

**CIVIL CASE INFORMATION STATEMENT
CIVIL CASES**

Circuit Court
Greenbrier Co., W. VA.
Filed

2014 OCT 31 PM 3: 26

In the Circuit Court, Greenbrier County, West Virginia

I. CASE STYLE:

Plaintiff(s)/Petitioner(s)

Case #

**STATE OF WEST VIRGINIA ex rel.
PATRICK MORRISEY,
ATTORNEY GENERAL**

Judge

vs.

Defendant(s)/Respondent(s)	<u>Days to Answer</u>	<u>Type of Service</u>
SHANKLIN FUNERAL HOME, INC. 17 Mountain Avenue White Sulphur Springs, WV 24986	30	Personal
ZIVO V. WALKUP, DIRECTOR Shanklin Funeral Home, Inc. 17 Mountain Avenue White Sulphur Springs, WV 24986	20	Personal

Original and ___ copies of complaint furnished herewith.

(Continued On Next Page)

PLAINTIFF: STATE OF WEST VIRGINIA ex rel. PATRICK MORRISEY, ATTORNEY GENERAL DEFENDANTS: SHANKLIN FUNERAL HOME, INC., et al.	CASE NUMBER:
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II. TYPE OF CASE:

TORTS	OTHER CIVIL

Asbestos	Adoption	Appeal from Magistrate Court
Professional Malpractice	Contract	Petition for Modification of Magistrate Sentence
Personal Injury	Real Property	<input checked="" type="checkbox"/> Miscellaneous Civil
Product Liability	Mental Health	Other
Other Tort	Appeal of Administrative Agency	

III. JURY DEMAND: Yes No

CASE WILL BE READY FOR TRIAL BY (MONTH/YEAR): N/A

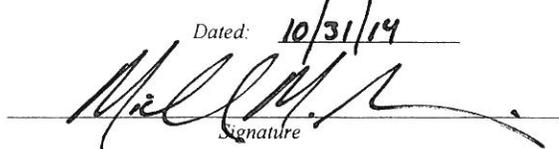
IV. DO YOU OR ANY OF YOUR CLIENTS OR WITNESSES IN THIS CASE REQUIRE SPECIAL ACCOMMODATIONS DUE TO A DISABILITY OR AGE?

YES NO
IF YES, PLEASE SPECIFY:

Wheelchair accessible hearing room and other facilities
 Interpreter or other auxiliary aid for the hearing impaired
 Reader or other auxiliary aid for the visually impaired
 Spokesperson or other auxiliary aid for the speech impaired
 Other: _____

Attorney Name: Michael M. Morrison, Assistant Attorney General
 (State Bar No. 9822)
Firm: State of West Virginia, Attorney General's Office
Address: Post Office Box 1789, Charleston, WV 25326-1789
Telephone: (304) 558-8986

Representing:
 Plaintiff Defendant
 Cross-Complainant Cross-Defendant

Dated: 10/31/14

 Signature

Pro Se

IN THE CIRCUIT COURT OF GREENBRIER COUNTY, WEST VIRGINIA

Circuit Court
Greenbrier Co., W. VA.
Filed

2014 OCT 31 PM 3:26

STATE OF WEST VIRGINIA ex rel.
PATRICK MORRISEY,
Attorney General,

Plaintiff/Petitioner,

v.

Civil Action No. 14-C-187(R)

SHANKLIN FUNERAL HOME, INC.
and Zivo V. Walkup, Director

Defendants/Respondents.

COMPLAINT AND PETITION FOR
PRELIMINARY AND PERMANENT INJUNCTION

This action is brought pursuant to the West Virginia Consumer Credit and Protection Act, West Virginia Code § 46A-1-101 *et seq.* (hereinafter “the Act”). Plaintiff/Petitioner, the State of West Virginia ex rel. Patrick Morrissey, Attorney General (hereinafter “the State”) has reason to believe the above-named Defendants/Respondents, Shanklin Funeral Home, Inc., and Zivo V. Walkup (hereinafter collectively referred to as “SFH”), have violated the Act. The State brings this action to enjoin and restrain SFH from engaging in unfair or deceptive acts or practices in cemetery goods and services of any kind. The State seeks preliminary injunctive relief and other equitable relief including, but not limited to, restitution for consumers who were harmed by SFH business practices, court costs, investigative costs and attorneys’ fees, and penalties of \$5,000.00 for each violation of the Act.

I.
PARTIES

1. The Plaintiff, the State of West Virginia, brings this action by and through Patrick Morrissey, Attorney General for the State of West Virginia. The Attorney General is authorized to bring this action pursuant to W. Va. Code §§ 46A-7-108, -110, and -111.

2. Upon information and belief, Shanklin Funeral Home is a West Virginia corporation in the business of selling funeral goods and services as well as cemetery goods and services.

3. Upon information and belief, Shanklin Funeral Home is located at 17 Mountain Avenue, in White Sulphur Springs, Greenbrier County, West Virginia.

4. Upon information and belief, Zivo V. Walkup is the director of Shanklin Funeral Home and is involved in the day to day operation of the business, including the selling of cemetery goods and services to consumers.

II.
JURISDICTION AND VENUE

5. This Court has jurisdiction to hear this matter pursuant to Article VIII, Section 6 of the West Virginia Constitution and W. Va. Code § 51-2-2.

6. Venue is proper in this Court pursuant to W. Va. Code §§ 46A-7-114 and 56-1-1.

III.
FACTS COMMON TO ALL CAUSES OF ACTION

Background Facts

7. In 2014, the State commenced an investigation of the business practices of SFH after receiving complaints from individuals and consumers that SFH had taken their money and had not provided the promised cemetery goods and services.

8. The Attorney General's Office investigated SFH's business practices to determine if they were violating the Act.

9. West Virginia consumers and others contract with SFH for the purchase of cemetery goods and services along with funeral goods and services.

10. West Virginia consumers and others come into SFH's place of business for the purpose of purchasing cemetery goods and services as well as funeral goods and services.

11. Once the goods and services are selected, West Virginia consumers and others enter into a contract with SFH for the purchase of the selected goods and services.

12. SFH represents to West Virginia consumers and others that they are experienced in providing cemetery goods and services as well as funeral goods and services.

13. SFH failed multiple times to provide the cemetery goods and services within a reasonable time.

14. SFH refused multiple times to refund consumers' money for services not performed despite complaints about delays.

15. SFH willfully and repeatedly engages in the conduct described in this complaint.

16. The State has received at least seven (7) complaints from consumers since 2005 alleging that SFH has received their money without delivering the goods and services promised.

17. By way of example, the following allegations involving two consumers are representative of SFH's conduct:

Shirley Long

18. In April of 2012, Shirley Long of Greenbrier County, West Virginia, went to SFH with the intention to purchase a dual cemetery headstone for her deceased ex-husband and for it to be placed at his gravesite.

19. On April 26, 2012, Long met with Zivo Walkup of SFH and entered into a contract for the purchase of the dual cemetery headstone.

20. The contract also included that the headstone was to be placed at the gravesite of her deceased ex-husband.

21. As agreed upon in the contract, Long was to pay Zivo Walkup and SFH a total of \$2,031.90 for the cemetery goods and services purchased.

22. Long paid SFH in full the very same day that the contract was entered into. She wrote one check for \$2,031.90 on April 26, 2012.

23. Long was told verbally that day, by Zivo Walkup, the headstone would be in and placed at the gravesite within two (2) months.

24. Over the past two (2) years, Long has visited the gravesite once or twice a week to observe whether or not the headstone had been put down.

25. Long has been given numerous excuses by Zivo Walkup as to why the headstone has not been placed on the gravesite.

26. In March 2014, Long went to SFH to speak with Zivo Walkup only to have him leave his place of business in order to avoid speaking to Long.

27. Long has not spoken with or received any type of communication from SFH in over a year.

28. SFH has failed to provide the cemetery goods and services purchased by Long.

29. SFH has refused to refund Long's money.

Bernard Tucker

30. Bernard Tucker is 76 (seventy-six) years old and a resident of White Sulphur Springs, Greenbrier County, West Virginia.

31. In May 2013, Tucker went to SFH to purchase a monument for his deceased wife.

32. On May 6, 2013, Tucker entered into a contract with Zivo Walkup and SFH to purchase a matched veterans stone monument to be placed on his deceased wife's gravesite.

33. Pursuant to the contract, Tucker purchased \$1,667.20 worth of cemetery goods and services from SFH.

34. On the same day that the contract was entered into, Tucker paid the full purchase price of \$1,667.20 by personal check.

35. Zivo Walkup verbally told Tucker that the monument would be placed on the gravesite within four (4) months of the date of purchase.

36. It has been over a year and the monument is still not placed on the gravesite.

37. Tucker visits the gravesite weekly to monitor whether or not the monument has been set.

38. After repeated complaints by Tucker, Zivo Walkup personally wrote Tucker a letter promising that the "stone" (monument) would be set by Friday, May 23, 2014.

39. SFH has failed to provide the cemetery goods and services purchased by Tucker.

40. SFH has refused to refund Tucker's money.

CAUSE OF ACTION
(Taking Money without Delivering Goods or Services)

41. The State repeats and reasserts the facts and allegations set forth in paragraphs numbered 1 through 40 above as if each were set forth herein in its entirety.

42. SFH enters into written contracts with consumers for the purchase of cemetery goods and services.

43. SFH accepts full payment for the purchase of cemetery goods and services.

44. SFH fails to provide and perform the contracted cemetery services.

45. SFH refuses to refund money even though he has not provided the cemetery goods and services.

46. SFH causes much confusion among consumers who have paid money and expect to see their cemetery headstones and/or monuments on the selected gravesites.

47. Under the Act, unfair or deceptive acts or practices include “engaging in any other conduct which similarly creates a likelihood of confusion or of misunderstanding.” *See* West Virginia Code § 46A-6-102(7)(L).

48. Under the Act, unfair or deceptive acts or practices also include “the act, use or employment by any person of any deception, fraud, false pretense, false promise or misrepresentation, or the concealment, suppression or omission, in connection with the sale or advertisement of any goods or services, whether or not any person has in fact been misled, deceived or damaged thereby.” *See* West Virginia Code § 46A-6-102(7)(M).

49. SFH fails to perform and provide contracted cemetery goods and services, which constitutes an unfair or deceptive act or practice in violation of W. Va. Code § 46A-6-104, as defined by W. Va. Code § 46A-6-102(7)(L)-(M).

IV.
PRAYER FOR RELIEF

WHEREFORE, The State of West Virginia requests that this Court:

A. Conduct a hearing on this matter as soon as possible pursuant to W. Va. Code § 46A-7-110.

B. Grant an immediate preliminary injunction without bond pursuant to W. Va. Code § 46A-7-110:

1. Prohibiting Defendants from engaging in the sale of any cemetery goods and services of any kind in the State of West Virginia;

2. Prohibiting Defendants from transferring or conveying any real or personal property in his custody or control to any third party until this matter has been finally adjudicated; and

3. An Order compelling Defendants to provide the Attorney General, within 15 calendar days of entry of the Order, with a list of all of their customers relating to the sale of cemetery goods and services, in Microsoft Excel, providing the customers' names, addresses, telephone numbers, dates of purchase, and the amounts paid.

C. Upon final hearing:

1. Enter judgment in favor of the State against Defendants to pay restitution to all aggrieved consumers;

2. Enter judgment in favor of the State against Defendants and order Defendants to pay a civil penalty in the amount of five thousand dollars (\$5,000.00) for each and every willful and repeated violation of Chapter 46A of the West Virginia Code that he committed, as provided in W. Va. Code § 46A-7-111(2);

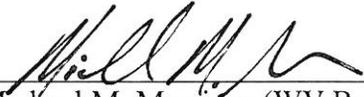
3. Enter judgment against and order Defendants to pay to the State of West Virginia all its attorney fees, court costs, investigation costs, and all other costs associated with the maintenance and prosecution of this action; and

4. Grant other and further relief as the Court deems just and appropriate.

Respectfully submitted:

STATE OF WEST VIRGINIA, ex rel.
PATRICK MORRISEY,
ATTORNEY GENERAL

By Counsel

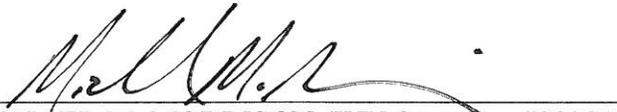


Michael M. Morrison (WV Bar No. 9822)
Assistant Attorney General
Office of the Attorney General of West Virginia
Consumer Protection/Antitrust Division
Post Office Box 1789
Charleston, West Virginia 25326-1789
(304) 558-8986

VERIFICATION

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, TO-WIT:

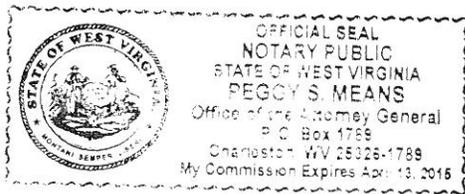
I, MICHAEL M. MORRISON, ASSISTANT ATTORNEY GENERAL, being duly sworn, depose and say that I am the counsel of record for the Plaintiff/Petitioner in the Complaint and Petition for Preliminary and Permanent Injunction in the foregoing styled civil action; that I am familiar with the contents of the foregoing Complaint and Petition for Preliminary and Permanent Injunction; and that the facts and allegations contained therein are true, except such as are therein stated upon information and belief, and that as to such allegations I believe them to be true.



MICHAEL M. MORRISON (WV State Bar #9822)
ASSISTANT ATTORNEY GENERAL
Consumer Protection Division and
Antitrust Division

Taken, subscribed, and sworn to before me in the County and State aforesaid this 31st day of October, 2014.

My commission expires April 13, 2015.



NOTARY PUBLIC