

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA,

Plaintiff,

v.

HARRISON FUNERAL HOME, INC. and  
JOHN BALSAMO,

Defendants.  
-----X

12 Civ. 03733 ~~(ER)~~ (NSR)

**CONSENT DECREE**

ECF Case

Plaintiff, the United States of America, by its attorney Preet Bharara, United States Attorney for the Southern District of New York, acting upon notification and authorization to the Attorney General by the Federal Trade Commission ("Commission" or "FTC"), filed its Amended Complaint for a permanent injunction, civil penalties, and other relief in this matter, pursuant to Sections 13(b) and 16(a)(1) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) and 56(a)(1) on October 5, 2012. Defendants Harrison Funeral Home, Inc. and John Balsamo filed their Answer on November 16, 2012. Through counsel, having filed a joint motion, Plaintiff and Defendants Harrison Funeral Home, Inc. and John Balsamo stipulate to the entry of this Consent Decree ("Order") to resolve all matters in dispute in this action between them.

THEREFORE, IT IS ORDERED as follows:

**USDC SDNY**  
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**ELECTRONICALLY FILED**  
DOC #:  
DATE FILED: 1/2/2014

2 of 14  
**FINDINGS**

1. This Court has jurisdiction over this matter.
2. The Amended Complaint charges that Defendants participated in deceptive acts or practices in violation of the FTC Act, 15 U.S.C. §§ 45(a) and 45(m)(1)(A), for violations of the FTC's trade regulation rule concerning funeral industry practices, 16 C.F.R. Part 453.
3. Defendants neither admit nor deny any of the allegations in the Amended Complaint, except that Defendants admit that they violated the Funeral Rule.
4. Only for purposes of this action, Defendants admit the facts necessary to establish jurisdiction.
5. Defendants waive any claim that they may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Order, and agree to bear their own costs and attorney fees.
6. Defendants and Plaintiff waive all rights to appeal or otherwise challenge or contest the validity of this Order.
7. The activities of Defendants are in or affecting commerce as "commerce" is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.
8. Entry of this Order is in the public interest.

3 of 14  
**DEFINITIONS**

- A. "Defendants" means the Individual Defendant and the Corporate Defendant, individually, collectively, or in any combination.
- B. "Corporate Defendant" means Harrison Funeral Home, Inc., and its successors and assigns. The Corporate Defendant is a "funeral provider" offering "funeral goods" and "funeral services" under 16 C.F.R. §§ 453.1(h)-(j).
- C. "Individual Defendant" means John Balsamo.
- D. "Funeral goods" are the goods which are sold or offered for sale directly to the public for use in connection with funeral services.
- E. "Funeral Rule" or "Rule" means the Trade Regulation Rule Concerning Funeral Industry Practices issued by the Federal Trade Commission ("FTC" or "Commission"), 16 C.F.R. Part 453. Copies of the Funeral Rule and the FTC publication, "Complying with the Funeral Rule," are attached hereto as Exhibits A and B, respectively.
- F. "Funeral services" are any service which may be used to: (1) care for and prepare deceased human bodies for burial, cremation or other final disposition; and (2) arrange, supervise, or conduct the funeral ceremony or the final disposition of deceased human bodies.

**I. INJUNCTION**

IT IS ORDERED that Defendants, Defendants' officers, agents, servants, employees, and attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with selling or offering to sell funeral goods and funeral services to the public are permanently restrained and enjoined from violating, directly or through any corporation, subsidiary, division, or other

4 of 14

device, any provision of the Funeral Rule, including, but not limited to, the Rule's prohibitions against:

A. Failing to give consumers who inquire in person a general price list they can keep upon beginning discussion of the overall type of funeral service or disposition, specific funeral goods or services offered, or the prices of such goods or services;

B. Failing to show consumers who inquire in person about the offerings or prices of caskets or alternative containers a casket price list upon beginning discussion of caskets, but in any event before showing any caskets, models, or pictures of caskets;

C. Failing to show consumers who inquire in person about the offerings or prices of outer burial containers an outer burial container price list upon beginning discussion of outer burial containers, but in any event before showing any outer burial containers, models, or pictures of outer burial containers;

D. Failing to include the following disclosure clearly and conspicuously on Defendants' general price list:

"The goods and services shown below are those we can provide to our customers. You may choose only the items you desire. If legal or other requirements mean you must buy any items you did not specifically ask for, we will explain the reason in writing on the statement we provide describing the funeral goods and services you selected."

*Provided, however,* that if the basic services fee cannot be declined by the purchaser, the disclosure must include the sentence: "However, any funeral arrangements you select will include a charge for our basic services" between the second and third sentences of the disclosure.

*Provided further,* that this sentence may include the phrase "and overhead" after the word "services" if the fee includes a charge for the recovery of unallocated funeral provider overhead;

5 of 14

E. Failing to give any person who asks by telephone about Defendants' offerings or prices accurate information from Defendants' price lists and any other readily available information that reasonably answers the question;

F. Failing to give each person who arranges a funeral or other disposition of human remains an itemized written statement of all funeral goods and services selected to keep at the conclusion of the discussion of arrangements;

G. Requiring the purchase of any funeral good or funeral service as a condition of furnishing any other funeral good or funeral service, except as required by law or as otherwise permitted by the Rule;

H. Requiring payment of any fee as a condition of furnishing any funeral good or funeral service to a person arranging a funeral, other than the fees for: (1) the services of funeral director and staff (the "basic services fee"); (2) other funeral services and funeral goods selected by the purchaser; and (3) other funeral goods or services necessitated by any legal, cemetery or crematory requirements described in writing on Defendants' statement of the funeral goods and services a customer has selected; and

I. Any other provision of the Funeral Rule; *provided, however*, that pursuant to 16 C.F.R. § 453.4(b)(3)(ii), Defendants are not required to comply with a request for a combination of funeral goods or services that would be impossible, impractical or excessively burdensome to provide.

**II. MONETARY JUDGMENT FOR CIVIL PENALTY**

IT IS FURTHER ORDERED that:

A. Judgment in the amount of Thirty-Two Thousand Dollars (\$32,000.00) is entered in favor of Plaintiff against the Individual Defendant and Corporate Defendant, jointly and severally, as a civil penalty.

B. Defendants are ordered to pay Plaintiff, by making a payment to the U.S. Department of Justice, Thirty-Two Thousand Dollars (\$32,000.00), which, as Defendants stipulate, their undersigned counsel will hold in escrow for no purpose other than payment to Plaintiff. Such payment must be made in three installments: the first within thirty (30) days of entry of this Order, the second within sixty (60) days within entry of this Order, and third within ninety (90) days within entry of this Order. Payments must be made by Electronic Funds Transfer ("EFT"), and include interest accruing from the Date of Lodging, at the rate specified in 28 U.S.C. § 1961 as of the Date of Lodging, in accordance with instructions previously provided by the Financial Litigation Unit of the U.S. Attorney's Office for the Southern District of New York. At the time of payment, Defendants shall send a copy of the EFT authorization form and EFT transaction record together with a transmittal letter, which shall state that the payment is for the civil penalty owed pursuant to the Order in United States of America v. Harrison Funeral Home, Inc. et al, and shall reference the civil action number and the U.S. Attorney's Office case number 2011V01359 to the United States.

C. Defendants relinquish all dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Order and may not seek to return any assets.

7 of 14

D. The facts alleged in the Amended Complaint will be taken as true, without further proof, in any subsequent civil litigation filed by or on behalf of the Commission, or by the Plaintiff, including in a proceeding to enforce its rights to any payment or monetary judgment pursuant to this Order.

E. Defendants agree that the judgment represents a civil penalty owed to the government of the United States, is not compensation for actual pecuniary loss, and, therefore, as to the Individual Defendant, it is not subject to discharge under the Bankruptcy Code pursuant to 11 U.S.C. § 523(a)(7).

F. Defendants acknowledge that their Taxpayer Identification Numbers (Social Security Number or Employer Identification Number), which Defendants previously submitted to the Plaintiff and the Commission, may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. § 7701.

### III. ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that Defendants obtain acknowledgments of receipt of this Order:

A. Each Defendant, within 7 days of entry of this Order, must submit to the Commission acknowledgment of receipt of this Order sworn under penalty of perjury.

B. For 5 years after entry of this Order, the Individual Defendant, for any business selling or offering to sell funeral goods or funeral services that such Defendant, individually or collectively with any other Defendant, is the majority owner of, or controls directly or indirectly, and the Corporate Defendant, must deliver a copy of this Order to: (1) all principals, officers, directors, and LLC managers and members; (2) all employees, agents, and representatives who

8 of 14

have contact with consumers who are seeking to arrange a funeral; and (3) any business entity resulting from any change in structure as set forth in the Section titled Compliance Reporting. Delivery must occur within 7 days of entry of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities.

C. From each individual or entity to which a Defendant delivered a copy of this Order, that Defendant must obtain, within 30 days, a signed and dated acknowledgment of receipt of this Order.

#### IV. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that Defendants make timely submissions to the Commission:

A. One year after entry of this Order, each Defendant must submit a compliance report, sworn under penalty of perjury:

1. Each Defendant must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Commission and Plaintiff may use to communicate with that Defendant; (b) identify all of that Defendant's businesses by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each business, including the goods and services offered, the means of advertising, marketing, and sales, and the involvement of any other Defendant (which Individual Defendant must describe if he knows or should know due to his own involvement); (d) describe in detail whether and how that Defendant is in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Commission.



9 of 14

2. Additionally, Individual Defendant must: (a) identify all telephone numbers and all physical, postal, email and Internet addresses, including all residences; (b) identify all business activities, including any business for which such Defendant performs services whether as an employee or otherwise and any entity in which such Defendant has any ownership interest; and (c) describe in detail such Defendant's involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership.

B. For 20 years after entry of this Order, each Defendant must submit a compliance notice, sworn under penalty of perjury, within 14 days of any change in the following:

1. Each Defendant must report any change in: (a) any designated point of contact; or (b) the structure of any Corporate Defendant or any entity that Defendant has any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, including: creation, merger, sale, or dissolution of the entity or any subsidiary, parent, or affiliate that engages in any acts or practices subject to this Order.

2. Additionally, the Individual Defendant must report any change in: (a) name, including aliases or fictitious name, or residence address; or (b) title or role in any business activity, including any business for which such Defendant performs services whether as an employee or otherwise and any entity in which such Defendant has any ownership interest, and identify the name, physical address, and any Internet address of the business or entity.

C. Each Defendant must submit to the Commission notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against such Defendant within 14 days of its filing.

10 of 14

D. Any submission to the Commission required by this Order to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: \_\_\_\_\_” and supplying the date, signatory’s full name, title (if applicable), and signature.

E. Unless otherwise directed by a Commission representative in writing, all submissions to the Commission pursuant to this Order must be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to: Associate Director for Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580. The subject line must begin: United States v. Harrison Funeral Home, Inc. and John Balsamo, FTC File No.: X120051.

#### V. RECORDKEEPING

IT IS FURTHER ORDERED that Defendants must create certain records for 20 years after entry of the Order, and retain each such record for 5 years. Specifically, Corporate Defendant, for any business that has sold or offered to sell funeral goods or funeral services, and Individual Defendant for any business that such Defendant, individually or collectively with any other Defendant, is a majority owner of, or controls directly or indirectly, must create and retain the following records:

- A. Accounting records showing the revenues from all goods or services sold;
- B. Personnel records showing, for each person providing services, whether as an employee or otherwise, that person’s: name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason for termination;

11 of 14

C. Complaints and refund requests concerning the sale or offer of funeral goods or funeral services, whether received directly or indirectly, such as through a third party, and any response;

D. All records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission; and

E. A copy of each price list, contract, advertisement, and other marketing material for the sale or offer of funeral goods or funeral services.

#### VI. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring Defendants' compliance with this Order, including any failure to transfer any assets as required by this Order:

A. Within 14 days of receipt of a written request from a representative of the Commission or Plaintiff, each Defendant must: submit additional compliance reports or other requested information, which must be sworn under penalty of perjury; appear for depositions; and produce documents for inspection and copying. The Commission and Plaintiff are also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.

B. For matters concerning this Order, the Commission and Plaintiff are authorized to communicate directly with each Defendant. Defendants must permit representatives of the Commission and Plaintiff to interview any employee or other person affiliated with any Defendant who has agreed to such an interview. The person interviewed may have counsel present.

12 of 14

C. The Commission and Plaintiff may use all other lawful means, including posing, through its representatives as consumers, suppliers, or other individuals or entities, to Defendants or any individual or entity affiliated with Defendants, without the necessity of identification or prior notice. Nothing in this Order limits the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

**VII. RETENTION OF JURISDICTION**

IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

SO ORDERED: this 2nd day of January, <sup>2014</sup>~~2013~~.

  
NELSON STEPHEN ROMÁN  
UNITED STATES DISTRICT JUDGE

1/2/14

13 of 14

**SO STIPULATED AND AGREED;**

**FOR PLAINTIFF:**

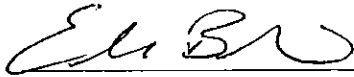
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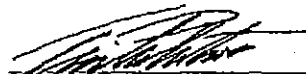
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JOHN BALSAMO INDIVIDUALLY  
AND AS AN OFFICER OF  
HARRISON FUNERAL HOME, INC.