

Arkansas Burial Association Board

MINUTES

Tuesday, December 4, 2012, 11:30 am

101 East Capitol, Little Rock, AR

Conference Room C

Board Meeting

Chairman David Powell, Jr. called the meeting to order. Members present were: Pete Sims, Scott Berna, Steve Ballard, Normal Gilchrest, Sumner, Brashears, and Sammie "Turner" James. Members absent were: Dr. Jacki McCray, and Melanie Posey. Staff present: Amy S. Goode, Executive Secretary, James R. Brooke, Auditor and assistant attorney general Mark Ohrenberger, Board Counsel.

1. Introduction of the Board and guests, meeting called to order
2. ***Stuttgart Home Burial Association – Default Judgment***

Executive Secretary recapped the Board of their order at their last meeting. The judgment carried a 10% interest rate and as of February 2012 the amount due was \$29,000. Mr. Javier Buck turned over to the auditor the last of any Stuttgart Home records. Mr. Buck stated he did not have all the money today, but he would be prepared to pay the debt over a three to five year period. They have \$4,000 in outstanding claims to file with the secretary-treasurer Mr. McNabb. He would apply that amount to the debt and plan to pay \$350 a month. All Stuttgart Home claims would be applied to the judgment.

Ohrenberger updated the Board that we did not have a bond on Mr. Buck in the office and he was unable to provide proof of bond. The Bond at this time would have been obsolete due to the time of incident.

Berna stated we have had this judgment since 2009 and there has been no restitution. We have had other associations before this Board these past couple months and we are holding firm we want restitution not a payment plan. Brashears inquired if since he was the owner of Richardson Memorial Funeral Home that perhaps they could get a loan to pay the judgment in full and paying a financial institution would be a better business decision. Mr. Buck had not been able to get an answer from his bank prior to today; he further stated he would like to get the matter resolved today and would pay the 10% interest to the Board. The Board did not think they could make a decision today. It was suggested the Board defer this until the next meeting and prior to that meeting Mr. Buck provide the Board with financial statements on the funeral home as well as himself; to determine what assets that might be available there.

Ballard questioned if we do adopt a payment plan, is there any way without going back to court to get some sort of collateral, because if he stops making payments there is no recourse. Ohrenberger answered that if the Board accepted a payment plan it would not eliminate the Board's ability to garnish wages or other property. If the Board accepted a payment plan and he defaulted the Board could seek recourse through the courts. Berna clarified if a lump sum was paid that the Board could waive the interest. Ohrenberger stated that was correct.

Motion made by Brashears that within 30 days Buck submit to the Board his financial statements of his personal and business assets and a letter from a financial institution approving or disapproving the loan. Seconded by Sims, all in favor, motion carried.

Amended motion made by Brashears that the letter of credit be a minimum amount of \$22,150, seconded by Sims, all in favor. Motion carried.

### **3. Church Burial Association**

Executive Secretary updated the Board of their directive at their last meeting and this was a continuance from that meeting. Since that meeting, the Strickland's have repaid \$4,000 and in a letter received by our office specified they had claims they had not paid. The office faxed to Mrs. Strickland a list of items to bring to the meeting today. Mrs. Strickland did bring the checkbooks, back-up claims, and statements requested. Ohrenberger stated he did have an Emergency Order for the Board to approve that Executive Secretary could sign and send to the banks. The Order would require Mrs. Strickland to get written approval from the Executive Secretary before payments are processed. Brooke inquired if any collections have been deposited. Mrs. Strickland stated since the last meeting no collections had been deposited.

Mrs. Strickland has applied to her homeowners and funeral home insurance to determine what amounts they will pay towards the shortage. The Attorney stated that he did not feel after reviewing the bond that it would pay based on the language. Mrs. Strickland did bring to the meeting several checks that were recovered during the time of the loss dating back to July 2011 that was found in their home under the refrigerator. There has been \$1,700 dollars collected from October through November 2012 that still has not been deposited. Shannon Strickland stated it was locked up at the funeral home. The question remained why the money had not been deposited.

Brooke stated after doing a quick audit of the records provided that during the time of July – November 2012 there has been a total of \$4,900 in collections not deposited. As of today, with the \$4,000 repaid and the \$4,000 in claims that they have not paid in conjunction with \$4,900 un-deposited collections we are dealing with an approximate shortage of \$16,000.

The Board gave a direct order to deposit the money in the bank.

Motion made by Ballard that restitution be made by the next meeting after the Auditor determines amount due, seconded by Berna, all in favor. Motion carried.

Discussion ensued that the Board should receive at the next meeting a letter of loan approval or disapproval from their financial institution if the Strickland's are unable to make restitution on their own. In addition, they need to send in financial statements prior to the next meeting for the Board to determine the proper payment plan if a loan is not approved by the financial institution.

The Emergency Order will give the Board control of any money going out of the accounts. This order will direct once signed that no withdrawals will be made from the account without prior written notice and approval from the Executive Secretary.

Motion made by Brashears to adopt the Emergency Order, seconded by Ballard, all in favor. Motion carried.

### **4. Herndon-Cornelius Burial Association**

Executive Secretary updated the Board that on November 28, 2012 the office received proof of full repayment on the \$25,000 shortage on the act 443 new business.

### **5. Yell County Burial**

Executive Secretary updated the Board about Dennis Haley of Fidelity Standard that has assumed Yell County Burial when Wonder State Life was transferred to Fidelity. Mr. Haley has become a member of the association and now needs to be appointed as secretary/treasurer. Brashears stated he felt the Board could nominate him as secretary/treasurer until their next scheduled annual meeting. Executive Secretary advised Mr. Haley he would need to have other officers. Brashears further stated from the logistics standpoint since this is now a corporate setting they would need other officers if he were to be incapacitated they would have some succession.

The Association is now with Fidelity Standard since it was a companion of the insurance company (Wonder State) for years and the members have paid their assessments together. The Board did not want to split the two apart and confuse the members.

Motion made by Brashears to nominate Dennis Haley as secretary-treasurer of the Yell County Burial Association, seconded by Berna, all in favor. Motion carried.

## **6. Complaints**

B. Dwight Olmstead, Secretary-Treasurer, R. W. Olmstead Burial Association V. Joann Olmstead, Olmstead Funeral Home.

Executive Secretary explained that this was a continuance from the last meeting. Office staff had compiled a document called "Olmstead Burial" that contained all information from previous minutes and that document was emailed to the Board. The staff did not find a direct order from the Board that included all documents be turned over to Dwight Olmstead. Since the last meeting, another complaint was received by Mr. Olmstead. In that complaint, Mr. Olmstead stated Olmstead Funeral Home continued to accept payments and not send them to the association.

Joann Olmstead stated in her answer that the Mildred Lacy had come to pay her insurance and was asked to forward the burial association payment. Olmstead Funeral Home provided an addressed stamped envelope. Executive Secretary confirmed with Mr. Olmstead that he had given credit to Ms. Lacy, but had never received the check. Joann Olmstead during a phone inquiry to the Executive Secretary stated she mailed the check and Ms. Lacy watched her place check in envelope. Marjorie Lacy (daughter) stated that they were not informed to take the burial payment elsewhere. She also could not confirm or deny that her payment was mailed to the association.

Motion made by Brashears that letter be sent stating any property that belongs to R. W. Olmstead Burial Association be returned to the burial association from Olmstead Funeral Home and do not accept anymore payments on behalf of the association, seconded by Ballard, all in favor. Motion carried.

Sims stated to send registered mail.

## **7. Approval of minutes of the October 2012 meeting**

Motion made by Gilcrest to approve the October 2012 meeting minutes, seconded by Brashears, all in favor. Motion carried.

## **8. Approval of October 2012 Trial Balance and DF&A Financial Documents**

Motion made by Sims to approve the October 2012 Trial and DF&A financial documents, seconded by Berna, all in favor. Motion carried.

## **9. Board Discussion**

### **a. Health Subcommittee**

Executive Secretary explained to the Board that on October 31<sup>st</sup> Mr. Ballard and she attended the meeting to discuss the survey that was completed and submitted to the committee. Executive Secretary stated that after hearing that the Department of Health was not in the position to take on anymore boards at this time the meeting was adjourned, but boards were advised the next biennium that this would be considered again. The survey was a method to get more information to the legislative committee for learning purposes. The Board's were advised to be proactive in changing their investigation and complaint procedures.

### **b. Attorney updates - Drew County Burial Association update**

Attorney Mark Ohrenberger updated the Board that the trail set for December 5 was continued and so was the backup date in January. There were mainly two reasons why, the parties not including our Board were not ready. Mr. Harris & Mr. Horne would like to see this issue resolved not by the courts, but through proposed legislation. They would like to work with this Board to promulgate regulation to change the law to address dissolution. The Board did

not have interest in promulgating regulation at this time. Ohrenberger stated he would let both attorneys know the Board is very skeptical at this time to promulgate regulation, but if the two of them wanted to work on regulation that not only pertained to this case but any dissolution then the Board could always review it.

**c. Audits**

Executive Secretary explained to the Board that she has been looking at ways to cut costs; and one she is proposing today is that the Auditor conduct audits onsite every other year with an exception on the associations that have been before with this Board over the last 5 years. During the odd years require more of a burden on the associations to send to the office the documents required to do the audit. Discussion ensued and it was suggested that associations that have not had any derogatory issues before the Board could on the off years have investments and bank accounts verified. Executive Secretary stated we could do as a trial basis during this biennium. The assets could be verified on one of the semi-annual reports. We could submit a confirmation form to the banks and investment firms to verify the assets.

Bill Booker stated the Burial Board conducts more audits than any other regulatory authority over them. The Insurance Commission visits onsite every three years and the cemetery board never comes unless there is a complaint. The Board will start sending to the associations a pre-filled out confirmation form that the secretary-treasurer would sign authorizing their bank to release the required information to the Board. The Board should lean towards verifying the assets yearly and conduct onsite every two years.

Motion made by Ballard that on trial basis the Board will conduct onsite audits every two years and on the off year the Board will receive confirmation of assets from the banks and investment firms, seconded by Gilcrest, all in favor. Motion carried.

**10. Next Meeting**

The Board will meet Wednesday, January 23, 2012 @ 11:00am

**11. Adjournment**

Motion made by Sims to adjourn since there was no further business to discuss, seconded by Berna, all in favor. Motion carried.

ATTEST:

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