

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

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CATHY S. CATSON, CLERK
KANAWHA COUNTY CIRCUIT COURT

STATE OF WEST VIRGINIA
ex rel. Patrick Morrissey,
Attorney General,

Plaintiff/Petitioner,

v.

CIVIL ACTION NO. 15 C-1756
Judge Tabiri

GATENS-HARDING FUNERAL HOME, INC.,
a West Virginia corporation,
CHAD R. HARDING and
BILLIE J. HARDING, Individually and as Owners of
GATENS-HARDING FUNERAL HOME,

Defendants/Respondents.

COMPLAINT FOR INJUNCTION AND RELATED RELIEF

This action is brought pursuant to the West Virginia Consumer Credit and Protection Act, West Virginia Code § 46A-1-101 *et seq.* (hereinafter “Consumer Act”) and the West Virginia Preneed Funeral Contracts Act, W. Va. Code § 47-14-1, *et seq.* (hereinafter “Preneed Act”). The State of West Virginia ex rel. Patrick Morrissey, Attorney General (hereinafter “State”), alleges that the Gatens-Harding Funeral Home, Inc., Chad R. Harding and Billie J. Harding (collectively hereinafter “Defendants”) have violated the Consumer Act and the Preneed Act, and brings this action to enjoin and restrain the Defendants from selling and providing preneed funeral goods and services, and to secure redress for aggrieved consumers. The State seeks permanent injunctive relief, investigative costs, damages, restitution, civil penalties, and attorney’s fees.

PARTIES

1. Plaintiff, 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 West Virginia Code § 46A-1-101, *et seq.*, and specifically West Virginia Code § 46A-7-102, § 46A-7-108, § 46A-7-110, § 46A-7-111, and § 47-14-12.

2. Defendant Gatens-Harding Funeral Home, Inc. (“GHFH”) is a West Virginia corporation, and has its principal place of business located at 147 Main Street, Poca, West Virginia.

3. Upon information and belief, Defendant, Chad R. Harding is an individual residing in Poca, Putnam County, West Virginia and is the owner, officer, director, member, and/or incorporator of Defendant GHFH.

4. Upon information and belief, Defendant, Billie J. Harding is an individual residing in Poca, Putnam County, West Virginia and is the owner, officer, director, member, and/or incorporator of Defendant GHFH.

JURISDICTION AND VENUE

5. This Court has jurisdiction to hear this matter pursuant to Article VI, 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 W. Va. Code § 56-1-1(f).

RELEVANT PERIOD OF TIME

7. The Defendants have engaged in continuous violations of the Preneed Act and Consumer Act from at least 2012 to the present.

FACTS COMMON TO ALL CAUSES OF ACTION

8. Defendant GHFH has owned and operated a funeral home business with multiple locations in southern West Virginia, including a funeral home in Poca, Putnam County, West Virginia and has engaged in selling preneed funeral goods and services to West Virginia consumers by means of preneed funeral contracts¹, since at least 2005.

9. At all times relevant hereto, Chad R. Harding and Billie J. Harding have formulated, directed, and controlled the day-to-day business policies and practices of Defendant GHFH.

10. Homesteaders Life Company (hereinafter “Homesteaders”) is one of the insurance companies that GHFH used to purchase preneed life insurance policies to fund preneed contracts.

11. No person may sell, make available, receive, hold, control, or manage any funds or other things of value tendered as payment on a preneed funeral contract (hereinafter “preneed contract”) unless such person has obtained a certificate of authority² (hereinafter “COA”) or renewal thereof from the Preneed Funeral Services Division of the Office of Attorney General (hereinafter “Preneed Unit”).

¹ A “preneed funeral contract” is defined as any contract, agreement, mutual understanding, series or combination of contracts, agreements and mutual understandings, including a contract that is financed by the purchase of an insurance policy or annuity, under which, for a specified consideration paid in advance of death in a lump sum or by installments, a person promises to furnish or make available or provide funeral services, funeral goods or burial goods for use at a time determinable by the death of the contract beneficiary who is either named or implied therein. W. Va. Code § 47-14-2(12) (Emphasis added).

² A “certificate of authority holder” is defined as any person who sells, makes available, or provides preneed funeral contracts. W. Va. Code § 47-14-2(4).

12. Every time a preneed contract is sold, the consumer is charged a \$20.00 contract recording fee. This fee, along with a copy of the contract, must be submitted to the Preneed Unit within ten (10) days of the contract's execution.

13. Any payments made by a consumer purchasing a preneed contract must be deposited in a trust account or insurance policy by the COA holder, within thirty (30) days of receipt, to safeguard the funds until death.

14. Every time a preneed contract is serviced, the funeral home is required to file a death beneficiary report³ with the Preneed Unit, to account for how the preneed contract funds were spent.

15. COA holders must maintain accurate records of all their preneed contracts accounts, and make them available for inspection if so desired by the Preneed Unit.

16. In approximately 2004, the Defendants obtained a COA to sell and provide preneed contracts in the state of West Virginia. At the same time, the Defendants obtained a license for an employee to conduct sales of its preneed contracts with funeral home customers.

17. On or about August 27, 2015, the State audited the preneed contracts accounts held by the Defendants, and discovered multiple violations of West Virginia law.

18. As a result of the audit, the State identified areas of violation and at least one hundred eight (108) West Virginia consumers who were affected by Defendants' conduct.

19. The audit revealed that at least one hundred eight (108) death claims were made by Defendants *prior* to the deaths of any of the preneed contract beneficiaries.

³ A "Death Beneficiary Report" is a document prepared by a COA holder after servicing a preneed contract, which accounts for all expenditures and disbursements from the trust or other proceeds, justifies any increase in price, and explains any substitution of goods or services. *See*, W. Va. C.S.R. § 142-8-8.2.

20. The audit revealed that at least one hundred eight (108) death claims were paid to Defendants *prior* to the deaths of any of the preneed contract beneficiaries.

FRAUDULENT DEATH CLAIMS AND MISAPPROPRIATION OF FUNDS

21. The State adopts by reference the allegations set forth in paragraphs 1 through 20 and in addition thereto, alleges the following:

22. On or about August 27, 2015, the State conducted an audit of the Defendants pursuant to W. Va. Code § 47-14-3(i), and determined that the Defendants had violated the Preneed Act and WVCCPA.

23. The audit revealed that at least one hundred eight (108) preneed funeral contracts were purchased from Defendants by West Virginia consumers between September 2005 and November 2013.

24. Defendants took all one hundred eight (108) of those preneed funeral contracts and purchased preneed life insurance policies for each from Homesteaders Life Company.

25. The audit revealed that all one hundred eight (108) policies were still active according to Defendants but were not listed on the life insurance policy report provided by Homesteaders.

26. According to the documentation provided by Homesteaders, ninety-six (96) death claims were made by and paid to Defendants for preneed contracts that have not been fulfilled.

27. According to the documentation provided by Homesteaders, twelve (12) death claims were made by and paid to Defendants for preneed contracts prior to the preneed contracts being fulfilled.

28. According to the documentation provided by Homesteaders, none of the contract beneficiaries of the one hundred eight (108) preneed contracts were deceased at the time that Defendants made the death claims to Homesteaders.

29. From the one hundred eight (108) death claims made by Defendants, Defendants received preneed insurance proceeds in an amount yet to be determined but in excess of this Court's minimal jurisdictional limits.

30. The audit also revealed that Defendants failed to disclose to the Preneed Unit withdrawals of funds belonging to one hundred eight (108) consumers as required by law.

CAUSES OF ACTION

First Cause of Action (Failure to Maintain Funds Violates W. Va. Code § 47-14-11(a)(10), and Constitutes a per se Unfair or Deceptive Act or Practice in Violation of W. Va. Code § 46A-6-104.)

31. The State adopts by reference the allegations set forth in paragraphs numbered 1 through 30 and, in addition thereto, alleges the following:

32. Pursuant to W. Va. Code § 47-14-11(a)(10), no person shall "fail to maintain the funds received under the contracts as required by this article."

33. Funds used to purchase preneed contracts are to remain in a trust fund or insurance policy as a safeguard until the death of a contract beneficiary. Defendants' fraudulent withdrawals of consumers' funds put the availability of those funds at risk at the consumers' times of need.

34. By failing to maintain funds received from consumers for the purchase of preneed funeral contracts, the Defendants violated W.Va. Code § 47-14-11(a)(10), which constitutes a per se unfair or deceptive act or practice in violation of W. Va. Code § 46A-6-104.

Second Cause of Action
(Engaging in Fraudulent and Deceitful Activities
While Conducting Business Pertaining to the Selling of Preneed
Funeral Contracts Violate W. Va. Code § 47-14-11(a)(7),
and Constitutes a per se Unfair or Deceptive Act or Practice
in Violation of W. Va. Code § 46A-6-104.)

35. The State adopts by reference the allegations set forth in paragraphs numbered 1 through 30 and, in addition thereto, alleges the following:

36. Pursuant to W. Va. Code § 47-14-11(a)(7), no person shall “engage in fraud, deceit or misrepresentation in the conduct of business governed by the provisions of this article.”

37. Defendants made death claims and received preneed insurance proceeds for one hundred eight (108) consumers prior to the deaths of those consumers.

38. By engaging in fraudulent activities while conducting business pertaining to the selling of preneed funeral contracts, the Defendants violated W.Va. Code § 47-14-11(a)(7), which constitutes a per se unfair or deceptive act or practice in violation of W. Va. Code § 46A-6-104.

Third Cause of Action
(Failure to Maintain Accurate Records Violates
W. Va. Code § 47-14-3(i)(1), and Constitutes a per se Unfair or
Deceptive Act or Practice in Violation of W.Va. Code § 46A-6-104.)

39. The State adopts by reference the allegations set forth in paragraphs numbered 1 through 30 and, in addition thereto, alleges the following:

40. Pursuant to West Virginia Code § 47-14-3(i)(1),

The certificate holder shall keep accurate accounts, books and records in this state of all transactions, copies of all contracts . . . and such other records as the division may require to determine whether such certificate holder is complying with the provisions of this article. Such records must be kept for twelve months after the date of termination of the applicable preneed contract.

41. The Defendants failed to keep accurate accounts, books and/or records of all their transactions, with the result that the true location of consumers' advance payments could not be readily determined.

42. By failing to keep accurate accounts, books, and/or records of their preneed contract transactions with West Virginia consumers, the Defendants violated W.Va. Code § 47-14-3(i)(1), which constitutes a per se Unfair or Deceptive Act or Practice in violation of W. Va. Code § 46A-6-104.

**Fourth Cause of Action
(Misrepresentation of Material Fact, as Defined by
W. Va. Code § 46A-6-102(7)(M), Is an Unfair or Deceptive Act or Practice
In Violation of W. Va. Code § 46A-6-104.)**

43. The State adopts by reference the allegations set forth in paragraphs numbered 1 through 30 and, in addition thereto, alleges the following:

44. West Virginia Code § 46A-6-104 provides that “unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.”

45. West Virginia Code § 46A-6-102(7)(M) provides that:

Unfair methods of competition and unfair or deceptive acts or practices means and includes, but is not limited to . . . [t]he act, use or employment by a person of any deception, fraud, false pretense, false promise or misrepresentation, or the concealment, suppression or omission of any material fact with intent that others rely upon such 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.

46. The Defendants made death claims and received preneed insurance proceeds from at least one hundred eight (108) consumers' preneed contracts prior to the deaths of any of those consumers.

47. From the Defendants' misrepresentation of consumers deaths in order to receive preneed insurance proceeds *prior* to the actual deaths of those consumers violate W. Va. Code § 46A-6-102 (7)(M), and constitute unfair or deceptive acts or practices, in violation of W. Va. Code § 46A-6-104.

REQUEST FOR RELIEF

PERMANENT RELIEF

The State further requests that, upon a final hearing, this Court grant the following permanent relief:

1. An order permanently enjoining the Defendants from violating the Consumer Act and the Preneed Act;
2. An order forever prohibiting the Defendants from selling, making available and/or acting as the provider of any preneed funeral products or services in the State of West Virginia;
3. An order requiring the Defendants to refund all money they received from West Virginia consumers as advance payment for preneed contracts the Defendants have not preformed, and refund all other money received from consumers as a result of the Defendants' violations of the Preneed Act and Consumer Act;
4. An order requiring Defendants to turn over all preneed contracts held by Defendants, and all funds incident thereto, to the State;
5. An order requiring the Defendants to produce any and all documents and records pertaining to any prepayment, or agreement to prepay, for funeral goods or services by any consumer prior to the death of the consumer or payment beneficiary;
6. An order requiring Defendants to cooperate with the State of West Virginia in transferring their preneed contracts to other funeral service providers;

7. An order requiring the Defendants to pay civil penalties to the State in the amount of \$5,000.00 per violation of the Preneed Act and the Consumer Act, pursuant to W. Va. Code § 46A-7-111, based on their willful and repeated conduct as set forth herein;

8. An order requiring the Defendants to pay punitive damages in the amount of three times the actual damages awarded in the judgment, pursuant to W. Va. Code § 47-14-12;

9. An order granting pre-judgment interest on all awards of refunds and civil penalties, pursuant to W. Va. Code § 56-6-29;

10. An order granting reimbursement of all investigation costs, court costs and attorney's fees, pursuant to W. Va. Code § 46A-7-108 and the general equitable powers of this Court. *See State ex rel. McGraw v. Imperial Marketing*, 506 S.E.2d 779 (W.Va. 1998);

11. Post-judgment interest, pursuant to W. Va. Code § 56-6-29.

The State further requests such other relief as the interests of justice may require.

Respectfully submitted,

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

By Counsel



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