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Southern District of New York
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	:	
UNITED STATES OF AMERICA,	:	
	:	AMENDED COMPLAINT
Plaintiff,	:	
	:	12 Civ. 03722 (ER)
v.	:	
	:	ECF Case
HARRISON FUNERAL HOME, INC. and	:	
JOHN BALSAMO,	:	
	:	
Defendants.	:	
-----X	:	

Plaintiff, United States of America, by its attorney Preet Bharara, United States Attorney for the Southern District of New York, alleges for its complaint against Harrison Funeral Home, Inc. (“Harrison Funeral Home”) and John Balsamo (“Balsamo”) upon information and belief as follows:

I. INTRODUCTION

1. The United States 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 and a permanent injunction against Harrison Funeral Home and Balsamo (collectively, “Defendants”) for their repeated

violations of the Federal Trade Commission's Trade Regulation Rule Concerning Funeral Industry Practices (the "Funeral Rule"), 16 C.F.R. Part 453.

II. 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) because Harrison Funeral Home is located in this district, Balsamo resides in this district, and the events or omissions giving rise to the claims alleged herein occurred in this district.

III. PARTIES

4. Plaintiff is the United States of America, suing on behalf of the Federal Trade Commission ("FTC"), 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 FTC is charged with, *inter alia*, enforcing Section 5 of the FTC Act, 15 U.S.C. § 45, which prohibits unfair and deceptive acts or practices in or affecting commerce, and may obtain civil penalties for rule violations pursuant to 15 U.S.C. § 45(m)(1)(A).

5. Defendant Harrison Funeral Home is a New York corporation providing funeral services with a principal place of business located within the Southern District of New York at 329 Halstead Avenue, Harrison, New York 10528.

6. Defendant Balsamo is the president and an owner of Harrison Funeral Home. His business address is the same as Harrison Funeral Home's principal place of business. At all times material to this complaint, acting alone or in concert with others, Balsamo formulated,

directed, and controlled, had the authority to control, or participated in the acts and practices of Harrison Funeral Home set forth in this complaint.

THE FUNERAL RULE

7. The FTC issued the Funeral Rule, a trade regulation rule concerning funeral industry practices, to ensure that people inquiring about funeral arrangements receive full and fair pricing information and are not taken advantage of by funeral providers through inflated prices, overcharges, double charges or unnecessary services.

8. The Funeral Rule requires, among other things, that funeral providers disclose information about prices to persons inquiring about funeral arrangements, and give them a written general price list, casket price list, and outer burial container price list. The Funeral Rule also prohibits certain unfair practices, such as embalming for a fee without prior permission or conditioning the purchase of any funeral good or service upon the purchase of any other funeral good or service, and prohibits misrepresentations about legal, cemetery or crematory requirements pertaining to the disposition of human remains. In addition, the Funeral Rule requires that each person who arranges a funeral be given a statement of the funeral goods and services selected by that person and the price to be paid for each item.

9. The Funeral Rule, which was 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 was amended on July 19, 1994.

DEFENDANTS' INITIAL VIOLATIONS OF THE FUNERAL RULE

10. Defendants have at all times relevant to this complaint been “funeral providers” who sold or offered to sell “funeral goods” and “funeral services,” as those terms are defined in the Funeral Rule, 16 C.F.R. § 453.1(h)-(j).

11. On April 12, 2001 and May 7, 2001, to ascertain whether Defendants were acting in compliance with the Funeral Rule, FTC staff visited Harrison Funeral Home and posed as consumers making inquiries about prospective funeral arrangements. On both occasions, the Defendants violated the Funeral Rule by failing to provide a general price list and failing to present a casket pricelist in the time and manner required.

12. Specifically, in violation of 16 C.F.R. Part 453.2(b)(4), Defendants failed 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.

13. Moreover, in violation of 16 C.F.R. § 453.2(b)(2), Defendants failed 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.

14. The FTC gave Defendants the option of enrolling in the Funeral Rule Offenders Program (“FROP”) in connection with their 2001 violations of the Funeral Rule. The FROP was developed by the National Funeral Directors’ Association (the “NFDA”) and allows the FTC to offer enrollment to first-time Funeral Rule violators in lieu of formal law enforcement actions. Participating funeral providers are required to (i) make a payment to the United States Treasury; (ii) allow the NFDA to examine the adequacy of the home’s general price list, casket price list and outer burial container price list; and (iii) enroll all employees who are engaged in the offering or selling of funeral goods and services in training classes to prevent future violations.

15. Although Defendants agreed to enter into the FROP and submitted the required payment to the U.S. Treasury, they never participated in any FROP training to ensure future compliance with the Funeral Rule.

DEFENDANTS' SUBSEQUENT VIOLATIONS OF THE FUNERAL RULE

16. On March 12, 2010, and July 2, 2010, to ascertain whether Defendants were acting in compliance with the Funeral Rule, FTC staff again visited Harrison Funeral Home and posed as consumers making inquiries about prospective funeral arrangements. On both occasions, the Defendants again violated the Funeral Rule by failing to provide a general price list and failing to present a casket pricelist in the time and manner required. On one occasion, Defendants also violated the Funeral Rule by failing to present an outer burial container price list in the time and manner required.

17. Specifically, in violation of 16 C.F.R. Part 453.2(b)(4), on March 12, 2010, Defendant Balsamo discussed the prices of funeral goods or services with FTC staff but did not provide the FTC staff with a general price list to retain.

18. That same day, in violation of 16 C.F.R. § 453.2(b)(2), Defendant Balsamo discussed the prices of caskets with FTC staff and showed FTC staff caskets or pictures of caskets, but did not provide the FTC staff with a casket price list.

19. Moreover, in violation of 16 C.F.R. § 453.2(b)(3), Defendant Balsamo on March 12, 2010 discussed the prices of outer burial containers with FTC staff and showed FTC staff outer burial containers or pictures of outer burial containers, but did not provide the FTC staff with an outer burial container price list.

20. On July 2, 2010, in violation of 16 C.F.R. Part 453.2(b)(4), Defendant Balsamo again discussed the prices of funeral good or services with FTC staff but did not provide the FTC staff with a general price list to retain.

21. That same day, in violation of 16 C.F.R. § 453.2(b)(2), Defendant Balsamo again discussed the prices of caskets with FTC staff and showed FTC staff caskets or pictures of caskets, but did not provide the FTC staff with a casket price list.

FIRST CLAIM FOR RELIEF

Civil Penalties under the FTC Act – Violations of the Funeral Rule

22. Plaintiff incorporates the allegations contained in Paragraphs 1 through 21 above.

23. Defendants sell and offer 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.

24. Defendants 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).

25. 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).

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

27. 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.

SECOND CLAIM FOR RELIEF

Injunctive Relief under the FTC Act – Violations of the Funeral Rule

28. Plaintiff incorporates the allegations contained in Paragraphs 1 through 27 above.

29. Defendants sell and offer to sell funeral goods and funeral services in or affecting commerce as “commerce” as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

30. Defendants have 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).

31. 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).

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

33. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), authorizes the Court to issue a permanent injunction enjoining defendants from violating the FTC Act.

PRAYER FOR RELIEF

WHEREFORE, plaintiff United States prays for judgment against the Defendants for their violations of the Funeral Rule and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), as follows:

A. On the First Claim for Relief, awarding monetary civil penalties in the maximum amount permitted by law;

B. On the Second Claim for Relief, enjoining Defendants’ from violating the Funeral Rule and Section 5 of the FTC Act, 15 U.S.C. § 45; and

C. All other relief this Court deems just.

Dated: New York, New York
October 5, 2012

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