack on their opposition. It seems that disregard of consumer rights, non-price disclosures, and attacks against independent providers have increased with intensity. Appearing to co-operate with the FTC is simply a ploy to keep the FTC from fully investigating widespread abuse. As they continue to expand through acquisition (eliminated competition through purchase), employ restriction of trade policies such as the refusal to install vaults in selected areas, and increase their legislative presence with stupid rulings like in Oklahoma (caskets pose an environmental hazard so only licensed funeral directors can sell them), they are simply diverting attention away from themselves. Stricter enforcement and action is needed.

Conclusion

The FTC in reviewing the Funeral Rule has taken on a tremendous challenge. Every day, literally billions of dollars are at stake. Simply pull up any financial service on the Internet and review the "death care" stocks and their respective financial reports. They feel they are posed to take advantage of a "harvest" of business. On the other hand, new access to information, the Internet, 3rd party providers like casket stores, and the Funeral Rule, are the only controls the funeral lobby has. Please carefully review the direction you go, and know that grieving families are at stake!

Please let me know if you have any questions. Thank you for your consideration.

Sincerely,



David N. Swim

President

Casket Gallery Showrooms

Cemetery Sales Information Services

Glen Abbey

MEMORIAL PARK and MORTUARY

Established 1923

3838 BONITA ROAD, BONITA, CALIFORNIA 91902
(619) 498-4600

July 1, 1999

David Swim
The Casket Gallery
1123 Highland Avenue
National City, CA 91950

Dear David:

The purpose of this letter is to inform you that effective August 1, 1999, Glen Abbey Cemetery will only install vaults sold by our cemetery. If you currently install vaults yourself or have arrangements made for an independent company to install vaults at our cemetery, this change should not affect you. However, many suppliers routinely deliver vaults to the cemetery for installation by our maintenance personnel. These companies will need to make arrangements to install the vaults themselves or to have an acceptable third-party company perform the installation.

All companies performing work on cemetery grounds must meet the requirements of our rules and regulations. Therefore, a copy of those requirements is attached to this letter. A full copy of the cemetery's rules and regulations is available for review in the office during normal business hours.

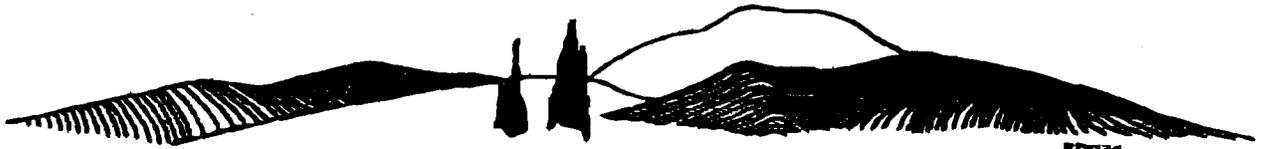
It is not the intention of Glen Abbey Cemetery to create any undue burden on your company. The purpose of this new rule is to eliminate any claim that we are liable for problems that should be the responsibility of the vault's manufacturer. If you believe that this new rule will cause excessive hardship, please contact me as soon as possible so that we may discuss the matter further.

Very truly yours,


Patricia M. Gradillas
General Manager

Attachment

Eternal Hills



MEMORIAL PARK, MORTUARY and CREMATORY
July 6, 1999

Mr. Barry Taira
Caskets for Less
2216 El Camino Real
Oceanside, CA 92054

RE: VAULT INSTALLATION

Dear Mr. Taira,

The purpose of this letter is to inform you that effective August 1, 1999, Eternal Hills Memorial Park will only install vaults sold by our cemetery. If you currently install vaults yourself or have arrangements made for an independent company to install vaults at our cemetery, this change should not affect you. However, many suppliers routinely deliver vaults to the cemetery for installation by our maintenance personnel. These companies will need to make arrangements to install the vaults themselves or to have an acceptable third-party company perform the installation.

All companies performing work on cemetery grounds must meet the requirements of our rules and regulations. Therefore, a copy of those requirements is attached to this letter. A full copy of the cemetery's rules and regulations is available for review in the office during normal business hours.

It is not the intention of Eternal Hills Memorial Park to create any undue burden on your company. The purpose of this new rule is to eliminate any claim that we are liable for problems that should be the responsibility of the vault manufacturer. If you believe that this new rule will cause excessive hardship, please contact me as soon as possible so that we may discuss this matter further.

Very truly yours,

JerriAnn Lewis
General Manager

Attachment



June 14, 1999

Casket Gallery
Owner/Manager
1123 Highland Avenue
National City, CA 91950

RE: Vault Installations

Dear Owner/Manager:

The purpose of this letter is to inform you that effective August 1, 1999, Greenwood Memorial Park will only install vaults sold by our cemetery. If you currently install vaults yourself or have arrangements made for an independent company to install vaults at our cemetery, this change should not affect you. However, many suppliers routinely deliver vaults to the cemetery for installation by our maintenance personnel. These companies will need to make arrangements to install the vaults themselves or to have an acceptable third-party company perform the installation.

All companies performing work on cemetery grounds must meet the requirements of our rules and regulations. Therefore, a copy of those requirements is attached to this letter. A full copy of the cemetery's rules and regulations is available for review in the office during normal business hours.

It is not the intention of Greenwood Memorial Park to create any undue burden on your company. The purpose of this new rule is to eliminate any claim that we are liable for problems that should be the responsibility of the vault's manufacturer. If you believe that this new rule will cause excessive hardship, please contact me as soon as possible so that we may discuss this matter further.

Very truly yours,

Shawn C. Aylesworth
General Manager

Attachment

GREENWOOD MEMORIAL PARK AND MORTUARY
1-805 & IMPERIAL AVE. * P.O. BOX 120088, SAN DIEGO, CA 92112 0088 * PH. (619) 264-3131

From: David N. & Regine P. Swim <davidswim@worldnet.att.net>
To: Jay_Brinker/Aurora@auroracasket.com
<Jay_Brinker/Aurora@auroracasket.com>
Date: Saturday, August 07, 1999 10:07 AM
Subject: Re: Caskets/reply

Dear Jay,

Why is this? Aren't your caskets good enough to be sold directly to the consumer and not have the funeral homes in the way? Or are there other reasons?

David Swim

davidswim@worldnet.att.net

-----Original Message-----

From: Jay_Brinker/Aurora@auroracasket.com
<Jay_Brinker/Aurora@auroracasket.com>

To: davidswim@worldnet.att.net <davidswim@worldnet.att.net>

Date: Friday, August 06, 1999 7:30 AM

Subject: Caskets

>Dear Mr. Swim,

>

>Thank you for your recent e-mail concerning purchasing from Aurora Casket Co.

>Aurora sells only to licensed Funeral Homes and you will have to contact your

>local

>Funeral Home to find information on Aurora's products and pricing.

>

>Thank you again for your interest in Aurora.

>

>Sincerely,

>

>

>Jay Brinker

>Customer Service Specialist

>

>

>

From: Jay_Brinker/Aurora@auroracasket.com
<Jay_Brinker/Aurora@auroracasket.com>
To: David N. & Regine P. Swim <davidswim@worldnet.att.net>
Date: Tuesday, August 10, 1999 2:31 PM
Subject: Re: Caskets/reply

Dear David,

You have very valid questions. Actually, before recent passed laws a casket manufacturer couldn't sell to the general public if they wanted to do so. There are many rules and regulations that also vary from state to state.

Aurora Casket is a nationwide company that's been family owned and operated since 1890. The Funeral Industry is so very traditional and Aurora's chooses to conduct business as usual at this time.

A Funeral Home and Funeral Services are available for one of the most difficult times in life to provide comfort and uncomplication. It is also Aurora's strong belief that most people don't want to "shop" for caskets in their time of grievance. We support our Funeral Homes for the service they provide and they, then become an excellent representative for our fine quality products to the consumer.

My best advice would be to discuss your options with your local Funeral Home and see how they can best suit your needs and budget. If all else fails you can contact your local Better Business Bureau and they should be able to tell you who in your area sells to the general public.

Research well my friend, most casket stores are geared toward a "cheaper" market and you will find scratch, dent, and refurbished merchandise.

Good Luck to you in all your endeavors and I hope I've been of some help.

Sincerely,

Jay Brinker
Customer Service Specialist

RESEARCH
TO
CHECK STATES
X