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

Division of Marketing Practices

Laurie Meehan
Attorney

Direct Dial
202-326-3755

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David Nixon
Funeral Management Service, Inc.
P.O. Box 13320
Springfield, Illinois 62791-3320

Dear Mr. Nixon:

I apologize for the delay in responding to your inquiry. You have raised several issues with respect funeral homes granting discounts to consumers in the course of offering to sell and selling funeral goods and services. As we discussed in our last conversation, if discounts are granted as a matter of course to consumers, these discounts should, instead, be the actual prices and included as such on the General Price List. As the FTC publication Complying with the Funeral Rule states,

The itemized prices on your General Price List, as well as your Casket Price List and Outer Burial Container Price List, should be accurate and up-to-date. These prices should reflect the prices that you actually charge your customers.

Accordingly, as a general practice, if the cost of any item is discounted for all consumers, the discounted prices should be listed as the actual price.

In your letter, you propose four scenarios with respect to discounting services on the basis of whether or not a consumer purchases a casket from the funeral home. As a general matter, I must reiterate that the Funeral Rule prohibits charging casket handling fees pursuant to Section 453.4(b)(1)(ii) of the Funeral Rule. The scenarios you proposed are addressed as follows:

1. A funeral director offers families a discounted price for his/her Basic Services of Funeral Director & Staff fee, if the family purchases a casket from his/her funeral business. Families supplying their own casket are not offered this discount. Is this allowed under the FTC Funeral Rule.

This practice is impermissible under the Funeral Rule. Funeral homes may charge a non-declinable Basic Services Fee as a condition for the purchase of other goods and services. When this fee is included in the price of a casket, the rule requires funeral homes to disclose to consumers that the "same fee shall be added to the total cost of your funeral arrangements if you provide the casket." Section 453.2(b)(4)(C)(2). A discounted fee for consumers who purchase the casket from the funeral home would be inconsistent with this section of the rule stating that consumers who do not purchase a casket from the funeral home would have the same fee added to their arrangement. In addition, this discount would, in effect, become a fee assessed to only those consumers who do not purchase a casket from the funeral home, and would equate to a casket handling fee. Accordingly, this proposal is inconsistent with Section 453.2(b)(4)(C)(2) and is potentially violative of Section 453.4(b)(1)(ii).

2. A funeral director offers families a discounted price for all his/her service fees (Basic Services of Funeral Director & Staff, Embalming, Other Preparation of the Body, etc.), if the family purchases a casket from his/her funeral business. Families supplying their own caskets are not offered this discount. Is this allowed under the FTC Funeral Rule.

Again, this scenario is not allowable under the Funeral Rule. The same issues arise with respect to scenario number one. First, if the Basic Services fee was included in the price of the casket, the required disclosure concerning the "same" fee as mentioned above would be inconsistent with the funeral home's practice of assessing a "different" fee to consumers providing their own caskets. Second, discounting fees on the basis of the purchase of a casket has the effect of charging fees to those consumers who do not purchase caskets from the funeral home. Consistent with previous staff opinions on this subject, funeral homes are permitted to offer funeral packages which offer a discount to all consumers. Structuring discounts to explicitly burden consumers who purchase a casket outside of the funeral home or discourage consumers from purchasing a casket from outside the funeral home, while benefitting only those consumers who purchase a casket from the funeral home effectively amounts to a casket handling fee that is prohibited by the Funeral Rule.

3. A funeral director offers families a discounted price for all his/her service fees (except the Basic Services of Funeral Director & Staff), if the family purchases a casket from his/her funeral business. Families supplying their own casket are not offered this

discount. Is this allowed under the FTC Funeral Rule.

This is allowable under the FTC Funeral Rule. Although we are certainly concerned about the premise of a proposed discount when it is structured in a way to monetarily burden consumers who supply their own casket or discourage consumers from supplying their own casket, funeral homes may encourage consumers to purchase a casket from their organization by offering discounts on services or items except for a non-declinable Basic Services Fee.

4. Allowing that a funeral director is permitted to offer a discounted price in one of the three prior examples, I believe that he/she can enter either the itemized prices on the Statement of Funeral Goods & Services Selected or a single package total price with a check mark on all the service items included in that package price.

If a funeral home offers a package of goods and services that complies with the Funeral Rule, it may list the goods and services included in the package together with the package price. See Complying with the Funeral Rule, page 24.

I hope that you find this information helpful. Please note that the views expressed in this letter are those of staff only. They have not been reviewed, approved or adopted by the Commission, and they are not binding on the Commission. They do, however, reflect the opinions of the staff charged with enforcement of the Funeral Rule.

Sincerely,

Laurie Meehan
Funeral Rule Enforcement Staff