

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civil Action No. 11-1258-RBW

B. K. HENRY FUNERAL CHAPEL, INC.,

a District of Columbia corporation;

BRIAN K. HENRY, individually and as an officer of
the corporation; and

LISA HENRY, individually and as an officer of the
corporation;

Defendants.

CONSENT DECREE

WHEREAS, Plaintiff, the United States of America, has commenced this action by filing the Complaint herein; Defendants B.K. Henry Funeral Chapel, Inc., Brian K. Henry, and Lisa Henry have waived service of the Summons and Complaint; the parties have been represented by the attorneys whose names appear hereafter; and the parties have agreed to settlement of this action upon the following terms and conditions, without adjudication of any issue of fact or law and without Defendants admitting liability for any of the matters charged in the Complaint other than jurisdictional facts;

ORDER

THEREFORE, on the joint motion of the Plaintiff and Defendants, it is **ORDERED**, **ADJUDGED**, and **DECREED** as follows:

FINDINGS

1. This Court has jurisdiction of the subject matter and of the parties.
2. The Complaint states a claim upon which relief may be granted against the Defendants under Sections 5(a)(1), 5(m)(1)(A), 13(b), and 16(a) of the Federal Trade Commission Act, 15 U.S.C. §§ 45(a)(1), 45(m)(1)(A), 53(b), and 56(a).
3. Venue in this district is proper under 28 U.S.C. §§ 1391(b-c) and 1395(a) and 15 U.S.C. § 53(b).
4. 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.
5. Entry of this Consent Decree is in the public interest.
6. Defendants stipulate to the entry of this Consent Decree freely and without coercion. Defendants further acknowledge that they have read the provisions of this Consent Decree and are prepared to abide by them.
7. All parties waive all rights to appeal or otherwise challenge or contest the validity of this Consent Decree.
8. The parties shall each bear their own costs and attorneys' fees incurred in this action. Defendants waive any claim they may have under the Equal Access to Justice Act, 28 U.S.C. § 2412.

DEFINITIONS

1. "Individual Defendants" means Brian K. Henry and Lisa Henry.
2. "Corporate Defendant" means B. K. Henry Funeral Chapel, Inc., and its successors and assigns.
3. "Defendants" means all of the Individual Defendants and the Corporate Defendant, individually, collectively, or in any combination.
4. "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, and incorporated in this Consent Decree as if fully set forth herein.

I. INJUNCTION

IT IS THEREFORE ORDERED that Defendants and their officers, agents, servants, employees, successors, attorneys, and all other persons in active concert or participation with any of them who receive actual notice of this Consent Decree by personal service or otherwise, are permanently enjoined from violating, directly or through any corporation, subsidiary, division, or other 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, as required by 16 C.F.R. § 453.2(b)(4);

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, as required by 16 C.F.R. § 453.2(b)(2);

C. Failing to show consumers who inquire in person about outer burial container offerings or prices an outer burial container price list upon beginning discussion of outer burial containers, vaults or grave liners, but in any event before showing any outer burial containers, models, or pictures thereof, as required by 16 C.F.R. § 453.2(b)(3);

D. Failing to tell any person who asks by telephone about defendants' offerings or prices any accurate information from defendants' price lists and any other readily available information that reasonably answers the question, as required by 16 C.F.R. § 453.2(b)(1);

E. Failing to give each person who arranges a funeral or other disposition of human remains an itemized written statement to keep at the conclusion of the discussion of arrangements, as required by 16 C.F.R. § 453.2(b)(5); and

F. Conditioning the furnishing of any funeral good or funeral service to a person arranging a funeral upon the purchase of any other funeral good or funeral service contrary to 16 C.F.R. § 453.4(b)(i), charging any fee as a condition to furnishing any funeral goods or funeral services except as permitted by 16 C.F.R. § 453.4(b)(ii), or failing to make the disclosures required by 16 C.F.R. § 453.4(b)(2).

II. CIVIL PENALTY

IT IS FURTHER ORDERED that:

A. Defendants shall pay to Plaintiff a civil penalty, pursuant to Section 5(m)(1)(A) of the Federal Trade Commission Act, 15 U.S.C. § 45(m)(1)(A), in the amount of Twenty-Five Thousand Dollars (\$25,000).

B. Defendants shall make the payment required by Section II.A. in installments. Within five (5) days of the date of entry of this Consent Decree, Defendants shall pay an initial sum of Five Thousand Dollars (\$5,000), followed by twelve monthly payments of Six Hundred Twenty-Five Dollars (\$625) beginning 30 days thereafter that are due and payable no later than the end of each month, with a final payment of Twelve Thousand Five Hundred Dollars (\$12,500) due and payable no later than 30 days after the final monthly payment is due. All payments shall be made in the form of a wire transfer or certified or cashier's check payable to the Treasurer of the United States. The checks or written confirmations of the wire transfers shall be delivered in accordance with procedures specified by the Consumer Protection Branch, Civil Division, U.S. Department of Justice, Washington, DC 20530.

C. In the event of any default in payment required to be made under this Consent Decree, the entire unpaid penalty, together with interest from the date of default to the date of payment, as computed pursuant to 28 U.S.C. § 1961, shall immediately become due and payable.

D. Defendants relinquish all dominion, control, and title to the funds paid to the fullest extent permitted by law. Defendants shall make no claim to or demand return of the funds, directly or indirectly, through counsel or otherwise.

E. In accordance with 31 U.S.C. § 7701, Defendants are hereby required, unless they have done so already, to furnish to Plaintiff and the Commission their taxpayer identifying

numbers (social security number or employer identification number). Such numbers may be used for purposes of collecting and reporting on any delinquent amount arising out of Defendants' relationship with the government.

F. Defendants agree that the facts as alleged in the Complaint filed in this action shall be taken as true, without further proof, in any subsequent civil litigation filed by or on behalf of the Commission to enforce its rights to any payment or money judgment pursuant to this Consent Decree.

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

III. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of (i) monitoring and investigating compliance with any provision of this Consent Decree and (ii) investigating the accuracy of any Defendants' financial statements upon which the Commission's agreement to this Consent Decree is expressly premised:

A. Within ten (10) days of receipt of written notice from a representative of the Commission, Defendants shall each submit additional written reports, which are true and accurate and sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and provide entry during normal business hours to any business location in such Defendant's possession or direct or indirect control to inspect the business operation;

B. In addition, the Commission is authorized to use all other lawful means, including, but not limited to:

1. Obtaining discovery from any person, without further leave of Court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, 45 and 69;
2. Having its representatives pose as consumers and suppliers to Defendants, their employees, or any other entity managed or controlled in whole or in part by a Defendant, without the necessity of identification or prior notice.

C. Defendants each shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Consent Decree. The person interviewed may have counsel present.

Provided, however, that nothing in this Consent Decree shall limit 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, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

IV. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that, in order that compliance with the provisions of this Consent Decree may be monitored:

- A. For a period of three (3) years from the date of entry of this Consent Decree,
 1. Each Individual Defendant shall notify the Commission of the following:
 - a. Any changes in such Defendant's residence, mailing addresses, and telephone numbers, within ten (10) days of the date of such change;

b. Any changes in such Defendant's employment status (including self-employment), and any change in such Defendant's ownership in any business entity, within ten (10) days of the date of such change. Such notice shall include the name and address of each business that such Defendant is affiliated with, employed by, creates or forms, or performs services for; a detailed description of the nature of the business; and a detailed description of such Defendant's duties and responsibilities in connection with the business or employment; and

c. Any changes in such Defendant's name or use of any aliases or fictitious names within ten (10) days of the date of such change;

2. Defendants shall notify the Commission of any changes in structure of any Corporate Defendant or any business entity that a Defendant directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under this Consent Decree, including, but not limited to: incorporation or other organization; a dissolution, assignment, sale, merger, or other action; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Consent Decree; or a change in the business name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any such change in the business entity about which a Defendant learns less than thirty (30) days prior to the date such action is to take place, the Defendant shall notify the Commission as soon as is practicable after obtaining such knowledge.

B. One hundred eighty (180) days after the date of entry of this Consent Decree and annually thereafter for a period of three (3) years, Defendants shall each provide a written report

to the FTC, which is true and accurate and sworn to under penalty of perjury, setting forth in detail the manner and form in which they have complied and are complying with this Consent Decree. This report shall include, but not be limited to:

1. For each Individual Defendant:
 - a. Such Defendant's then-current residence address, mailing addresses, and telephone numbers;
 - b. Such Defendant's then-current employment status (including self-employment), including the name, addresses, and telephone numbers of each business that such Defendant is affiliated with, employed by, or performs services for; a detailed description of the nature of the business; and a detailed description of such Defendant's duties and responsibilities in connection with the business or employment; and
 - c. Any other changes required to be reported under Subsection A of this Section.
2. For all Defendants:
 - a. A copy of each acknowledgment of receipt of this Consent Decree obtained pursuant to the Section titled "Distribution of Consent Decree;" and
 - b. Any other changes required to be reported under Subsection A of this Section.

C. Each Defendant shall notify the Commission of the filing of a bankruptcy petition by such Defendant within fifteen (15) days of filing.

D. For the purposes of this Consent Decree, Defendants shall, unless otherwise directed by the Commission's authorized representatives, send by overnight courier (not the U.S. Postal Service) all reports and notifications to the Commission that are required by this Consent Decree to:

Associate Director for Enforcement
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
Re: *United States v. B.K. Henry Funeral Chapel, Inc.*, Case No. 11-1258

Provided that, in lieu of overnight courier, Defendants may send such reports or notifications by first-class mail, but only if Defendants contemporaneously send an electronic version of such report or notification to the Commission at DEBrief@ftc.gov.

E. For purposes of the compliance reporting and monitoring required by this Consent Decree, the Commission is authorized to communicate directly with each Defendant.

V. RECORDKEEPING

IT IS FURTHER ORDERED that, for a period of three (3) years from the date of entry of this Consent Decree, Defendants create certain records, and retain each such record for five (5) years after their creation. Specifically, the Corporate Defendant, for any business that has sold or offered to sell funeral goods or funeral services, and each Individual Defendant, for any such business in which that Defendant, individually or collectively with any other Defendant, is a majority owner or directly or indirectly controls must maintain the following records:

A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;

B. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;

C. Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent the information is obtained in the ordinary course of business;

D. Complaints and refund requests (whether received directly or indirectly, such as through a third party) and any responses to those complaints or requests;

E. Copies of all price lists, sales scripts, training materials, advertisements, or other marketing materials; and

F. All records and documents necessary to demonstrate full compliance with each provision of this Consent Decree, including, but not limited to, copies of acknowledgments of receipt of this Consent Decree required by the Sections titled "Distribution of Consent Decree" and "Acknowledgment of Receipt of Consent Decree" and all reports submitted to the FTC pursuant to the Section titled "Compliance Reporting."

VI. DISTRIBUTION OF CONSENT DECREE

IT IS FURTHER ORDERED that, for a period of three (3) years from the date of entry of this Consent Decree:

A. Corporate Defendant: The Corporate Defendant must deliver a copy of this Consent Decree to (1) all of its principals, officers, directors, and managers; (2) all of its employees, agents, and representatives who engage in conduct related to the subject matter of the Consent Decree, including, but not limited to, all personnel who have contact with the public;

and (3) any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled "Compliance Reporting." For current personnel, delivery shall be within five (5) days of service of this Consent Decree upon such Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities. For any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled "Compliance Reporting," delivery shall be at least ten (10) days prior to the change in structure.

B. Individual Defendant as control person: For any business that an Individual Defendant controls, directly or indirectly, or in which such Defendant has a majority ownership interest, such Defendant must deliver a copy of this Consent Decree to (1) all principals, officers, directors, and managers of that business; (2) all employees, agents, and representatives of that business who engage in conduct related to the subject matter of the Consent Decree including, but not limited to, all personnel who have contact with the public; and (3) any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled "Compliance Reporting." For current personnel, delivery shall be within five (5) days of service of this Consent Decree upon such Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities. For any business entity resulting from any change in structure set forth in Subsection A.2 of the Section titled "Compliance Reporting," delivery shall be at least ten (10) days prior to the change in structure.

C. Individual Defendant as employee or non-control person: For any business where an Individual Defendant is not a controlling person of a business but otherwise engages in conduct related to the subject matter of this Consent Decree, such Defendant must deliver a copy of this Consent Decree to all principals and managers of such business before engaging in such conduct.

D. Defendants must secure a signed and dated statement acknowledging receipt of this Consent Decree within thirty (30) days of delivery, from all persons receiving copies of the Consent Decree, pursuant to this Section.

VII. ACKNOWLEDGMENT OF RECEIPT OF CONSENT DECREE

IT IS FURTHER ORDERED that each Defendant, within five (5) business days of receipt of this Consent Decree as entered by the Court, must submit to the Commission a truthful sworn statement acknowledging receipt of this Consent Decree.

VIII. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Consent Decree.

JUDGMENT IS THEREFORE ENTERED in favor of Plaintiff and against Defendants, pursuant to all the terms and conditions recited above.

ENTERED: this _____ day of _____, 2012.

UNITED STATES DISTRICT JUDGE

The parties, by their respective counsel, consent to the terms and conditions of the Consent Decree as set forth above and consent to the entry thereof.

**FOR THE FEDERAL TRADE
COMMISSION:**

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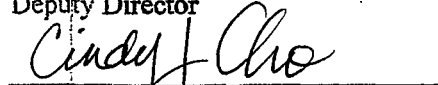
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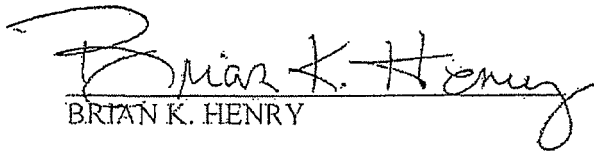
KENNETH L. JOST
Deputy Director

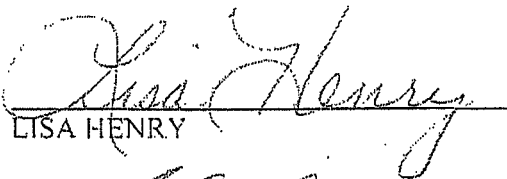


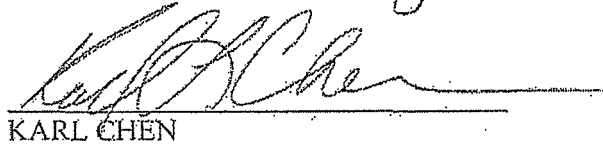
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