

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY

RONALD MARTS, ET AL.)	
)	
PETITIONERS,)	
)	
V.)	CASE NO. 1016-CV39473
)	
STATE BOARD OF EMBALMERS)	
AND FUNERAL DIRECTORS,)	
)	
RESPONDENT.)	

ORDER GRANTING MOTION FOR STAY SUBJECT TO APPOINTMENT OF
INTERIM MANAGER

Now on this 14th day of January, 2011, the Court takes up the “Agreed Motion for Stay Subject to Appointment of Interim Manager.” Petitioners appear by counsel, Salvatore Mirabile. Respondent (the “Board”) appears by counsel, Sharon K. Euler. There are no other appearances.

After review of the file, the “Agreed Motion for Stay Subject to Appointment of Interim Manager “and being fully apprised of all matters relevant to this motion, the Court finds:

1. On Friday, January 7, 2011, the Court heard testimony on behalf of both Petitioners and Respondent as to whether a stay of the Board’s Order revoking the licenses of Petitioners should issue.
2. As a result of the hearing held on Friday, January 7, 2011, the Court ordered that the Order of the Board revoking the funeral director, funeral

establishment license and the preneed provider licenses of Petitioners be stayed until 5 p.m. on Friday, January 14, 2011. The Court also ordered the parties to attempt to negotiate an agreement for an interim arrangement regarding the conduct of Petitioners' business, Marts Memorial Services, during the pendency of this appeal and to report back to the Court by noon on Friday, January 14, 2011.

3. The parties reported to the Court by noon on Friday, January 14, 2011, the status of their negotiations and as a result of those negotiations, submitted an agreed motion with a proposed Order for the Court's consideration and review on Friday, January 14, 2011.

4. Jurisdiction and venue are properly vested in the Court.

5. Section 536.120, RSMo¹, authorizes the Court to stay the Board's

Order and states:

Pending the filing and final disposition of proceedings for review under sections 536.100 to 536.140, the agency may stay the enforcement of its order and may temporarily grant or extend relief denied or withheld. Any court in which such proceedings for review may be pending may issue all necessary and appropriate process to stay or require the agency to stay the enforcement of its order or temporarily to grant or extend or require the agency temporarily to grant or extend relief denied or withheld, pending the final disposition of such proceedings for review. Such stay or other temporary relief by a reviewing court may be conditioned upon such terms as shall appear to the court to be proper. No such stay or temporary relief shall be granted by a reviewing court without notice, except in cases of threatened irreparable injury; and when in any case a stay or other temporary relief is granted without notice the court shall then make an order, of which due notice shall be

¹ All references are to the Revised Statutes of Missouri (2000), as supplemented, unless otherwise indicated.

given, setting the matter down for hearing as promptly as possible on the question whether such stay or other temporary relief shall be continued in effect. No such stay or other temporary relief shall be granted or continued unless the court is satisfied that the public interest will not be prejudiced thereby.

6. The Court is satisfied that the public interest will not be prejudiced by the entry of this Order staying the Board's Order conditioned upon the terms contained in this Order.

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

7. The Board's "Finding of Facts, Conclusions of Law and Disciplinary Order" (the "Board's Disciplinary Order") is hereby stayed conditioned upon the terms and conditions contained in this Stay Order.

8. This Stay Order shall be effective upon the date and time the Interim Manager notifies the Court that Petitioners have paid to him a retainer of \$5,000. The Court's Order granting temporary stay shall be extended until the Interim Manager notifies the Court of its receipt of the \$5,000 retainer or until noon on Tuesday, January 18, 2011, whichever comes first.

9. This Stay shall be in effect until 10 calendar days after the Court issues its decision in this matter affirming, denying or remanding the Board's Order or until further order of this Court. If Petitioners dismiss this appeal, this Stay Order shall be void as of the date and time of the filing of the dismissal.

Appointment of Interim Manager

10. Berry F. Laws, III, Esq. is hereby appointed as Interim Manager of Petitioners' funeral establishment ("Marts Memorial Services") in this matter and, as of the effective time and date of the Stay Order.

11. The Interim Manager shall be an agent of the Court and solely the agent of this Court and shall be accountable directly to this Court.

12. No bond shall be required of the Interim Manager.

Duties of Interim Manager

13. The Court authorizes and directs the Interim Manager to take all steps reasonably necessary to assure that Marts Memorial Services is operated in accordance with all state and federal laws and regulations including, but not limited to, Chapters 333, 436, RSMo, and accompanying regulations, the Funeral Rule promulgated by the Federal Trade Commission, and all state, federal and local tax and licensing laws.

14. The Interim Manager may not serve in any function for which Missouri requires a license as a funeral director as set forth in Chapter 333, RSMo. Rather, the Interim Manager shall retain the services of a licensed funeral director to fulfill all such functions in the operation of Marts Memorial Services.

15. The Interim Manager shall maintain the retainer fee paid to him in this matter in his firm's trust account until such time as the Court issues an order allowing payment for fees and expenses of the Interim Manager. Upon

completion of his duties and after final payment for his costs and expenses, the Interim Manager shall refund to Petitioners any amounts remaining in trust.

16. The Interim Manager shall make weekly reports to the Court consisting of two parts:

- a. A report containing a detailed billing of services rendered and his fees and expenses for that week.
- b. A separate report detailing the business transacted by Marts Memorial Services during the previous week including documentation showing compliance with state laws such as daily readings from the cooling room thermometer, register log pages, documentation of cremains received and delivered to families, written statements of goods and services, and a written affirmation of compliance or non-compliance with state and federal laws, with copies to counsel for the parties. The Interim Manager shall redact confidential information from these reports including, but not limited to, names and addresses of decedents and their families, personal health information, social security numbers, account numbers from any financial institution and other personal information of customers or potential customers of Marts Memorial Services.

17. All weekly reports shall be filed with the Court by the Interim Manager by 10:00 on each Monday morning reporting for the previous week.

18. In these weekly reports, the Interim Manager shall report to the Court violations of any state or federal law or conduct that would be cause for discipline pursuant to Section 333.330.2, RSMo.

Payment of costs and expenses of Interim Manager

19. Petitioners shall pay all fees and expenses of the Interim Manager.

20. The Interim Manager shall be paid a reasonable amount for his fees and shall be reimbursed for his costs associated with serving as the Interim Manager. The parties have agreed that the Interim Manager shall be entitled to payment in the amount of \$220 per hour for his time, payment in the amount of \$180 per hour for associates and payment in the amount of \$85 per hour for paralegal time.

21. Petitioners shall pay the Interim Manager a retainer of \$ 5,000 due and payable no later than noon on Tuesday, January 18, 2011.

22. The Interim Manager shall make periodic requests for payment for his services and expenses by providing detailed bill and requesting the Court approve payment of the Interim Managers fees and expenses.

23. Court shall review and approve all payments to the Interim Manager.

24. Upon approval of the request for payment, the Court shall order that funds be disbursed to the Interim Manager.

25. If, at any time, the funds available to pay the Interim Manager drop below \$1,000, the Interim Manager shall so notify the Court and the parties and

Petitioners shall replenish the funds in \$5,000 increments, or as ordered by the Court.

Petitioners' Duties

26. Petitioners and their officers, agents, employees, attorneys and all other persons in active concert or participation with Petitioners shall fully cooperate with and assist the Interim Manager. Such cooperation and assistance shall include, but not be limited to:

- a. Providing information and access to all records and facilities to the Interim Manager that the Interim Manager deems necessary in order to exercise the authority and discharge his responsibilities under this Order;
- b. Providing any passwords required to access any computer, telephonic or electronic data in any medium.

27. During the pendency of this stay, Petitioners are restrained and enjoined from:

- a. Destroying, secreting, defacing, transferring, or otherwise altering or disposing of any documents of, or related to, the business of Marts Memorial Services, including, but not limited to, funeral service contracts and related records, both at-need and pre-need, correspondence, computer records, electronically stored records, books, records, accounts, writings, drawings, graphs, charges,

- photographs, or any other papers or electronic records of any kind or nature;
- b. Failing to notify the Interim Manager, or failure to provide full access to the Interim Manager, of any asset pertaining to Marts Memorial Services, including accounts of any kind, of Petitioners whether held in the name of Petitioner(s) or any other person;
 - c. Doing any act, or refraining from any act whatsoever, to interfere with the Interim Manager performing his duties under this Order or to harass or interfere with the Interim Manager in any way or to interfere in any way with the jurisdiction of this Court or to refuse to cooperate with the Interim Manager or his duly authorized agents in the exercise of their duties or authorities under any order of this Court.

28. Petitioners shall have the right to advertise and negotiate terms of sale for the business of Marts Memorial Services, but shall not sign any contract or make any commitment of sale of Martron, LLC or any of the business interest, assets or activities of Marts Memorial Services without notice to the Interim Manager, the Board and the Court.

Respondent Rights and Duties

29. The Board shall be entitled to full and complete access to Petitioners' premises and business records, during regular business hours, without

notice. Petitioners and the Interim Manager shall cooperate fully with Board's investigators and personnel.

30. The Board shall provide reasonable assistance to the Interim Manager to ensure that Petitioners comply with the provisions of Chapters 333 and 436, RSMo.

Non-compliance

31. If Petitioners fail to cooperate with the Interim Manager or fail to follow any direction received from the Interim Manager, the Interim Manager shall so report to the Court.

32. If the Court finds that Petitioners have failed to comply with the terms of this Order, including failure to comply with requests or direction from the Interim Manager, the Court may issue an order rescinding the stay of the Board's Order. Before any such order is issued, the Court shall allow the parties the opportunity to be heard.

IT IS SO ORDERED.

Dated: 11/14/2011

Judge

