

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.
)	
)	
HARRY J. CARTER III,)	
individually and doing business as)	
Carter Funeral Chapels, Ltd.)	
)	
Defendant.)	
)	

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE AND OTHER RELIEF**

Plaintiff, the United States of America, acting upon notification and authorization to the Attorney General by the Federal Trade Commission (“Commission”), for its Complaint alleges that:

1. Plaintiff brings this action under Sections 5(a)(1), 5(m)(1)(A), 13(b), and 16(a) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45(a)(1), 45(m)(1)(A), 53(b), and 56(a), to obtain monetary civil penalties, a permanent injunction, and other equitable relief for Defendant’s violations of the Commission’s Trade Regulation Rule Concerning Funeral Industry Practices (“Rule” or “Funeral Rule”), 16 C.F.R. Part 453.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355 and 15 U.S.C. §§ 45(m)(1)(A), 53(b), and 56(a). This action arises under 15 U.S.C. § 45(a)(1).

3. Venue is proper in this district under 15 U.S.C. § 53(b) and 28 U.S.C. §§ 1391(b)-(c) and 1395(a).

PLAINTIFF

4. This action is brought by the United States of America on behalf of the Federal Trade Commission pursuant to 15 U.S.C. § 56. The Commission is an independent agency of the United States government given statutory authority and responsibility by the FTC Act, as amended, 15 U.S.C. §§ 41-58. The Commission is charged, inter alia, with enforcing Section 5 of the FTC Act, 15 U.S.C. § 45, which prohibits unfair and deceptive acts or practices in or affecting commerce. The Commission also is authorized by 15 U.S.C. § 57a(a)(1)(B) to issue trade regulation rules that “define with specificity acts or practices which are unfair or deceptive acts or practices in or affecting commerce” within the meaning of Section 5(a)(1), 15 U.S.C. § 45(a)(1), and may obtain civil penalties for rule violations pursuant to 15 U.S.C. § 45(m)(1)(A).

DEFENDANT

5. Defendant Harry J. Carter III is an individual doing business as Carter Funeral Chapels Ltd. with his principal place of business at 2100 E. 75th Street, Chicago, Illinois. At all times material to this complaint, acting alone or in concert with others, he has formulated, directed, controlled, had the authority to control, or participated in the acts and practices of Carter Funeral Chapels, Ltd., including the acts and practices set forth in this complaint. Carter resides in this district and, in connection with the matters alleged herein, transacts or has transacted business in this district.

THE FUNERAL RULE

6. The Funeral Rule, promulgated by the Commission under Section 18 of the FTC Act, 15 U.S.C. § 57a, became effective in its entirety on April 30, 1984, and since that date has remained in full force and effect. Amendments to the Funeral Rule were promulgated by the Commission under Section 18 of the FTC Act, 15 U.S.C. § 57a, and became effective on July 19, 1994. The Funeral Rule is codified at 16 C.F.R. Part 453.

VIOLATIONS OF THE FUNERAL RULE

7. At all times material herein, Defendant has been a “funeral provider,” as that term is defined in Section 453.1(i) of the Rule, 16 C.F.R. § 453.1(i), and has sold or offered to sell “funeral goods” and “funeral services,” as those terms are defined in Sections 453.1(h) and 453.1(j) of the Rule, 16 C.F.R. §§ 453.1(h) and 453.1(j).

8. In at least two separate incidents, in connection with selling or offering to sell funeral goods and funeral services, in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44, Defendant has violated the Funeral Rule by failing to provide to each person who inquires in person about funeral goods, funeral services, or prices of funeral goods or services a printed or typewritten general price list, upon beginning discussion of any of the following: (1) the prices of funeral goods or funeral services; (2) the overall type of funeral service or disposition; or (3) specific funeral goods or funeral services offered by the funeral provider, in violation of 16 C.F.R. § 453.2(b)(4).

9. In at least two separate incidents, in connection with selling or offering to sell funeral goods and funeral services, in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44, Defendant has violated the Funeral Rule by failing to provide to each

person who inquires in person about the offerings or prices of caskets or alternative containers a printed or typewritten casket price list, upon beginning discussion of, but in any event before showing, caskets or alternative containers, thereby violating 16 C.F.R. § 453.2(b)(2).

CIVIL PENALTIES AND INJUNCTION

10. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), authorizes the Court to award monetary civil penalties of not more than \$16,000 for each such violation of the Funeral Rule. *See also* 16 C.F.R. § 1.98(d).

11. Defendant has violated the Funeral Rule as described above with knowledge as set forth in Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).

12. Pursuant to Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the Funeral Rule constitutes an unfair or deceptive act or practice in violation of Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1).

13. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), provides that “unfair and deceptive acts or practices in or affecting commerce are hereby declared unlawful.”

14. Defendant sells and offers to sell funeral goods and funeral services in or affecting commerce as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

15. Under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), this Court is authorized to issue a permanent injunction enjoining Defendant from violating the FTC Act.

PRAYER

WHEREFORE, Plaintiff requests that this Court, pursuant to 15 U.S.C. §§ 45(a)(1), 45(m)(1)(A), and 53(b), and pursuant to its own equitable powers:

- (1) Enter judgment against Defendant and in favor of Plaintiff for the violations of the Funeral Rule and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), alleged in this Complaint;
- (2) Award Plaintiff monetary civil penalties from Defendant for the violations of the Funeral Rule and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), alleged in this Complaint;
- (3) Enjoin Defendant from violating the Funeral Rule and Section 5 of the FTC Act, 15 U.S.C. § 45; and
- (4) Award Plaintiff such additional relief as the Court may deem just and proper.

Dated: July 15, 2011

OF COUNSEL:

WILLARD K. TOM
General Counsel

C. STEVEN BAKER
Regional Director

JAMES DAVIS
Midwest Region
Federal Trade Commission
55 West Monroe, Suite 1825
Chicago, IL 60603
Telephone: (312) 960-5634
FAX: (312) 960-5600

Respectfully submitted,

FOR THE UNITED STATES
OF AMERICA:

TONY WEST
Assistant Attorney General
MAAME EWUSI-MENSAH FRIMPONG
Acting Deputy Assistant Attorney General
Civil Division
U.S. DEPARTMENT OF JUSTICE

PATRICK J. FITZGERALD
United States Attorney

s/ LaShonda A. Hunt
LASHONDA A. HUNT
Assistant United States Attorney
219 S. Dearborn Street, Suite 500
Chicago, IL 60604
Telephone: 312-886-4190
LaShonda.Hunt@usdoj.gov

KENNETH L. JOST
Acting Director
Office of Consumer Protection Litigation

ADRIENNE FOWLER
Trial Attorney
Office of Consumer Protection Litigation
United States Department of Justice
Liberty Square Building, Room 6400
450 Fifth St., NW
Washington, D.C. 20530
Telephone: (202) 514-9471
FAX: (202) 514-8742
Adrienne.E.Fowler@usdoj.gov