

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. *CV00-96*

STATE OF MAINE,)
)
Plaintiff)
)
v.)
)
MAINE FUNERAL DIRECTORS' ASSOCIATION,)
A Maine Not-for-Profit Corporation,)
)
Defendant)

CONSENT DECREE

The Plaintiff, State of Maine, and the Defendant, Maine Funeral Directors' Association, having agreed to the entry of this Consent Decree without trial or adjudication of any issue of fact or law herein, and without this Consent Decree constituting any admission by either party with respect to such issues, it is hereby ORDERED and DECREED as follows:

I. JURISDICTION

This Court has jurisdiction over the Plaintiff and the Defendant and the subject matter of this action. The Complaint states a claim for relief under the Maine Unfair Trade Practices Act, 5 M.R.S.A. §§ 207 and 209.

II. INJUNCTION

1. Pursuant to 5 M.R.S.A. § 209, the Defendant is permanently enjoined from:
 - A. Charging any fees against a mortuary trust account, or the interest earned thereon, other than reasonable fees for the actual financial and tax administration of the account;

- B. Charging any fees against a mortuary trust account, or the interest earned thereon, except as clearly stated in a written mortuary trust agreement signed by the consumer; and
- C. Engaging in any unfair or deceptive acts or practices in violation of the Maine Unfair Trade Practices Act.

2. Pursuant to 5 M.R.S.A. § 209, the Defendant shall pay civil a civil penalty to the State of Maine Department of the Attorney General in the amount of \$10,000.00.

3. Pursuant to 5 M.R.S.A. § 209, the Defendant shall pay \$2,000.00 to the State of Maine Department of the Attorney General, representing reasonable attorney fees, costs of investigation and costs of suit.

4. PURSUANT TO THE MAINE UNFAIR TRADE PRACTICES ACT, 5 M.R.S.A. § 209, ANY PERSON WHO VIOLATES THE TERMS OF THIS INJUNCTION SHALL FORFEIT AND PAY TO THE STATE OF MAINE A CIVIL PENALTY OF NOT MORE THAN \$10,000 FOR EACH VIOLATION.

III. FINALITY AND RETENTION OF JURISDICTION

This Consent Decree and Order constitutes final judgment with respect to the subject matter of the Complaint filed by the Plaintiff against the Defendant, namely, alleged unfair and deceptive business practices relating to service fees charged by the Defendant in connection with mortuary trust accounts, up to and including December 31, 1999, and constitutes an absolute bar to any subsequent action by the Plaintiff against the Defendant, and any member of the Defendant, with respect to the subject matter of the Complaint.

Jurisdiction is retained by this Court for the purpose of enabling either party to this Consent Decree to apply to this Court at any time for such further orders or directions as may be

necessary or appropriate for the construction or carrying out of the Consent Decree, for the modification of or termination of any of the provisions hereof, and for the enforcement of compliance herewith, including through actions for civil or criminal contempt.

Respectfully submitted,

Dated: 5/12/2000



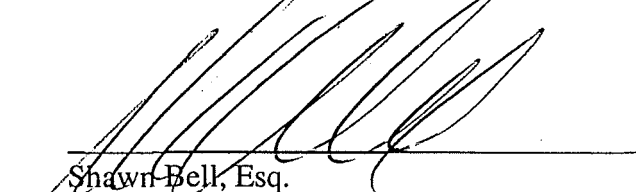
Carlos Diaz, Assistant Attorney General
Maine Bar Registration No. 8015
Attorney for the State of Maine

Dated: 4-27-00



Dana Chandler, President
Maine Funeral Directors' Association

Dated: 5/2/00

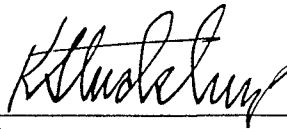


Shawn Bell, Esq.
Maine Bar Registration No. 7295
Attorney for the Defendant

ORDER

IT IS HEREBY ORDERED AND DECREED as set forth above.

Dated: 5/17/00



JUSTICE
MAINE SUPERIOR COURT

ANDREW KETTERER
ATTORNEY GENERAL



Telephone: (207) 626-8800
FAX: (207) 287-3145
TDD: (207) 626-8865

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
6 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0006

REGIONAL OFFICES:

84 HARLOW ST., 2ND FLOOR
BANGOR, MAINE 04401
TEL: (207) 941-3070
FAX: (207) 941-3075

59 PREBLE STREET
PORTLAND, MAINE 04101-3014
TEL: (207) 822-0260
FAX: (207) 822-0259
TDD: (877) 428-8800

May 6, 1999

Eddie Smith, Executive Director
Maine Funeral Directors Association
P.O. Box 352
Hallowell, Maine 04347

Dear Ms. Smith,

The Department of the Attorney General has investigated concerns that the Maine Funeral Directors Association engaged in unfair and deceptive trade practices in relation to mortuary trusts. The investigation was conducted pursuant to the Department's enforcement responsibilities under the Maine Unfair Trade Practices Act, 5 M.R.S.A. §§ 206-214 (1989 & Pamph. 1998).

The Department has concluded that the Maine Funeral Directors Association did engage in unfair and deceptive trade practices. Specifically, the Association charged fees that were excessive and that were not disclosed to the consumer in the written mortuary trust agreements. These unfair and deceptive practices violated the Unfair Trade Practices Act.

It is the Department's intention to file a civil complaint to enjoin the Association from continuing to engage in the practices described above. We also intend to obtain an order requiring the Association to make restitution for the fees charged in the past, to pay a civil penalty of up to \$10,000 for each intentional violation, and to reimburse the Department for attorneys fees and costs of the investigation and suit.

Pursuant to 5 M.R.S.A. § 207, the Department is required to provide the Association with notice of our intentions at least ten days prior to filing suit. In this case, the Department does not intend to file suit prior to June 1, 1999. The purpose of this advance notice is to give the Association an opportunity to resolve the Department's

concerns. Please contact me either by telephone or by mail, or through your attorney if you would like to arrange a meeting to discuss this matter.

The Department also requests that in advance of such meeting you provide the following documents and information:

1. All yearly budget and expense reports for the Maine Funeral Directors Association from January, 1992, to the present.
2. A list of the Association's monthly income from the master trust program, from January, 1992, to the present.
3. A list of every funeral home and funeral home director who participated in the master trust program at any time between January, 1992, and the present, including names, addresses, and telephone numbers.
4. A list of all documents, reports and other communications prepared by the Association and distributed to its participating members, to Key Bank, or to Interment Trust Services pursuant to the Association's obligation to act as liaison under the custodial participation agreements.
5. For each year from 1992 to the present, the number and total value of "credit for services" mortuary trusts in the master trust.
6. For each year from 1992 to the present, the number of "credit for services" mortuary trusts disbursed from the master trust based on the death of the person for whose benefit the funds were paid.
7. For each year from 1992 to the present, the number and total value of "full payment" mortuary trusts in the master trust.
8. For each year from 1992 to the present, the number of "full payment" mortuary trusts disbursed from the master trust based on the death of the person for whose benefit the funds were paid.

You or your attorney may call if you have any questions about these requests.

Sincerely,

Carlos Diaz
Assistant Attorney General
(207) 626-8846

Cc: Shawn Bell, Esq.
Bonneau & Geismar, LLC
P.O. Box 7230
Lewiston, Maine 04243-7230

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. _____

STATE OF MAINE,)
)
 Plaintiff)
)
 v.)
)
 MAINE FUNERAL DIRECTORS)
 ASSOCIATION, INC.,)
 A Maine Corporation,)
)
 Defendant)

COMPLAINT
(Preliminary and Permanent Injunction)

I. INTRODUCTION

1. The Plaintiff, the State of Maine, brings this action under the Maine Unfair Trade Practices Act, 5 M.R.S.A. §§ 205-A through 214 (hereafter the UTPA), to obtain declaratory and injunctive relief, restitution, civil penalties, attorney's fees and costs. The complaint alleges that the Defendant, the Maine Funeral Directors Association (hereafter the MFDA), engaged in unfair and deceptive business practices by charging service fees totaling approximately \$491,372 against the interest earned on mortuary trust accounts without disclosing the fees to the consumers or to the beneficiaries, and without performing services that would have reasonably justified the fees.

II. PARTIES AND JURISDICTION

2. The Plaintiff State of Maine, a sovereign state, commences this action by and through the Attorney General.

3. The Defendant MFDA is an association, incorporated under the laws of the State of Maine, having principal places of business in Hallowell and Augusta, Maine.

4. The Superior Court sitting at Kennebec County has jurisdiction over the Plaintiff and the Defendant, as well as the subject matter of this action, pursuant to 5 M.R.S.A. § 209.

III. STATUTORY BACKGROUND

5. At all times pertinent to this action, mortuary trust accounts were governed by the provisions of 32 M.R.S.A. § 1401, which provided in pertinent part as follows:

§ 1401. Prearranged funerals or burial plans

All moneys paid during a person's lifetime to any individual, firm association, partnership or corporation, by that person or by someone in his behalf under an agreement that services be performed or personal property be delivered in connection with the disposition of that person's body after his death *shall be deposited by the payee within 10 days after receipt thereof in a separate account in a bank, trust company, credit union or savings institution in this State in the name of the payee as mortuary trustee for the person for whose benefit the payment was made and shall be held in that account together with any interest thereon.*

[. . .]

The agreement shall be in writing and [...] *shall clearly state terms providing for the disposition of any interest earned on the funds deposited.*

[Emphasis added.] Violation of section 1401 is a Class E crime. Id.

6. The UTPA provides that “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are declared unlawful.” 5 M.R.S.A. § 207. Trade or commerce includes “offering for sale, sale or distribution of any services.” 5 M.R.S.A. § 206(3).

7. The UTPA further provides as follows:

§ 209. Injunction; procedures

Whenever the Attorney General has reason to believe that any person is using or is about to use any method, act or practice declared by section 207 to be unlawful, and that proceedings would be in the public

interest, he may bring an action in the name of the State against such person to restrain by temporary or permanent injunction the use of such method, act or practice and the court may make such other orders or judgments as may be necessary to restore any person who has suffered any ascertainable loss by reason of the use or employment of such unlawful method, act or practice.

5 M.R.S.A. § 209. The Attorney General may bring an action against any “incorporated or unincorporated associations and any other legal entity.” 5

M.R.S.A. § 206(2).

IV. FACTUAL BACKGROUND

8. The Defendant MFDA is an incorporated association of funeral directors that do business at funeral homes throughout the State of Maine.

9. A mortuary trust account is a means by which a consumer pays in advance for funeral services. Pursuant to a mortuary trust agreement, the funeral director receives funds from the consumer and holds the funds, together with any accrued interest, in a trust account at a financial institution until the time of the beneficiary’s death. At that time, the mortuary trust account is used to pay the funeral home for the costs of the funeral services. The handling and management of mortuary trusts are governed by 32 M.R.S.A. § 1401, as partially described in paragraph 5, above.

10. From 1993 through 1999, the Defendant MFDA developed, directed and participated in programs (hereafter collectively referred to as the Master Trust Program) to handle and manage the combined funds held by member funeral directors in mortuary trust accounts.

11. The operation of the Master Trust Program was governed by formal written agreements between the funeral directors, Key Trust of Maine, Access Financial Group, Inc. and the MFDA. The participants agreed to the following:

- a) Participating funeral directors gave permission for the funds in their mortuary trust accounts to be invested and managed through the Master Trust Program;
- b) Key Trust of Maine, a bank incorporated under the laws of Maine, agreed to act as the custodian of the mortuary trust funds;
- c) Access Financial Group, Inc., a brokerage firm based in Chicago, agreed to invest and manage the mortuary trust funds through securities transactions, to perform all accounting activities and to furnish reports to Key Trust of Maine and the MFDA; and
- d) The MFDA agreed to “promote” the Master Trust Program to its membership and “to act as liaison” between the funeral homes, Access Financial Group, Inc. and Key Trust of Maine.

12. As a service fee, the Defendant MFDA annually received a percentage of the total funds in the Master Trust Program, paid out of the interest accrued thereon. The combined annual service fees paid to the MFDA from 1993 through 1999 totaled approximately \$491,372.

13. The consumers and beneficiaries, who were not parties to Master Trust Program agreement, were not informed by the MFDA or the participating funeral directors that the MFDA charged a service fee against the interest earned on the mortuary trust accounts.

14. The services that were the basis for the MFDA’s fees, namely promoting the Master Trust Program to its membership and acting as liaison between the parties to

the Master Trust Program, were not of substantial benefit to the consumers and beneficiaries of the mortuary trusts.

V. CAUSE OF ACTION

COUNT ONE
(Unfair and Deceptive Trade Practices)
5 M.R.S.A. § 209

15. Plaintiff repeats, re-alleges and incorporates herein by reference paragraphs 1 through 14 of the Complaint.

16. The MFDA's business practice of charging service fees against the interest earned on mortuary trust accounts without disclosing the fees to the consumers and beneficiaries was unfair and deceptive, all in violation of the Maine Unfair Trade Practices Act, 5 M.R.S.A. § 207.

17. The MFDA's conduct, as described herein, was intentional.

COUNT TWO
(Unfair and Deceptive Trade Practices)
5 M.R.S.A. § 209

20. Plaintiff repeats, re-alleges and incorporates herein by reference paragraphs 1 through 17 of the Complaint.

21. The MFDA's business practice of charging service fees against the interest earned on mortuary trust accounts without performing services that were of any substantial benefit to the consumers or the beneficiaries was unfair and deceptive, all in violation of the Maine Unfair Trade Practices Act, 5 M.R.S.A. § 207.

22. The MFDA's conduct as described herein was intentional.

V. RELIEF

The Plaintiff prays that this Court shall enter an order(s) granting the following relief:

1. Declare that the Defendant MFDA intentionally engaged in unfair and deceptive acts or practices, as described above, all in violation of the Maine Unfair Trade Practices Act.
2. Issue a permanent injunction, pursuant to 5 M.R.S.A. § 209, prohibiting the MFDA, together with its officers, agents, servants, employees, attorneys, and any other persons in active concert or participation with the Defendant MFDA, from:
 - a) Charging any fees against a mortuary trust account, or the interest earned thereon, except for such fees as are clearly stated in the written mortuary trust agreement signed by the consumer;
 - b) Charging any fees against a mortuary trust account, or the interest earned thereon, except for reasonable fees for the actual financial and tax administration of the account; and
 - c) Engaging in any other unfair or deceptive acts or practices in violation of the Maine Unfair Trade Practices Act.
3. Order the MFDA to pay a civil penalty of up to \$10,000 per violation of the Maine Unfair Trade Practices Act, pursuant to 5 M.R.S.A. § 209.
4. Order the MFDA to pay the Plaintiff's reasonable attorney's fees and costs, pursuant to 5 M.R.S.A. § 209.
5. Order such other relief as may be deemed proper.

ANDREW KETTERER
Attorney General

Dated: May 12, 2000



Carlos Diaz
Assistant Attorney General
Maine Bar Registration No. 8015

Department of the Attorney General
Public Protection Division
6 State House Station
Augusta, Maine 04333

(207) 626-8846

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CVDD-96

STATE OF MAINE,)
)
Plaintiff)
)
v.)
)
MAINE FUNERAL DIRECTORS' ASSOCIATION,)
A Maine Not-for-Profit Corporation,)
)
Defendant)

CONSENT DECREE

The Plaintiff, State of Maine, and the Defendant, Maine Funeral Directors' Association, having agreed to the entry of this Consent Decree without trial or adjudication of any issue of fact or law herein, and without this Consent Decree constituting any admission by either party with respect to such issues, it is hereby ORDERED and DECREED as follows:

I. JURISDICTION

This Court has jurisdiction over the Plaintiff and the Defendant and the subject matter of this action. The Complaint states a claim for relief under the Maine Unfair Trade Practices Act, 5 M.R.S.A. §§ 207 and 209.

II. INJUNCTION

1. Pursuant to 5 M.R.S.A. § 209, the Defendant is permanently enjoined from:
 - A. Charging any fees against a mortuary trust account, or the interest earned thereon, other than reasonable fees for the actual financial and tax administration of the account;

B. Charging any fees against a mortuary trust account, or the interest earned thereon, except as clearly stated in a written mortuary trust agreement signed by the consumer; and

C. Engaging in any unfair or deceptive acts or practices in violation of the Maine Unfair Trade Practices Act.

2. Pursuant to 5 M.R.S.A. § 209, the Defendant shall pay civil a civil penalty to the State of Maine Department of the Attorney General in the amount of \$10,000.00.

3. Pursuant to 5 M.R.S.A. § 209, the Defendant shall pay \$2,000.00 to the State of Maine Department of the Attorney General, representing reasonable attorney fees, costs of investigation and costs of suit.

4. PURSUANT TO THE MAINE UNFAIR TRADE PRACTICES ACT, 5 M.R.S.A. § 209, ANY PERSON WHO VIOLATES THE TERMS OF THIS INJUNCTION SHALL FORFEIT AND PAY TO THE STATE OF MAINE A CIVIL PENALTY OF NOT MORE THAN \$10,000 FOR EACH VIOLATION.

III. FINALITY AND RETENTION OF JURISDICTION

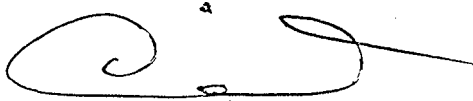
This Consent Decree and Order constitutes final judgment with respect to the subject matter of the Complaint filed by the Plaintiff against the Defendant, namely, alleged unfair and deceptive business practices relating to service fees charged by the Defendant in connection with mortuary trust accounts, up to and including December 31, 1999, and constitutes an absolute bar to any subsequent action by the Plaintiff against the Defendant, and any member of the Defendant, with respect to the subject matter of the Complaint.

Jurisdiction is retained by this Court for the purpose of enabling either party to this Consent Decree to apply to this Court at any time for such further orders or directions as may be

necessary or appropriate for the construction or carrying out of the Consent Decree, for the modification of or termination of any of the provisions hereof, and for the enforcement of compliance herewith, including through actions for civil or criminal contempt.

Respectfully submitted,

Dated: 5/12/2000



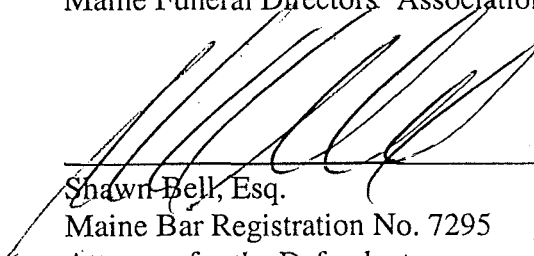
Carlos Diaz, Assistant Attorney General
Maine Bar Registration No. 8015
Attorney for the State of Maine

Dated: 4-27-00



Dana Chandler, President
Maine Funeral Directors' Association

Dated: 5/2/00

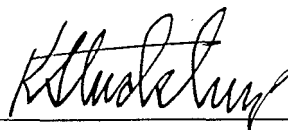


Shawn Bell, Esq.
Maine Bar Registration No. 7295
Attorney for the Defendant

ORDER

IT IS HEREBY ORDERED AND DECREED as set forth above.

Dated: 5/17/00



JUSTICE
MAINE SUPERIOR COURT



ANDREW KETTERER
ATTORNEY GENERAL

Telephone: (207) 626-8800
FAX: (207) 287-3145
TDD: (207) 626-8865

STATE OF MAINE
DEPARTMENT OF THE ATTORNEY GENERAL
6 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0006

REGIONAL OFFICES:

84 HARLOW ST., 2ND FLOOR
BANGOR, MAINE 04401
TEL: (207) 941-3070
FAX: (207) 941-3075

59 PREBLE STREET
PORTLAND, MAINE 04101-3014
TEL: (207) 822-0260
FAX: (207) 822-0259
TDD: (877) 428-8800

May 6, 1999

Edie Smith, Executive Director
Maine Funeral Directors Association
P.O. Box 352
Hallowell, Maine 04347

Dear Ms. Smith,

The Department of the Attorney General has investigated concerns that the Maine Funeral Directors Association engaged in unfair and deceptive trade practices in relation to mortuary trusts. The investigation was conducted pursuant to the Department's enforcement responsibilities under the Maine Unfair Trade Practices Act, 5 M.R.S.A. §§ 206-214 (1989 & Pamph. 1998).

The Department has concluded that the Maine Funeral Directors Association did engage in unfair and deceptive trade practices. Specifically, the Association charged fees that were excessive and that were not disclosed to the consumer in the written mortuary trust agreements. These unfair and deceptive practices violated the Unfair Trade Practices Act.

It is the Department's intention to file a civil complaint to enjoin the Association from continuing to engage in the practices described above. We also intend to obtain an order requiring the Association to make restitution for the fees charged in the past, to pay a civil penalty of up to \$10,000 for each intentional violation, and to reimburse the Department for attorneys fees and costs of the investigation and suit.

Pursuant to 5 M.R.S.A. § 207, the Department is required to provide the Association with notice of our intentions at least ten days prior to filing suit. In this case, the Department does not intend to file suit prior to June 1, 1999. The purpose of this advance notice is to give the Association an opportunity to resolve the Department's

concerns. Please contact me either by telephone or by mail, or through your attorney if you would like to arrange a meeting to discuss this matter.

The Department also requests that in advance of such meeting you provide the following documents and information:

1. All yearly budget and expense reports for the Maine Funeral Directors Association from January, 1992, to the present.
2. A list of the Association's monthly income from the master trust program, from January, 1992, to the present.
3. A list of every funeral home and funeral home director who participated in the master trust program at any time between January, 1992, and the present, including names, addresses, and telephone numbers.
4. A list of all documents, reports and other communications prepared by the Association and distributed to its participating members, to Key Bank, or to Interment Trust Services pursuant to the Association's obligation to act as liaison under the custodial participation agreements.
5. For each year from 1992 to the present, the number and total value of "credit for services" mortuary trusts in the master trust.
6. For each year from 1992 to the present, the number of "credit for services" mortuary trusts disbursed from the master trust based on the death of the person for whose benefit the funds were paid.
7. For each year from 1992 to the present, the number and total value of "full payment" mortuary trusts in the master trust.
8. For each year from 1992 to the present, the number of "full payment" mortuary trusts disbursed from the master trust based on the death of the person for whose benefit the funds were paid.

You or your attorney may call if you have any questions about these requests.

Sincerely,

Carlos Diaz
Assistant Attorney General
(207) 626-8846

Cc: Shawn Bell, Esq.
Bonneau & Geismar, LLC
P.O. Box 7230
Lewiston, Maine 04243-7230

COMPLAINT SUMMARY SHEET

Date Filed

This summary sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by the Maine Rules of Court or by law. This form is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet and attaching the appropriate party to the appropriate count or counts.
(SEE INSTRUCTIONS ON REVERSE)

(Note to Clerk: If this is not your court, do not enter this case)

I. County of Filing / Jurisdiction: Kennebec County

II. CAUSE OF ACTION. (Cite the primary civil statutes under which you are filing, if any.) Pro se plaintiffs: If unsure, leave blank.

5 M.R.S.A. §§ 207 and 209, Maine Unfair Trade Practices Act

III. MOST DEFINITIVE NATURE OF ACTION. (Place an X in one box only) Pro se plaintiffs: If unsure, leave blank.

GENERAL CIVIL (CV)

Personal Injury Tort

- Property Negligence
- Auto Negligence
- Medical Malpractice
- Product Liability
- Assault/Battery
- Prolitigation Screening
- Domestic Torts
- Other Negligence
- Other Personal Injury Tort

Non-Personal Injury Tort

- Libel/Defamation
- Auto Negligence
- Other Negligence

Other Non-Personal Injury Tort

- Contract
- Contract
- Declaratory/Equitable Relief
- General Injunctive Relief
- Declaratory Judgment

Constitutional/Civil Rights

- Constitutional/Civil Rights

Statutory Actions

- Unfair Trade Practices
- Freedom of Access

Miscellaneous Civil

- Drug Forfeitures
- Other Forfeitures/Property Libels

Land Use Enforcement (80K)

- HIV Testing
- Arbitration Awards
- Appointment of Receiver
- Shareholders' Derivative Actions
- Foreign Deposition
- Pre-action Discovery
- Common Law Habeas Corpus
- Prisoner Transfers
- Foreign Judgments
- Minor Settlements
- Other Civil

FAMILY MATTERS (FM)

Domestic Relations

- Divorce
- Judicial Separation
- Register Foreign Judgment
- Support
- Parental Rights/Responsibilities
- Non DHS Term Parental Rights
- Grandparents Rights
- Other Marriage Dissolution
- Other Domestic Relations

Paternity

- Paternity
- DHS Administrative Paternity

Mental Health Actions

- Emergency Commitment
- Involuntary Hospitalization
- Judicial Certification
- Petition for Modified Release
- Petition for Release
- Sterilization

URES/UIFSA

- URES/UIFSA
- Register Foreign Judgment
- Child Protective Custody
- DHS Protective Custody
- Non-DHS Protective Custody
- Miscellaneous Family Matters
- Other Family Matters

SPECIAL ACTIONS (SA)

Money Judgments

- Money Judgments
- Forcible Entry & Detainer**
- Forcible Entry & Detainer

Emancipation

- Emancipation
- Protection Actions**
- Protection From Abuse
- Protection From Harassment

Misc. Special Actions

- Marriage Waiver
- Consent to Abortion
- Other Special Actions

REAL ESTATE (RE)

Title Actions

- Quiet Title
- Eminent Domain
- Easements
- Boundaries

Foreclosure

- Foreclosure
- Trespass**
- Trespass

Misc. Real Estate

- Equitable Remedies
- Mechanics Liens
- Partition
- Adverse Possession

- Prescriptive Easements
- Nuisance
- Abandoned Roads
- Other Real Estate

SMALL CLAIMS (SC)

- Original Action
- Disclosures

APPEALS (AP) (To be filed in Superior Court)

- Governmental Body (80C)
- Administrative Agency (80B)
- Other Appeals

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. _____

STATE OF MAINE,)
)
 Plaintiff)
)
 v.)
)
 MAINE FUNERAL DIRECTORS)
 ASSOCIATION, INC.,)
 A Maine Corporation,)
)
 Defendant)

COMPLAINT
(Preliminary and Permanent Injunction)

I. INTRODUCTION

1. The Plaintiff, the State of Maine, brings this action under the Maine Unfair Trade Practices Act, 5 M.R.S.A. §§ 205-A through 214 (hereafter the UTPA), to obtain declaratory and injunctive relief, restitution, civil penalties, attorney's fees and costs. The complaint alleges that the Defendant, the Maine Funeral Directors Association (hereafter the MFDA), engaged in unfair and deceptive business practices by charging service fees totaling approximately \$491,372 against the interest earned on mortuary trust accounts without disclosing the fees to the consumers or to the beneficiaries, and without performing services that would have reasonably justified the fees.

II. PARTIES AND JURISDICTION

2. The Plaintiff State of Maine, a sovereign state, commences this action by and through the Attorney General.

3. The Defendant MFDA is an association, incorporated under the laws of the State of Maine, having principal places of business in Hallowell and Augusta, Maine.

4. The Superior Court sitting at Kennebec County has jurisdiction over the Plaintiff and the Defendant, as well as the subject matter of this action, pursuant to 5 M.R.S.A. § 209.

III. STATUTORY BACKGROUND

5. At all times pertinent to this action, mortuary trust accounts were governed by the provisions of 32 M.R.S.A. § 1401, which provided in pertinent part as follows:

§ 1401. Prearranged funerals or burial plans

All moneys paid during a person's lifetime to any individual, firm association, partnership or corporation, by that person or by someone in his behalf under an agreement that services be performed or personal property be delivered in connection with the disposition of that person's body after his death *shall be deposited by the payee within 10 days after receipt thereof in a separate account in a bank, trust company, credit union or savings institution in this State in the name of the payee as mortuary trustee for the person for whose benefit the payment was made and shall be held in that account together with any interest thereon.*

[. . .]

The agreement shall be in writing and [...] *shall clearly state terms providing for the disposition of any interest earned on the funds deposited.*

[Emphasis added.] Violation of section 1401 is a Class E crime. *Id.*

6. The UTPA provides that “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are declared unlawful.” 5 M.R.S.A. § 207. Trade or commerce includes “offering for sale, sale or distribution of any services.” 5 M.R.S.A. § 206(3).

7. The UTPA further provides as follows:

§ 209. Injunction; procedures

Whenever the Attorney General has reason to believe that any person is using or is about to use any method, act or practice declared by section 207 to be unlawful, and that proceedings would be in the public

interest, he may bring an action in the name of the State against such person to restrain by temporary or permanent injunction the use of such method, act or practice and the court may make such other orders or judgments as may be necessary to restore any person who has suffered any ascertainable loss by reason of the use or employment of such unlawful method, act or practice.

5 M.R.S.A. § 209. The Attorney General may bring an action against any “incorporated or unincorporated associations and any other legal entity.” 5

M.R.S.A. § 206(2).

IV. FACTUAL BACKGROUND

8. The Defendant MFDA is an incorporated association of funeral directors that do business at funeral homes throughout the State of Maine.

9. A mortuary trust account is a means by which a consumer pays in advance for funeral services. Pursuant to a mortuary trust agreement, the funeral director receives funds from the consumer and holds the funds, together with any accrued interest, in a trust account at a financial institution until the time of the beneficiary’s death. At that time, the mortuary trust account is used to pay the funeral home for the costs of the funeral services. The handling and management of mortuary trusts are governed by 32 M.R.S.A. § 1401, as partially described in paragraph 5, above.

10. From 1993 through 1999, the Defendant MFDA developed, directed and participated in programs (hereafter collectively referred to as the Master Trust Program) to handle and manage the combined funds held by member funeral directors in mortuary trust accounts.

11. The operation of the Master Trust Program was governed by formal written agreements between the funeral directors, Key Trust of Maine, Access Financial Group, Inc. and the MFDA. The participants agreed to the following:

- a) Participating funeral directors gave permission for the funds in their mortuary trust accounts to be invested and managed through the Master Trust Program;
- b) Key Trust of Maine, a bank incorporated under the laws of Maine, agreed to act as the custodian of the mortuary trust funds;
- c) Access Financial Group, Inc., a brokerage firm based in Chicago, agreed to invest and manage the mortuary trust funds through securities transactions, to perform all accounting activities and to furnish reports to Key Trust of Maine and the MFDA; and
- d) The MFDA agreed to “promote” the Master Trust Program to its membership and “to act as liaison” between the funeral homes, Access Financial Group, Inc. and Key Trust of Maine.

12. As a service fee, the Defendant MFDA annually received a percentage of the total funds in the Master Trust Program, paid out of the interest accrued thereon. The combined annual service fees paid to the MFDA from 1993 through 1999 totaled approximately \$491,372.

13. The consumers and beneficiaries, who were not parties to Master Trust Program agreement, were not informed by the MFDA or the participating funeral directors that the MFDA charged a service fee against the interest earned on the mortuary trust accounts.

14. The services that were the basis for the MFDA’s fees, namely promoting the Master Trust Program to its membership and acting as liaison between the parties to

the Master Trust Program, were not of substantial benefit to the consumers and beneficiaries of the mortuary trusts.

V. CAUSE OF ACTION

COUNT ONE
(Unfair and Deceptive Trade Practices)
5 M.R.S.A. § 209

15. Plaintiff repeats, re-alleges and incorporates herein by reference paragraphs 1 through 14 of the Complaint.

16. The MFDA's business practice of charging service fees against the interest earned on mortuary trust accounts without disclosing the fees to the consumers and beneficiaries was unfair and deceptive, all in violation of the Maine Unfair Trade Practices Act, 5 M.R.S.A. § 207.

17. The MFDA's conduct, as described herein, was intentional.

COUNT TWO
(Unfair and Deceptive Trade Practices)
5 M.R.S.A. § 209

20. Plaintiff repeats, re-alleges and incorporates herein by reference paragraphs 1 through 17 of the Complaint.

21. The MFDA's business practice of charging service fees against the interest earned on mortuary trust accounts without performing services that were of any substantial benefit to the consumers or the beneficiaries was unfair and deceptive, all in violation of the Maine Unfair Trade Practices Act, 5 M.R.S.A. § 207.

22. The MFDA's conduct as described herein was intentional.

V. RELIEF

The Plaintiff prays that this Court shall enter an order(s) granting the following relief:

1. Declare that the Defendant MFDA intentionally engaged in unfair and deceptive acts or practices, as described above, all in violation of the Maine Unfair Trade Practices Act.
2. Issue a permanent injunction, pursuant to 5 M.R.S.A. § 209, prohibiting the MFDA, together with its officers, agents, servants, employees, attorneys, and any other persons in active concert or participation with the Defendant MFDA, from:
 - a) Charging any fees against a mortuary trust account, or the interest earned thereon, except for such fees as are clearly stated in the written mortuary trust agreement signed by the consumer;
 - b) Charging any fees against a mortuary trust account, or the interest earned thereon, except for reasonable fees for the actual financial and tax administration of the account; and
 - c) Engaging in any other unfair or deceptive acts or practices in violation of the Maine Unfair Trade Practices Act.
3. Order the MFDA to pay a civil penalty of up to \$10,000 per violation of the Maine Unfair Trade Practices Act, pursuant to 5 M.R.S.A. § 209.
4. Order the MFDA to pay the Plaintiff's reasonable attorney's fees and costs, pursuant to 5 M.R.S.A. § 209.
5. Order such other relief as may be deemed proper.

ANDREW KETTERER
Attorney General

Dated: MAY 12, 2000



Carlos Diaz
Assistant Attorney General
Maine Bar Registration No. 8015

Department of the Attorney General
Public Protection Division
6 State House Station
Augusta, Maine 04333

(207) 626-8846