

BEFORE THE
DIVISION OF PROFESSIONAL REGISTRATION
STATE OF MISSOURI

State of Missouri ex rel.)	
Office of Endowed Care Cemeteries of the)	
Division of Professional Registration)	
)	
)	Petitioner
)	
)	v.
)	Case No. 10-1987 EN
)	Office Case Ashland-1
)	
Cora Bullock Opuiyo,)	
d/b/a Ashland Cemetery)	
)	
)	Respondent

Findings of Fact, Conclusions of Law and Disciplinary Order
(Endowed Cemetery License)

On April 8, 2016, the Division of Professional Registration (the “Division”) held a probation violation hearing upon the March 4, 2016 filing of a Probation Violation Complaint (the “Complaint”) by the Office of Endowed Care Cemeteries alleging that Cora Bullock Opuiyo d/b/a Ashland Cemetery (“Ashland” or “Licensee”) violated the conditions of her probation as were set forth in the “Findings of Fact, Conclusions of Law, and Disciplinary Order” entered by the Division on February 13, 2014 (the “2014 Order”).

After review of the file, consideration of the evidence and testimony adduced at hearing, and being fully appraised of the premises, the Division issues this “Findings

of Fact, Conclusions of Law and Disciplinary Order” to resolve the allegations stated in the Complaint.

Relevant Statutes

1. Section 214.267.3, RSMo, authorizes the Division to impose discipline on the holder of an endowed care cemetery license and states:

3. After the filing of such complaint, the proceedings shall be conducted in accordance with the provisions of chapter 621. Upon a finding by the administrative hearing commission that the grounds, provided in subsection 2 of this section, for disciplinary action are met, the division may singly or in combination, censure or place the person named in the complaint on probation on such terms and conditions as the division deems appropriate for a period not to exceed five years, or may suspend, or revoke the license or permit or may impose a penalty allowed by subsection 4 of section 214.410. No new license shall be issued to the owner or operator of a cemetery or to any corporation controlled by such owner for three years after the revocation of the certificate of the owner or of a corporation controlled by the owner.

4. The division may settle disputes arising under subsections 2 and 3 of this section by consent agreement or settlement agreement between the division and the holder of a license. Within such a settlement agreement, the division may singly or in combination impose any discipline or penalties allowed by this section or subsection 4 of section 214.410. Settlement of such disputes shall be entered into pursuant to the procedures set forth in section 621.045.

2. Section 324.042, RSMo, states:

Any board, commission, or committee within the division of professional registration may impose additional discipline when it finds after hearing that a licensee, registrant, or permittee has violated any disciplinary terms previously imposed or agreed to pursuant to settlement. The board, commission, or committee may impose as additional discipline any discipline it would be authorized to impose in an initial disciplinary hearing.

Findings of Fact and Conclusions of Law

Service of Process and Hearing

3. The Office filed the Probation Violation Complaint on March 4, 2016.
4. Ashland was served with a copy of the Notice of Hearing and the Probation Violation Complaint on March 8, 2016.
5. Pursuant to the notice of hearing, the Director of the Division convened the hearing on the Complaint at approximately 1:33 p.m. at the St. Joseph City Hall located at 1100 Frederick Avenue, Room 301, St. Joseph, Missouri 64501.
6. Petitioner appeared by counsel, Edwin R. Frownfelter, Assistant Attorney General. Cora Bullock Opuiyo appeared in person, pro se. Sharon K. Euler served as legal advisor to the Director.

The Parties

7. The Division of Professional Registration (the "Division") is an agency of the state of Missouri vested with the powers and duties to enforce and implement the "Cemetery Endowed Care Fund Law" found in Sections 214.270 through 214.410, RSMo.¹ The Division of Professional Registration administers the Cemetery Endowed Care Fund Law through the Office of Endowed Care Cemeteries as defined in Section 214.270(32), RSMo.

¹ All statutory citations are to the 2000 Revised Statutes of Missouri, as supplemented, unless otherwise noted.

8. Ashland operates as a cemetery located at 2324 Ashland Avenue, St. Joseph, Missouri 64506.

9. Ashland holds a license as an endowed care cemetery, license No. 2002001868. This license was current and active at all times relevant to this Order, until it lapsed on August 31, 2014 and has not been renewed since that date.

10. Cora Bullock Opuiyo serves as both owner and operator of Ashland and has registered her address with the Office as 2324 Ashland Avenue, St. Joseph, Missouri 64506.

Jurisdiction and Venue

11. The Division has jurisdiction over this matter pursuant to Section 324.042, RSMo.

12. Venue is proper.

Background Information

13. By Order dated June 26, 2012, the Administrative Hearing Commission found cause to discipline Ashland's endowed care cemetery license in case number 10-1987 EN. At the time that matter was pending, the Office filed a second case against Ashland seeking authority from the Administrative Hearing Commission to discipline Ashland's endowed care cemetery license for additional violations in case number 12-0463 EN.

14. Ashland and the Office agreed to resolve both case number 10-1987 EN and case number 12-0463 by agreement.

15. Ashland and the Office entered into a "Settlement Agreement Between the Office of Endowed Care Cemeteries and Cora-Bullock-Opuiyo d/b/a Ashland Cemetery" (the "Settlement Agreement"). The Settlement Agreement became effective on November 6, 2012.

16. By the terms of the Settlement Agreement, Ashland's endowed care cemetery license was placed on probation for 5 years, subject to Ashland's compliance with stated terms and conditions.

17. On March 8, 2013, the State of Missouri ex rel. Office of Endowed Care Cemeteries of the Division of Professional Registration filed a Probation Violation Complaint alleging that Ashland Cemetery violated the terms and conditions of probation as set forth in the Settlement Agreement (the "2013 Complaint").

18. The Division held a hearing on the 2013 Complaint on November 14, 2013. Licensee appeared in person, pro se; the Office was represented by Edwin R. Frownfelter, Assistant Attorney General.

19. On February 13, 2014, the Division issued its "Findings of Fact, Conclusions of Law and Disciplinary Order" (the "2014 Order") finding that Ashland had violated the terms and conditions of probation set forth in the Settlement Agreement and placed Ashland's endowed care cemetery license on probation for a period of five years, subject to specified terms and conditions.

20. The 2014 Order set forth the terms and conditions of probation in paragraph 27 and stated:

Ashland shall comply with the following:

A. Quarterly Reports. Ashland shall submit written quarterly reports to the Office reporting her compliance with these conditions of the Disciplinary Period and also the status of Ashland Cemetery's Endowed Care Fund. The quarterly reports shall be due on or before January 1, April 1, July 1, and October 1 of each calendar year during the Disciplinary Period and shall not be submitted more than 2 weeks before each due date. Each quarterly report shall be subscribed and sworn under penalty of perjury before a notary and shall include:

- (1) Licensee's current address, phone number and e-mail address, if applicable;
- (2) any arrests of Licensee;
- (3) any criminal charges brought against Licensee;
- (4) any criminal conviction or imposition of any suspended imposition of sentence in any criminal proceeding against Licensee;
- (5) any civil lawsuit filed against Licensee;
- (6) any civil judgment entered against Licensee;
- (7) a description of any disputes with consumers;
- (8) specification of the number of lot sales and deposits and payments to the Endowed Care Trust Fund during the period covered by the report;
- (9) canceled checks or other proof of payment of restitution to Ronald and Freeda White as provided in this Order;
- (10) a statement as to whether Licensee has complied with all requirements of the Endowed Care Cemeteries Law, Sections 214.270 through 214.516, RSMo, and all conditions of probation during the preceding calendar quarter, and if not, what violations have occurred; and
- (11) any other information required by this Settlement Agreement.

B. Probation Monitor. At all times during the Disciplinary Period, Ashland shall have retained and shall utilize the services of a Probation Monitor, per the terms of this Order, to assist Licensee with compliance with this Order and to report to the Office on compliance with the terms of this Order.

- (1) The Office has approved Bal Singh, Singh Accounting, St. Joseph, Missouri to serve as the initial Probation Monitor.
- (2) The Probation Monitor shall not be a licensed cemetery operator operating a cemetery in the city of St. Joseph, Missouri.
- (3) The Probation Monitor may be an attorney, accountant, licensed cemetery operator, or other person familiar with the operation of trust accounts in general and cemetery endowed care funds in particular.
- (4) The Probation Monitor must be approved by the Office prior to performing his or her duties. The Office may withdraw its approval of the Probation Monitor by providing written notice to the Licensee of its withdrawal of approval.
- (5) If the Probation Monitor ceases to serve because of resignation, death, disability or withdrawal, Licensee shall provide written notice of this cessation of service within 3 days of Licensee's being notified that the Probation Monitor will no longer serve. This written notice may be by submitted by original written notice mailed or delivered to the Office or by facsimile transmission or e-mail to the Office.
- (6) If at any point during the Probation the Probation Monitor ceases to serve, whether due to disapproval by the Office, resignation, death, disability, or withdrawal, Licensee shall provide to the Office the name of a new Probation Monitor within 15 days of receiving notice of such cessation of service. All powers, duties, and responsibilities of the new Probation Monitor shall be the same as the original Probation Monitor. At no time shall there be no Probation Monitor.

- (7) Arrangements for payment of the Probation Monitor for services rendered are the responsibility of Licensee. Failure of the Probation Monitor to perform his or her duties due to nonpayment of the Probation Monitor's compensation will be considered a violation of this Order.
- (8) Licensee hereby authorizes and agrees that the Probation Monitor will have access to the Ashland Cemetery office and financial records at all reasonable times during normal business hours with or without notice.
- (9) Licensee shall provide to the Probation Monitor, for inspection and review, all bank statements and prior reconciliations and all financial records showing the receipt and disbursement of endowed care funds as well as any records requested by the Probation Monitor. Further, Licensee shall provide to the Probation Monitor for inspection and review all documents and other information requested by the Probation Monitor necessary for both Licensee and the Probation Monitor to fulfill their respective obligations under the terms of this Order.
- (10) The Probation Monitor shall meet with Licensee at least once per month to review her financial records and determine whether records necessary to meet the requirements of the Endowed Care Cemeteries Law, Sections 214.270 through 214.516, RSMo, are being kept and payments to the Ashland Cemetery Endowed Care Fund have been made as required. The requirements Licensee is expected to meet are set forth in "Appendix A" to this Order.
- (11) The Probation Monitor may advise and instruct Licensee on any changes necessary to meet the requirements of the law. Licensee shall have a duty to implement any changes recommended by the Probation Monitor. The Probation Monitor shall include in his or her quarterly report all issues in which recommendations have not been followed, and such failure will be considered a violation of the probation terms.
- (12) The Probation Monitor shall file a report with the Office by January 1, April 1, July 1, and October 1 of each year of the Disciplinary Period, but no sooner than two weeks before each due date. The report shall be signed and dated by the Probation

Monitor, include the Probation Monitor's mailing address and telephone number and shall state whether Licensee is in compliance with all requirements set forth in Appendix A, and specify each respect in which she is found not to be in compliance.

- (13) The Probation Monitor shall have a responsibility to report accurately to the Office, not limited by any privilege or duty to Licensee.
- (14) The review and reporting of the Probation Monitor shall be in addition to, and not in lieu of, any periodic audits performed by the Office under the terms of the Endowed Care Cemeteries Law. The Office retains the right to perform periodic audits as in the past, and the responsibility of Licensee to cooperate with such audits and correct any deficiencies identified in such audits is unchanged by this agreement. In the event of any conflict between the recommendations of the Probation Monitor and the findings of the Auditor, the Office shall resolve the issue, and Licensee shall take any necessary action to correct deficiencies identified in the audit even if such action was not required or recommended by the Probation Monitor.

C. Restitution. Licensee shall provide proof that she has repaid the judgment owed to Ronald and Freeda White at the rate of \$66.30 per month beginning the 15th of the first month following execution of this agreement, with each payment due the 15th of each month thereafter, and a final payment of \$66.00, until the sum of \$1451 plus interest at 9% per annum shall be paid. An anticipated repayment schedule is attached as "Appendix B" to this Order and is the same repayment schedule as was included with the prior Settlement Agreement. Licensee shall submit canceled checks or other proof of payment showing timely payments to the Whites with each quarterly report until such time as the judgment is paid off. Failure to make any payment will be considered violation of the terms and conditions of the probation.

D. Current Endowed Care Contributions. Licensee shall make statutory contributions to the Ashland Cemetery Endowed Care Fund as required under the terms of Section 214.320.1, RSMo, for all lot sales occurring during the Disciplinary Period. Failure to make required contributions on any lot sales occurring during the Disciplinary Period will be considered violation of this Order.

E. Arrearages. Upon completion of the Restitution as stated above, Licensee shall undertake payments to retire the deficiency of \$15,281 found in the 2007 Audit at a rate equal to 20% of the deficit every year for a period of five (5) years as provided by Section 215.325, RSMo. The Office will not treat a failure to make such payments a violation of the terms of this Order if Licensee has made monthly payments of at least \$100 in each month of the Disciplinary Period. All such payments shall count toward the 20% payments provided in this paragraph.

F. Not to Use Term “Endowed Care.” Licensee shall not represent Ashland Cemetery as an endowed care cemetery, nor use the term “endowed care” in promotion or marketing, until such time as each payment of 20% the arrearage of \$15,281 as identified in the 2007 audit is made as required by Section 214.325, RSMo.

Conduct in Violation of Conditions of Probation

21. Ashland failed to submit any of the quarterly reports that were due on April 1, July 1, and October 1, 2014 and on January 1, April 1, July 1 and October 1, 2015, and on January 1 and April 1, 2015 as required by paragraph 27.A. of the 2014 Order.

22. Ashland entered into a letter agreement with Bal Singh to serve as probation monitor as required by paragraph 27.B. of the 2014 Order, but she failed to fulfill her duties to pay him for his services and failed to utilize his services as required by the provisions of paragraph 27.B. and paragraph 27.B. 5), 7), 8), 9), 10), 11), 12), and 13, of the 2014 Order.

23. Ashland failed to provide proof to the Office of Endowed Care Cemeteries that she paid the judgment owed to Ronald and Freeda White as required by paragraph 27.C. of the 2014 Order.

24. Ashland failed to make the required deposit into its Endowed Care Fund for one cemetery sale made in March, 2015, as required by paragraph 27.D. of the 2014 Order.

25. Ashland failed to make any payments to retire the deficiency of \$15,281 to the Ashland Endowed Care Trust Fund as required by paragraph 27.E. of the 2014 Order.

Finding of Probation Violation

26. Ashland has violated the terms and conditions of probation.

27. Ashland has violated each condition of probation set forth in the 2014 Order found in paragraphs 27.A, B., C., D., and E.

Disciplinary Order

28. Ashland's license as an Endowed Care Cemetery is hereby **REVOKED**.

29. Per Section 214.276.3, RSMo, Ashland may not re-apply for licensure as an endowed care cemetery for three years from the date of this Order.

30. Within 10 business days of Ashland's receipt of this order, Ashland shall return all indicia of licensure to the Office at Office of Endowed Care Cemeteries, P.O. Box 1335, 3605 Missouri Boulevard, Jefferson City, Missouri 65102.

31. Per Section 214.275, RSMo, Ashland may remain open as a cemetery, but the only business that it may transact is what is required to maintain the cemetery and to fulfill existing contracts for the burial and interment of dead human remains. No new cemetery sales or new preneed contracts may be made unless proper licensure is obtained.

32. The endowed care fund of Ashland shall remain to be held as an irrevocable trust in accordance with Missouri law and may be distributed only in accordance with the provisions of Missouri statutes and regulations and its trust agreement and it shall remain an irrevocable trust for the care and maintenance of the cemetery. Unless and until the cemetery is operated under an endowed care cemetery license, no principal may be distributed to any beneficiary of the trust and interest may be distributed only if the trust agreement so allows.

33. In the event the cemetery is sold or ownership transferred in any way, the endowed care fund shall transfer with the cemetery to any new owner.

34. This Order does not bind the Office or the Division or restrict the remedies available to it concerning facts or conduct not specifically mentioned in this Order that are either now known to the Office or may be discovered.

35. Each party shall pay their own fees and expenses incurred as a result of this matter.

36. The Office and the Division will maintain this Order as an open record of the Office as required by Chapters 214, 324, and 610, RSMo, as amended.

Dated: June 3, 2016


Kathleen Steele Danner, Director
Division of Professional Registration