



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

Division of Marketing Practices

Laurie Meehan
Attorney

Direct Dial
202-326-3755

VIA FACSIMILE AND U.S. MAIL

March 20, 1997

Vincent F. Kilborn, III
Kilborn, Roebuck & Kilborn
1810 Old Government Street
Mobile, Alabama 36606

Dear Mr. Kilborn:

Thank you for your letters of October 17, 1996 and December 31, 1996. I apologize for the delay in responding to your inquiries.

In your letters, you raise the following issues: 1) whether it is a violation of FTC's Funeral Rule to lump groups of charges together under the category of "Funeral Ceremony"; 2) whether it is a violation of the FTC's Funeral Rule to fail to explain the mandatory Funeral Director and Staff Services Charge; 3) whether there is a private right of action under the Funeral Rule; and 4) whether there are any complaints against SCI, and how you may obtain them.

As you may know, the Commission is charged with the enforcement of the Federal Trade Commission Act, 15 U.S.C. § 41 *et seq.* ("FTC Act"), which prohibits unfair and deceptive practices, as well as enforcement of trade regulation rules enacted pursuant thereto, such as the Funeral Rule, 16 C.F.R. Part 453. The Funeral Rule requires that funeral providers give consumers accurate, itemized price lists, make disclosures regarding certain funeral goods and service and prohibits funeral providers from making certain misrepresentations regarding funeral goods and services.

First, you inquired as to whether it is a violation of the Funeral Rule to lump together a number of items under a single charge of \$600 for the "Funeral Ceremony." This price allegedly includes charges for embalming, visitation, funeral ceremony, graveside service, transfer remains to funeral home, funeral vehicle, casket/cremation casket, and clothing/shroud.

The Funeral Rule requires itemization of prices for certain charges and services. Specifically, on the General Price List, a funeral provider must list sixteen items separately with their respective prices. 16 C.F.R. § 453.2 (4), (5) The sixteen items required to be listed separately on the General Price List are: forwarding of remains, receiving remains, direct cremation, immediate burial, basic services of funeral director and staff (and overhead), transfer of remains to funeral home, embalming, other preparation of the body, use of facilities and staff for viewing, use of facilities and staff for funeral ceremony, use of facilities and staff for memorial service, use of equipment and staff for graveside service, hearse, limousine, casket prices, and outer burial container prices. 16 C.F.R. § 453.2 (4)(ii) Under the Funeral Rule, funeral providers are required to provide consumers with an itemized Statement of Goods and Services selected including, "[t]he funeral goods and services selected by that person and the prices to be paid for each of them." See 16 C.F.R. § 453.2(b)(5). As the Compliance Guides state (p. 23), "the categories of goods and services listed in the Statement (or other similar document) should generally correspond to the items listed on the GPL [General Price List] so that customers can easily compare the two documents."

The situation which you presented in your letter indicates a grouping or lumping together of items on the Statement of Goods and Services Selected to include embalming, visitation, ceremony, memorial service, graveside service, transfer of remains to funeral home, funeral vehicle and casket all in one entry. Such grouping does not comply with § 453.2(b)(5).

Second, you inquired as to whether it is a violation of the Funeral Rule to fail to explain that the Funeral and Staff service charge was mandatory on the Statement of Goods and Services. In answer, first let me make it clear that the Funeral Staff and Services charge is not mandated by law. Such a charge is, however, permitted by the Funeral Rule. 16 C.F.R. § 453.2(4). The allowable fee may include charges for services such as "conducting the arrangements conference, planning the funeral, securing the necessary permits, preparing the notices, and coordinating the cemetery or crematory arrangements." With respect to the basic services fee, if the funeral provider lists a separate basic services fee and it is non-declinable, the provider must make the following disclosure on the General Price List:

This fee for our basic services and overhead will be added to the total cost of the funeral arrangements you select. (This fee is already included in our charges for direct cremations, immediate burials, and forwarding or receiving remains.)

The materials attached to your letter included what purports to be a Statement of Goods and Services Selected¹, but did not include a General Price List. Therefore, I cannot determine

¹There are three required disclosures which must be included on a Statement of Funeral Goods and Services. These disclosures pertain to legal requirements, embalming, and cash advance items. With respect to embalming, the funeral providers must include the following statement on the Statement of Goods and Services:

whether the funeral service provider in question complied with this provision of the Rule.

Third, you inquired as to whether there is a private right of action under the Funeral Rule. The FTC is charged with enforcing the provisions of the Funeral Rule. Under Section 5 (m)(1)(A) of the Federal Trade Commission Act, the Commission is authorized to commence a civil action to recover a civil penalty in a United States District Court against any person, partnership, or corporation that violates an FTC rule.² However, the case law clearly establishes that there is no private right of action to enforce provisions of the FTC Act and other FTC Rules. See Holloway v. Bristol-Myers Corporation, 485 F.2d 986 (D.C. Cir. 1973); Days Inn of America Franchising, Inc. v. Windham, 699 F. Supp. 1581 (N.D. Ga. 1988). It follows, therefore, that there is no private right of action to enforce the provisions of the Funeral Rule.

Finally, you have requested information concerning complaints that the FTC has received regarding SCI. Your query is subject to the Freedom of Information Act. I will forward your request to the appropriate party at the FTC to process your written request for information. For future use, if you require further information from the FTC, you should submit a written request to:

Freedom of Information Act Request
Chief Information Officer
Federal Trade Commission
6th and Pennsylvania Ave., N.W.
Washington, DC 20580

Other sources of consumer complaints regarding funeral homes include the state Attorney General's office for the state where the funeral home is located and the state funeral board.

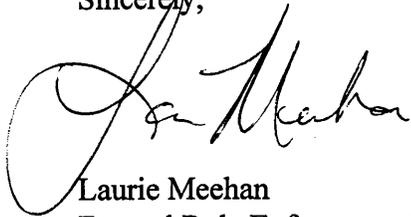
If you selected a funeral that may require embalming, such as a funeral with a viewing, you may have to pay for embalming. You do not have to pay for embalming you did not approve if you selected arrangements such as a direct cremation or immediate burial. If we charged for embalming, we will explain why below.

16 C.F.R. § 453.5(b). The Compliance Guide (p. 25) advises that "[t]he form should leave enough space for you to explain the reason for embalming. You should enter this information on the Statement before giving it to the customer."

²In such an action, the Commission is authorized to request a penalty fee for each violation. However, any penalty must be imposed by a United States District Court. An investigation of a potential rule violation may be commenced upon information submitted by any governmental entity, upon complaint by members of the public, including industry members, or by the Commission upon its own initiative.

I hope that this information is of assistance to you. Please let me know if I can be of any further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Laurie Meehan". The signature is written in a cursive style with a large initial "L" and "M".

Laurie Meehan
Funeral Rule Enforcement Staff



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

June 10, 2003

Jeanne Dwyer
Executive Vice President
Monument Builders of North America
3158 S. River Road, Suite 224
Des Plaines, IL 60018

Dear Ms. Dwyer:

Thank you for your letter of May 20, 2003, to Eileen Harrington, which has been referred to me for response. You indicate that most of your members do not sell monuments over the phone or solicit or accept payment for such a purchase over the phone. You note, however, that some of your members use the telephone as a preliminary sales tool either to make appointments with interested consumers or to inform consumers that they have alternatives to buying a monument from either a cemetery or funeral home. You ask whether these situations would be covered by the national do-not-call registry. You should understand that this opinion is that of Commission staff and, as such, is neither attributable to nor binding on the Commission itself or any individual Commissioner.

The Telemarketing Sales Rule exempts face-to-face transactions from complying with the requirements of the Rule except for certain of the abusive practices sections, including the do-not-call provisions. Therefore, the do-not-call registry would cover situations where your members call consumers to solicit appointments during which the transaction is completed in a face-to-face setting and where one or more interstate telephone calls are involved. Similarly, the second scenario you describe would also be covered by the do-not-call provisions of the Rule as long as one or more interstate telephone calls are involved. Although the calls in the second scenario may appear to be "informational," they are in fact commercial calls that have been made "for the purpose of inducing the purchase of goods or services," albeit at some unspecified later date, and thus they would fall within the definition of "telemarketing."

I hope this information is helpful to you. I must remind you that the opinions expressed in this letter are those of the Commission staff only. These opinions are not attributable to and are not binding on the Commission itself or on any individual Commissioner. If you wish to discuss this staff opinion or related issues, please feel free to contact me at (202) 326-3115 (email: cdanielson@ftc.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Carole I. Danielson". The signature is fluid and cursive, with a large initial "C" and "D".

Carole I. Danielson
Investigator