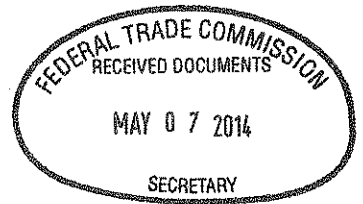


UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION



In the Matter of)	
)	
Service Corporation International,)	Docket No. C-4423
a corporation, and)	File No. 131 0163
)	
Stewart Enterprises, Inc.,)	
a corporation)	
)	

**PETITION OF RESPONDENTS FOR APPROVAL OF PROPOSED
DIVESTITURE OF CERTAIN ASSETS OF THE DIVESTITURE BUSINESSES**

Pursuant to Section 2.41(f) of the Federal Trade Commission (“Commission”) Rules of Practice and Procedure, 16 C.F.R. § 2.41(f) (2012), and Paragraphs II.A of the Decision and Order contained in the Agreement Containing Consent Orders accepted for public comment in this matter (“Decision and Order”), Respondent Service Corporation International (“SCI”) hereby petitions the Commission to approve the divestiture to NorthStar Memorial Group, LLC (“NorthStar” or, collectively with its subsidiaries and affiliates, the “NorthStar Group”) of the Divestiture Businesses that include the following facilities:

Divestiture Business	Address	City	State
Clairemont Mortuary	4266 Mt Abernathy Avenue	San Diego	CA
Greenwood Memorial Park Crematory	4300 Imperial Avenue	San Diego	CA
Greenwood Memorial Park & Mortuary	4300 Imperial Avenue	San Diego	CA
Greenwood Memorial Park	4300 Imperial Avenue	San Diego	CA
Moss Feaster Funeral Home and Cremation Services	693 South Belcher Road	Clearwater	FL

Moss Feaster Funeral Home and Cremation Services	1320 Main Street	Dunedin	FL
Woodlawn Memory Gardens	101 58th Street South	St. Petersburg	FL
Memorial Park Funeral Home & Cemetery	5750 49th Street North	St. Petersburg	FL
Grace Memorial Gardens and Funeral Home	17007 US Highway 19 North	Hudson	FL
Grace Memorial Gardens and Funeral Home	16931 US Highway 19 North	Hudson	FL
Boza & Roel Funeral Home	4730 North Armenia Avenue	Tampa	FL
Sunset Funeral Home and Memory Gardens	11005 N US Highway 301	Thonotosassa	FL
South Park Funeral Home and Cemetery	1310 North Main Street	Pearland	TX
San Jacinto Memorial Park and Funeral Home	14659 East Freeway	Houston	TX
Restland Cemetery	13005 Greenville Avenue	Dallas	TX
Restland Funeral Home	13005 Greenville Avenue	Dallas	TX

Subject to the Commission’s approval of this petition, the Divestiture Businesses associated with these facilities (as defined in the Decision and Order, and hereinafter collectively referred to as the “Divestiture Assets”) will be sold to NorthStar pursuant to the Asset Sale Agreement dated May 3, 2014, by and among NorthStar and affiliates of SCI (the “ASA”).

Background

On December 23, 2013, SCI and Respondent Stewart Enterprises, Inc. (“Stewart”) (collectively, the “Respondents”) executed an Agreement Containing Consent Orders that included the Decision and Order and Order to Hold Separate and Maintain Assets (collectively, the “Consent Agreement”) to settle the Commission’s charges that the proposed acquisition by SCI of Stewart would violate Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, and Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18. On December 23, 2013, the Commission accepted the Consent

Agreement for public comment, and on December 23, 2013, SCI consummated its acquisition of Stewart. Stewart is now a wholly owned subsidiary of SCI. The Commission issued the final order in this matter on April 29, 2014.

Because this petition and its attachments contain confidential and competitively sensitive business information relating to the divestiture of the Divestiture Assets—the disclosure of which may prejudice the Respondents and NorthStar, cause harm to the ongoing competitiveness of the Divestiture Assets, and impair Respondents’ ability to comply with their obligations under the Consent Agreement—Respondents have redacted such confidential information from the public version of this petition and its attachments. Pursuant to Sections 2.41(f)(4) and 4.9(c) of the Commission’s Rules of Practice and Procedure, 16 C.F.R. § 2.41(f)(4) & 4.9(c) (2012), Respondents request that the non-public, confidential version of this petition and its attachments and the information contained herein be accorded confidential treatment. The confidential version of this petition should be accorded such confidential treatment under 5 U.S.C. § 552 and Section 4.10(a)(2) of the Commission’s Rules of Practice and Procedure, 16 C.F.R. § 4.10(a)(2) (2012). The confidential version of this petition is also exempt from disclosure under Exemptions 4, 7(A), 7(B), and 7(C) of the Freedom of Information Act, 5 U.S.C. §§ 552(b)(4), 552(b)(7)(A), 552(b)(7)(B), & 552(b)(7)(C), and the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a(h).

Respondent SCI desires to complete the proposed divestiture of the Divestiture Assets as soon as possible, following Commission approval thereof. All conditions other than Commission approval, state approval, and those customarily satisfied at closing have already been satisfied. In each of Florida, California, and Texas,

applications must be made to the appropriate state agency for licensure under the state laws. The applications for three cemeteries in Texas and the cemetery and two funeral homes in California are pending. No pre-closing applications are required for the funeral homes in Texas. NorthStar received approval from the State of Florida on March 6, 2014, such approval conditioned upon submission to the State of a fully executed copy of the definitive purchase agreement. NorthStar believes the remaining state approvals will be received within sixty (60) days so that SCI and NorthStar are in a position to close the divestiture within a few days of Commission approval.

Prompt consummation will further the purposes of the Decision and Order and is in the interests of the public, NorthStar, and the Respondents, because it will allow NorthStar to move forward with its business plans for the competitive operation of the Divestiture Assets. SCI accordingly requests that the Commission promptly commence the period of public comment pursuant to Section 2.41(f)(2) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 2.41(f)(2) (2012), limit the public comment period to the customary 30-day period, and grant this petition by approving the divestiture of the Divestiture Assets to NorthStar pursuant to the above-referenced ASA as soon as practicable after the close of the public comment period.

I. The ASA Is Final and Consistent with the Decision and Order's Terms

Paragraph II.A of the Decision and Order requires the Respondents to divest the Divestiture Businesses (as defined in the Decision and Order) within 180 days of the date on which the Order is issued.¹ Pursuant to this requirement, SCI has diligently sought buyers that would be acceptable to the Commission, through an extensive auction process that produced

¹ The Commission issued the Order on April 29, 2014.

great interest in the properties. As noted above, on May 3, 2014, affiliates of SCI entered into the ASA with NorthStar, which requires SCI to sell the Divestiture Assets to NorthStar. The executed ASA is attached hereto as Confidential Exhibit A.

The ASA with NorthStar complies with the requirements of Paragraph II of the Decision and Order:

Paragraph II.A.1 requires that the Respondents divest the Divestiture Assets, absolutely and in good faith. Pursuant to the SPA, NorthStar will acquire the Divestiture Assets. See ASA § 1.1.

Paragraph II.A.2 of the Decision and Order requires Respondent to grant a License to all Retained Intellectual Property that will permit the Acquirer to operate the relevant Divestiture Business in substantially the same manner as Respondents. SCI is granting rights to the AFT system as requested by NorthStar. See ASA §5.5(c).

Paragraph II.B requires that Respondents divest the funeral homes and cemeteries in San Diego, California, to no more than one Acquirer. These facilities are (i) Clairemont Mortuary, 4266 Mt. Abernathy Avenue, San Diego, California 92117 and (ii) Greenwood Memorial Park and Mortuary, 4300 Imperial Avenue, San Diego, California 92113. The ASA contemplates that NorthStar will acquire all of these facilities, satisfying this requirement. See ASA § 1.1.

Paragraph II.B requires that Respondents divest the funeral homes and cemeteries in Clearwater/St. Petersburg, Florida, to no more than one Acquirer. These facilities are (i) Moss Feaster Funeral Home, 1320 Main Street, Dunedin, Florida 34698, (ii) Moss Feaster Funeral Home, 693 South Belcher Road, Clearwater, Florida 33764, (iii) Woodlawn Memory Gardens, 101 58th Street South, St. Petersburg, Florida 33707, and (iv) Memorial Park Funeral Home &

Cemetery, 5750 49th Street North, St. Petersburg, Florida 33709. The ASA contemplates that NorthStar will acquire all of these facilities, satisfying this requirement. See ASA § 1.1.

Paragraph II.B requires that Respondents divest the funeral homes and cemeteries in Houston, Texas, to no more than one Acquirer. These facilities are (i) South Park Funeral Home and Cemetery, 1310 North Main Street, Pearland, Texas 77518 and (ii) San Jacinto Memorial Park and Funeral Home, 14659 East Freeway, Houston, Texas 77015. The ASA contemplates that NorthStar will acquire all of these facilities, satisfying this requirement. See ASA § 1.1.

Paragraph II.C of the Decision and Order provides that Respondents may use the “Moss Feaster” trade name for the funeral homes located at 13401 Indian Rocks Road, Largo, Florida 33774 and 2550 Highlands Boulevard North, Palm Harbor, Florida 34684. Pursuant to the ASA, SCI can use the trade name for 12 months following the closing provided that SCI designate the location of the business in the name in order to avoid confusion. See ASA § 5.22.

Paragraph II.C of the Decision and Order provides that Respondents may use the “Restland” trade name for the funeral home located at 400 South Freeport Parkway, Coppell, Texas 75019. Pursuant to the ASA, SCI can use the trade name for 12 months following the closing provided that SCI designate the location of the business in the name in order to avoid confusion. See ASA § 5.22.

NorthStar has acknowledged that the Divestiture Assets, together with the NorthStar’s existing resources, enable NorthStar to operate the Divestiture Businesses as ongoing entities and that no other assets are needed from SCI to do so. See ASA § 4.6.

* * *

As demonstrated above and in the accompanying ASA, SCI has entered into an agreement relating to the divestiture of the Divestiture Assets that fully complies with the Commission's Decision and Order with respect to the divestiture of these assets. Accordingly, the Respondents hereby seek Commission approval of the proposed divestitures pursuant to Paragraph II.A of the Decision and Order.

II. The Prospective Acquirer Will Be a Strong and Effective Competitor

A. Background

NorthStar has extensive experience in acquiring and operating funeral homes and cemeteries, has the financial wherewithal to make this acquisition, and the acquisition of the businesses in question by NorthStar will ensure that those businesses remain strong and effective competitors in San Diego, California; Clearwater/St. Petersburg, Florida; Tampa, Florida; Houston, Texas; and Dallas, Texas. The Commission recognized NorthStar's experience and competitiveness in the death care industry in 2007 when it approved NorthStar as a buyer of the divestiture assets in relation to SCI's acquisition of Alderwoods Group, Inc.²

NorthStar Memorial Group, LLC was founded in 2004 by W. Mark Hamilton. Mr. Hamilton has served as President and Chief Executive Officer since NorthStar's inception. NorthStar completed its first acquisition in September 2004 in Decatur, Illinois. In 2007, it acquired businesses in Florida and Tennessee as a result of certain divestitures that were part of SCI's acquisition of the Alderwoods Group.

As of December 31, 2013, NorthStar owned and operated [REDACTED] funeral home and cemetery locations in eight states [REDACTED]

² See FTC Files Electricity Transmission Comments with FERC; Commission Approves Proposed Divestitures by Service Corporation International, et al.; FTC Approves Final Consent Order in Matter of United Launch Alliance,

█. Of the █ funeral home and cemetery locations, █ are funeral homes and █ are cemeteries. Many of the businesses █ are operated as combination facilities. In addition, NorthStar manages cremation businesses owned by an affiliate in █. In 2013, NorthStar conducted over █ funeral calls, █ interments, and employed over █ individuals.

NorthStar emphasizes maintaining the highest professional standards in the industry while focusing on pre-need sales and marketing with the intent that its locations are modern, flexible, and committed to responding to ever-changing customer preferences. NorthStar has a good record with the regulators that supervise its funeral home and cemetery operations. In each state in which NorthStar operates, the cemeteries file annual reports and are subject to audit by the state each year. Similarly, the management of the NorthStar Group's trust funds is reviewed by the state agency or department with the relevant oversight authority. These reports, audits and reviews have not resulted in any regulatory concerns or further inquiry. Indeed, the regulators have found that the company meets its legal obligations, and the company and its affiliates are not under investigation by any regulator.

Moreover, the Commission has recognized NorthStar's superior operating and financial viability in approving NorthStar as a buyer for divestiture assets in another matter. In 2007, the Commission approved NorthStar as a purchaser for 17 funeral homes and cemeteries in Florida and Tennessee in relation to SCI's acquisition of Alderwoods Group, Inc. Furthermore, in each of California, Florida, Illinois, and Tennessee, NorthStar's acquisitions received prior approval by the state regulatory agency. In California and Florida, this included comprehensive background and security checks on NorthStar's management.

at <http://www.ftc.gov/news-events/press-releases/2007/05/ftc-files-electricity-transmission-comments-ferc-commission>.

B. Financial Capability

NorthStar intends to pay the purchase price for the Divestiture Assets [REDACTED]. NorthStar is wholly owned by NorthStar Evergreen, LLC (“NS-Evergreen”). NS-Evergreen has five members. The members of NS-Evergreen have committed up to [REDACTED] in equity contributions to consummate the transactions contemplated herein. In addition, NorthStar has a senior credit facility with [REDACTED], as Administrative Agent. The senior credit facility has over [REDACTED] in undrawn capacity as of the date hereof.

As a result, NorthStar has sufficient available capital to consummate the acquisition of the Divestiture Assets as well as improve facilities and properties consistent with its business plan.

C. Operations Experience

NorthStar’s senior management includes three individuals with extensive experience in the death care industry: William H. Hamilton, Brian Sullivan, and Mark Shinder. All three will be active in the Divestiture Assets.

William M. Hamilton, President and Chief Executive Officer, has more than 24 years of experience in the funeral and cemetery industry in a broad range of executive roles. Today, Mr. Hamilton serves as the President and Chief Executive Officer of NorthStar, which he co-founded in 2004. From 1998 to 2002, he was responsible for North American Pre-Need Sales for SCI with direct responsibility of more than 5,000 employees, including 700 sales managers, and annual sales in excess of \$1 billion. From 1993 to 1998, Mr. Hamilton served as Chief Financial Officer – International Operations for SCI, where he was responsible for all aspects of

financial reporting of businesses with more than \$600 million in annual sales by 1998. Mr. Hamilton began his career with SCI in 1990 as Director, Corporate Development.

Brian Sullivan, Executive Vice President and Chief Operating Officer, has over 25 years of experience in the death care industry in a wide variety of sales and operational management roles. Mr. Sullivan has managed small, individual cemeteries for sales and marketing purposes, and he has also served as a Senior Vice President of Sales for the Florida region of SCI, managing over 200 individual funeral homes and cemeteries. Over the years, Mr. Sullivan's responsibilities have included everything from one-on-one customer interactions to overseeing sales, funeral, administrative and operations staffs of as many as 1,500 employees. Mr. Sullivan is a 1986 graduate of the University of South Florida with a B.A. in Mass Communications.

Mark Shinder, Executive Vice President and Chief Financial Officer, joined NorthStar in 2006. Prior to joining NorthStar, Mr. Shinder served as a Director in Deutsche Bank's Valuation and Investment Strategy Group where he researched and designed investment strategies for institutional clients as well as structured and derivative products. Before joining Deutsche Bank, Mr. Shinder served as a senior advisor to corporate executives for over ten years, specializing in business strategy, corporate finance and valuation. Mr. Shinder served as a Senior Vice President and Principal at Stern Stewart & Co. and Senior Manager at Marakon Associates. While at Stern Stewart, Mr. Shinder advised senior management of SCI on a variety of strategic, organizational and financial issues from 1997 to 1999. He was involved in design and implementation of the EVA (Economic Value Added) financial management system and innovative compensation plans at SCI, and he assisted financial officers at SCI in using EVA to measure financial performance, set goals and allocate capital. Mr. Shinder graduated magna cum

laude from New York University's Stern School of Business with dual B.S. degrees in accounting and Finance and earned his MBA degree at Columbia Business School.

The Senior Executives of NorthStar do not have any present employment or business relationship with SCI and have no knowledge of any professional, business, or employment relationships between NorthStar employees and SCI.

The NorthStar Group has been presented a list of employees by location for each of the Divestiture Assets. The NorthStar Group anticipates offering employment to most current employees but continues its due diligence in this regard. NorthStar's anticipated comprehensive offering of employment would be consistent with all of its industry acquisitions completed to date, whereby NorthStar offered employment to most employees of the acquisition targets, with the vast majority of those employees accepting such employment.

NorthStar expects to utilize its significant operating expertise not only to ensure the continued competitiveness of the Divestiture Assets but to enhance their competitiveness and profitability. Such enhancements will contribute to greater competition and superior customer service in all markets in which the Divestiture Assets are located.

III. The Proposed Divestiture Agreement Will Achieve the Purposes of the Decision and Order and Result in No Harm to Competition

The proposed divestiture of the Divestiture Assets, as embodied in the ASA, will achieve the purposes of the Decision and Order. NorthStar is an experienced operator of funeral homes and cemeteries, with a proven track record of successfully operating and enhancing the funeral homes and cemeteries that it has acquired in the past. NorthStar enjoys a strong financial position that will enable it to complete this acquisition, continue the operation of the Divestiture Assets and enhance their competitiveness in the markets for funeral and cemetery services.

Combining the Divestiture Assets with NorthStar's experience and financial wherewithal will ensure that the objectives of the Commission's Decision and Order will be realized.

The proposed acquisition of the Divestiture Assets does not present any competitive concerns because the Divestiture Assets do not compete with NorthStar's current locations. A complete list of the facilities owned and/or operated by NorthStar is included in Confidential Exhibit B.

The proposed acquisition by NorthStar does not raise any competitive concerns in Texas. NorthStar owns no funeral home or cemetery assets in Dallas or Houston, Texas, where the to-be-acquired facilities are located.

Similarly, the proposed acquisition does not raise any competitive concerns in Florida. Viewing the St. Petersburg/Clearwater/Tampa, Florida area broadly, NorthStar owns just one small cemetery, Skyway Memorial Gardens, located in Palmetto, Florida. This cemetery is over a 20-mile drive from the nearest to-be-acquired Divestiture Business, which is Woodlawn Memory Gardens in St. Petersburg, Florida. Skyway Memorial Gardens is on the other side of Tampa Bay from the to-be-acquired Divestiture Assets in both Tampa and St. Petersburg and does not compete with facilities in those cities. All other to-be-acquired Divestiture Businesses range from 24 to 76 miles north of Skyway Memorial Gardens.

Moreover, the proposed acquisition does not raise any competitive concerns in Southern California. NorthStar currently manages operations of only one facility in San Diego: Smart Cremation San Diego, 7709 Convoy Court, San Diego, CA 92111, which is owned by an affiliate of NorthStar. This is a storefront, direct cremation provider that does not own a crematory, cemetery, or funeral home. By contrast, the to-be-acquired Divestiture Business assets in San Diego—Clairemont Mortuary and Greenwood Memorial Park & Mortuary—are a

full-service funeral home and combination facility, respectively. Moreover, Greenwood Memorial Park & Mortuary is over 10 miles away from NorthStar's Smart Cremations storefront, in a completely different part of San Diego. Accordingly, NorthStar's acquisition of the Divestiture Assets should not raise any competitive concerns.

In sum, the proposed divestiture will remedy any alleged anticompetitive effects that could result from the Acquisition. The ASA will achieve the Commission's stated purposes of ensuring the continued use of the Divestiture Assets in the same business in which they were engaged at the time of the announcement of the Acquisition and remedying the lessening of competition as alleged in the Commission's Complaint.

Conclusion

For the foregoing reasons, the Respondents respectfully request that the Commission approve the proposed divestiture of the Divestiture Assets to NorthStar, as embodied in the ASA, as soon as practicable after expiration of the public comment period.

Respectfully submitted,

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(202) 955-1502
Counsel for Respondents

Dated: May 7, 2014

CERTIFICATION OF SERVICE CORPORATION INTERNATIONAL

The facts and information related in the foregoing Petition, insofar as they pertain to Service Corporation International, its subsidiaries, and its assets, are, to the best of my knowledge, true, correct, and complete.

Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

~~John Faulk~~
~~Vice President, Business Development~~
~~Service Corporation International~~

CERTIFICATION OF NORTHSTAR MEMORIAL GROUP, LLC

The facts and information related in the foregoing Petition, insofar as they pertain to NorthStar Memorial Group, LLC, their subsidiaries, and their assets, are, to the best of my knowledge, true, correct, and complete.

Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

William M. Hamilton
President and Chief Executive Officer
NorthStar Memorial Group, LLC

Confidential

Exhibit A

Confidential

Exhibit B