

STATE OF MINNESOTA  
BEFORE THE COMMISSIONER OF HEALTH

In the Matter of the Minnesota Funeral  
Director's Association's Master Funeral Trust

STIPULATION AND  
CONSENT ORDER

**IT IS HEREBY STIPULATED AND AGREED**, by the Minnesota Funeral Director's Association ("MFDA") and the Minnesota Department of Health ("Department"):

1. The purpose of this Stipulation and Consent Order ("Stipulation") is to resolve violations identified by the Minnesota Department of Health ("Department") concerning the Minnesota Funeral Director's Association's Master Funeral Trust ("MFDA Master Trust"). The MFDA is a nonprofit professional association of funeral providers in the State of Minnesota. The business address of MFDA is 9859 13th Avenue North, Plymouth, Minnesota 55441. The MFDA Service Corporation administered the MFDA Master Trust. The MFDA Service Corporation is a wholly-owned subsidiary of the MFDA.

2. Minnesota law requires that all funds accepted for the prepayment of funeral or burial goods or services, that are to be used in connection with the final disposition of human remains ("pre-need arrangements" or "pre-need accounts"), be deposited in a banking institution, savings or building and loan association, or credit union organized under state or federal law. Minn. Stat. § 149A.97, subd. 5 (2004). The funds must also be deposited in accounts that are insured by an instrumentality of the federal government. *Id.*

3. Minnesota law also requires that pre-need arrangements be placed in a separate account, with the name of the depositor (the funeral provider) and the purchaser (the pre-need consumer) as trustees for the beneficiary. Minn. Stat. § 149A.97, subd. 5 (2004).

4. Minnesota law prohibits funeral providers from assessing finance charges on pre-need arrangements. Minn. Stat. § 149A.97, subd. 4a (2004).
5. Minnesota law authorizes the Commissioner of Health ("Commissioner") to take enforcement action against any person for any violation of statutes or rules applicable to pre-need arrangements for funeral services. This enforcement authority includes the authority to issue correction orders, administrative penalty orders, and cease and desist orders, as well as the authority to revoke, refuse to re-issue or limit a license or permit, or to seek injunctive relief for violations of any law which the Commissioner is empowered to regulate, enforce, or issue. Minn. Stat. §§ 149A.05-149A.10, and 149A.97, subd. 12 (2004).
6. The MFDA established the MFDA Master Trust and allowed participating funeral providers to deposit funds from the funeral providers' customers for the pre-payment of funeral and burial goods and services into the MFDA Master Trust. The MFDA Service Corporation administered the MFDA Master Trust for the participating funeral providers. The MFDA Master Trust was required to follow the statutory requirements set forth in Minn. Stat. § 149A.97 (2004).
7. The MFDA Master Trust funds were invested in certain securities, including various municipal bonds. Certain fees were deducted from the MFDA Master Trust Fund to cover administrative, investment and management expenses. Consumers participating in the MFDA Master Trust were guaranteed a certain rate of return. Following an investigation, the Department determined that the MFDA Master Trust was in violation of Minnesota Statutes in three areas: (1) money held in the MFDA Master Trust was not in individual bank accounts (a violation of Minn. Stat. § 149A.97, subd. 5); (2) money held in the MFDA Master Trust was not deposited in federally insured accounts (a violation of Minn. Stat. § 149A.97, subd. 5); and (3)

administrative fees were being withdrawn from the MFDA Master Trust (a violation of Minn. Stat. § 149A.97, subd. 4a).

8. As a result of the violations set forth in paragraph 7 above, the Department executed Stipulations with every funeral provider who participated in the MFDA Master Trust. Those Stipulations required each participating funeral provider to withdraw the money he or she had in the MFDA Master Trust, re-deposit the funds into accounts that fully complied with state law, and reimburse each account for any short-fall in that account. These corrective actions have now been completed to the satisfaction of the Department.

9. The MFDA Master Trust has been fully liquidated. The MFDA and the MFDA Service Corporation cooperated with the Department and the participating funeral providers to facilitate the orderly disbursement of funds and liquidation of the MFDA Master Trust.

10. In order to resolve this matter and thus avoid the expense and uncertainty of enforcement proceedings under Minn. Stat. § 149A.97, subd. 12, including the possibility of hearings and appeals, but without admitting any matter, claim, or assertion set forth in paragraph 7 above, MFDA, MFDA Service Corporation and the Department agree to the following:

- A. **Administrative Charges.** MFDA agrees to pay \$35,000 to the Department for the investigation of the violations specified in paragraph 7 above. This charge represents the approximate amount the Department spent to investigate this matter, including attorney fees. Payment of the \$35,000 shall be by check or money order payable to "Treasurer, State of Minnesota." The payment is due within 30 days of the effective date of this Stipulation.

B. **Corrective Actions.** MFDA has already undertaken the following corrective actions:

- i. MFDA has completely liquidated the Master Trust.
- ii. MFDA has disbursed all funds from the Master Trust to each participating funeral provider and provided documentation to each participating funeral provider indicating the actual values of each account the funeral provider had in the Master Trust, and the value each account should have been given the guaranteed return on that account and absent the violations set forth in paragraph 7 above.
- iii. MFDA has cooperated by providing all follow-up documents and information requested by the Department.
- iv. MFDA has agreed to reimburse each funeral provider participating in the MFDA Master Trust by paying back the amount each funeral provider was required to pay into their customer accounts in order to fund their customers' accounts at the guaranteed value. The arrangements for this reimbursement is a matter for MFDA to settle with the participating funeral providers.

11. MFDA has been advised by the undersigned counsel concerning this Stipulation and these proceedings.

12. This Stipulation shall not in any way or manner limit or affect the authority of the Commissioner to proceed against MFDA by initiating a contested case hearing or by other appropriate means on the basis of any act, conduct, or admission of the MFDA justifying enforcement which is not the subject of the Stipulation.

13. Nothing in the Stipulation shall be construed as a waiver of any private rights, causes of action, or remedies of any consumer or other person against the MFDA or others responsible for the violations set forth in Paragraph 7 above.

14. This Stipulation is a public document pursuant to the Minnesota Data Practices Act, Minn. Stat. §§ 13.01-13.99 (2004).

15. MFDA hereby acknowledges, through its President, that it has read, understood, and agreed to this Stipulation and has voluntarily signed it.

16. Any appropriate federal or state court shall, upon application by the Commissioner, enter an Order of enforcement for any or all of the terms of this Stipulation.

17. This Stipulation contains the entire agreement between the parties, there being no other agreement of any kind, verbal or otherwise, which varies the terms of this Stipulation.

18. All rights inure to, and obligations bind, successors, heirs, and assignees of all parties involved.

19. This Stipulation may not be modified or amended except in writing and executed by the parties.

20. MFDA agrees that service of this Stipulation by United States first class mail addressed to MFDA at 9859 13th Avenue North, Plymouth, Minnesota 55441, shall be sufficient service upon them.

21. This Stipulation becomes effective on the date it is signed by the Department's representative.

By their signatures below, the undersigned represent that they have authority to bind the parties they represent and their agents, contractors, and subsidiaries.

Dated: April 5, 2006

Dated: 4/12/06



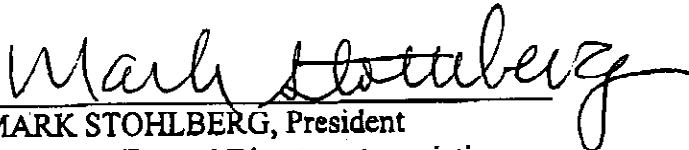
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ATTORNEYS FOR MFDA AND MFDA  
SERVICE CORPORATION

Dated: 3-29-06



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Dated: 4-3-06



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