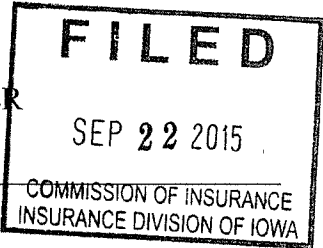


BEFORE THE IOWA INSURANCE COMMISSIONER



IN THE MATTER OF )  
 )  
DAVID C. GREENE; and )  
 )  
WATERLOO ELMWOOD CEMETERY )  
ASSOCIATION, )  
 )  
Respondents )

**ORDER AND CONSENT TO ORDER**

Division Case No. 88189

COMES NOW the Iowa Insurance Division (“Division”) pursuant to the provisions the Iowa Cemetery and Funeral Merchandise and Funeral Services Act, Iowa Code Chapter 523A, and the Iowa Administrative Code 191—Chapter 103, and is seeking the entry of the Order:

**I. PARTIES AND JURISDICTION**

1. The Commissioner of Insurance, Nick Gerhart, (“the Commissioner”) administers and enforces Iowa Code Chapter 523A relating to the regulation of preneed sellers of funeral services. The Commissioner has designated Assistant Commissioner Rosanne Mead to administer and enforce the Iowa Cemetery and Funeral Merchandise and Funeral Services Act – Iowa Code Chapter 523A. Commissioner Gerhart has designated the Division to seek enforcement of these provisions.
2. David C. Greene (“Greene”) is an individual with a last known residence of 3720 Village Place #5330, Waterloo, Iowa 50702.
3. Greene is president of Co-respondent Waterloo Elmwood Cemetery Association (“Elmwood”), a non-profit perpetual care cemetery incorporated in the state of Iowa, with a last known business address of 226 Elmwood Ave, PO Box 2411, Waterloo, Iowa 50701.
4. Respondents operated in the state of Iowa as an unlicensed preneed seller of funeral services since at least as early as June 1997.

5. From at least as early as June 1997 to May 2014, Respondents have engaged in acts and practices within the state of Iowa constituting violations supporting summary cease and desist orders under Iowa Code §523A.805.

6. Elmwood, through Respondent David Greene, voluntarily consents to the entry of the Order and admits that the Division has personal jurisdiction over Elmwood and has subject matter jurisdiction over this matter.

7. Elmwood, through Respondent David Greene, voluntarily consents to the Division's oversight and examination authority.

## **II. FINDINGS OF FACT**

8. Respondents are not and have not previously been licensed as preneed sellers in Iowa.

9. On May 29, 2015 the Division received a letter from Greene that Elmwood had unknowingly violated preneed requirements of Iowa Code Chapter 523A.

10. From June 1997 to May 2014, Respondents accepted payment for future opening and closing of interment spaces for fifteen individuals.

11. Respondents failed to establish a trust account prior to offering and selling funeral services.

12. Respondents failed to deposit prepaid amounts for future burial services into a trust account.

13. Payments for prepaid services were commingled with the general fund checking account from June 1997 until on or around November 4, 2010.

14. Respondents deposited the preneed funds into a segregated deposit account at a financial institution in November 2010.

15. In mid 2014, funds were transferred to Lincoln Savings Bank, where they currently remain, in a savings account entitled “Waterloo Elmwood Cemetery Association Prepaid Account.”
16. The Division has not received a preneed seller annual report for any of the years 1997 through 2014.
17. The Division has not received an annual sales agent report for any of the years 1997 through 2014.
18. On April 22, 2015, Elmwood passed a resolution that they would no longer accept preneed payment for cemetery merchandise or services.
19. Elmwood, through Respondent David Greene, voluntarily agrees to an order prohibiting it from advertising, selling, promoting or offering to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof when performance or delivery may be more than one hundred twenty days following the initial payment on the account.
20. Elmwood, through Respondent David Greene, voluntarily agrees to an order requiring it maintain at a financial institution, a financial account which is segregated out by individual purchaser name and which remains separate from seller’s other funds, for the fifteen preneed payments previously received.
21. Elmwood, through Respondent David Greene, voluntarily agrees to an order requiring it to submit a report annually to Christina Hazelbaker, Iowa Insurance Division located at 601 Locust Street, Fourth Floor, Des Moines, IA 50309, due no later than January 31<sup>st</sup>, which specifies if and when an opening/closing occurred during that year, if and when any funds were withdrawn from the separate account, and which includes an updated financial statement.

## II. CONCLUSIONS OF LAW

### Count 1 Unlicensed Preneed Seller

22. The Division incorporates by reference paragraphs 1-21 above as though fully set forth herein.

23. Iowa Code § 523A.102(27) provides, in part:

*“Seller” or “preneed seller” means a person doing business within this state, including a person doing business within this state who sells insurance, who advertises, sells, promotes, or offers to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof when performance or delivery may be more than one hundred twenty days following the initial payment on the account.*

24. Iowa Code § 523A.102(13) defines “funeral services” as “services provided for the final disposition of a dead human body, including but not limited to services necessarily or customarily provided for a funeral, or for the interment, entombment, or cremation of a dead human body, or any combination thereof.”

25. Respondents acted as a preneed seller by accepting advance payment from fifteen individuals for future opening and closing of interment spaces, which is a funeral service.

26. From at least as early as June 1997 Respondents have not been licensed as a preneed seller as required by Iowa Code § 523A.501(1), which provides:

A person shall not advertise, sell, promote, or offer to furnish cemetery merchandise, funeral merchandise, funeral services, or a combination thereof when performance or delivery may be more than one hundred twenty days following the initial payment on the account without a preneed seller’s license. (See also Iowa Administrative Code 191—105.7(1)).

27. Respondents’ acts and practices have been in violation of Iowa Code § 523A.501(1), subjecting Respondents to cease and desist orders under Iowa Code § 523A.805, civil penalties under Iowa Code § 523A.807(3), and costs of investigation and enforcement under Iowa

Administrative Code 191—105.12(3). (See Iowa Administrative Code 191—105.12(3) and 103(1)).

**Count 2**  
**Unlicensed Sales Agent**

28. The Division incorporates by reference paragraphs 1-27 above as though fully set forth herein.

29. Iowa Code § 523A.502(1) requires a person to have a sales license and be a sales agent of a licensed preneed seller to advertise, sell, promote, or offer to furnish funeral services when performance or delivery may be more than one hundred twenty days following initial payment. (See also Iowa Administrative Code 191—105.7(1)).

30. Respondents have neither a sales license nor a preneed license. Additionally, there is not a licensed preneed seller at Elmwood under whom a sales agent could operate.

**Count 3**  
**Failure to Establish a Trust Account and Deposit Funds**

31. The Division incorporates by reference paragraphs 1-30 above as though fully set forth herein.

32. Iowa Code § 523A.201 requires sellers to establish a trust fund prior to advertising, selling, promoting, or offering funeral merchandise and funeral services at a financial institution. Furthermore, under Iowa Code § 523A.201(2), if the services may be performed more than one hundred twenty days following the initial payment, then the payments shall be placed and remain in trust until the beneficiary dies.

33. Respondents violated Iowa Code § 523A.201 by failing to establish a trust fund prior to advertising, selling, promoting, or offering funeral merchandise and funeral services.

34. Respondents violated Iowa Code § 523A.201 by failing to deposit the prepaid amounts for future funeral services into a trust fund.

35. Respondents' acts and practices have been in violation of Iowa Code § 523A.201, subjecting Respondent to cease and desist orders under Iowa Code § 523A.805 and civil penalties under Iowa Code § 523A.807(3). (See Iowa Administrative Code 191—105.12(3).)

**Count 4**  
**Commingling of Funds**

36. The Division incorporates by reference paragraphs 1-35 above as though fully set forth herein.

37. Commingling of trust funds with other funds of the seller is prohibited under Iowa Code § 523A.201(7).

38. Payments for prepaid services were commingled with the general fund checking account from at least as early as June 1997 until they were separated on or around November 4, 2010.

39. In mid-2014, funds were transferred to Lincoln Savings Bank where they currently remain in a savings account entitled "Waterloo Elmwood Cemetery Association Prepaid Account."

40. Respondents' acts and practices have been in violation of Iowa Code § 523A.201(7), subjecting Respondents to cease and desist orders under Iowa Code § 523A.805 and civil penalties under Iowa Code § 523A.807(3).

**Count 5**  
**Failure to File Preneed Seller Annual Report**

41. The Division incorporates by reference paragraphs 1-40 above as though fully set forth herein.

42. For the years 1997 to 2014, Respondents failed to file the preneed seller annual reports as required under Iowa Code § 523A.204(1), which provides: “A preneed seller shall file with the commissioner not later than April 1 of each year an annual report on a form prescribed by the commissioner.” (See also Iowa Administrative Code 191—105.4(1) and 191—105.6(8).)

43. Respondents’ acts and practices have been in violation of Iowa Code § 523A.204(1) and, Iowa Administrative Code 191—105.4(1), subjecting Respondents to cease and desist orders under Iowa Code § 523A.805, administrative penalties under Iowa Code § 523A.204(4), costs of investigation and enforcement under Iowa Administrative Code 191—105.12(3), and sanctions under Iowa Administrative Code 191—105.6(8).

**Count 6**  
**Failure to File Sales Agent Annual Report**

44. The Division incorporates by reference paragraphs 1-43 above as though fully set forth herein.

45. For the years 1997 to 2014, Respondents failed to file the required sales agent annual reports as required under Iowa Code § 523A.502A(1), which states that a “sales agent shall file with the commissioner not later than April 1 of each year an annual report on a form prescribed by the commissioner describing each purchase agreement sold by the sales agent during the year.” (See also Iowa Administrative Code 191—105.4(2) and 191—105.6(8).)

46. Respondents’ acts and practices have been in violation of Iowa Code § 523.502A(1) and, Iowa Administrative Code 191—105.4(2), subjecting Respondents to cease and desist orders under Iowa Code § 523A.805, administrative penalties under Iowa Code § 523A.502A(3), costs of investigation and enforcement under Iowa Administrative Code 191—105.12(3), and sanctions under Iowa Administrative Code 191—105.6(8).

#### IV. ORDER

**WHEREFORE, IT IS ORDERED** pursuant to the powers granted the Commissioner of Insurance by Iowa Code Chapter 523A:

A. Respondents shall cease and desist from violating Iowa Code § 523A.501(1) by acting as a preneed seller without a license, as defined in Iowa Code § 523A.102(27);

B. Respondents shall cease and desist from violating Iowa Code § 523A.502(1) by operating without a sales license and without being designated as a sales agent under a licensed preneed seller;

47. Respondents shall maintain at a financial institution, a financial account which is segregated and separate from seller's other funds, for preneed payments and shall maintain an accounting by individual purchaser name;

C. Respondents shall submit a report annually to Christina Hazelbaker, Iowa Insurance Division located at 601 Locust Street, Fourth Floor, Des Moines, IA 50309, due no later than January 31<sup>st</sup>, which specifies if and when an opening/closing occurred during the previous calendar year covering January 1<sup>st</sup> through December 31<sup>st</sup>, if and when any funds were withdrawn from the separate account, and which includes an updated financial statement.

D. Nothing contained in this Order shall in any way limit the Division from instituting administrative or legal action against Respondents for any past conduct or future activity in violation of Iowa laws and regulations.

SO ORDERED on this 22 day of September, 2015.





---

NICK GERHART  
Iowa Insurance Commissioner

Respectfully submitted,



---

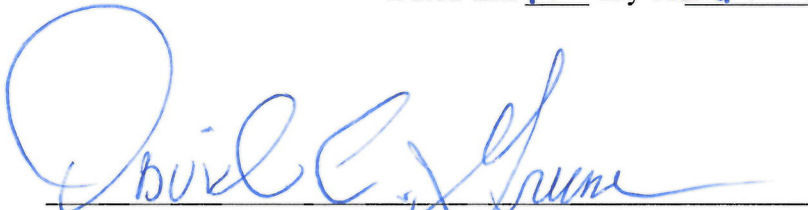
JOHANNA NAGEL  
Compliance Attorney

**CONSENT TO ORDER AND AGREEMENT**

I, David C. Greene, Respondent in this matter, and as president of Respondent Waterloo Elmwood Cemetery Association, have read, understood, and do knowingly consent to this Order in its entirety. By executing this consent, I understand that Elmwood Cemetery Association is waiving its rights to a hearing, to confront and cross-examine witnesses, to produce evidence, and to judicial review.

I further understand that this Order is considered final administrative action that may be reported by the Division to the National Association of Insurance Commissioners and to other regulatory agencies. I also understand that this Order is a public record under Iowa Code Chapter 22, that will be disclosed to other state regulatory authorities, upon request, pursuant to Iowa Code section 505.8(8)(d). I also understand that the information contained in the Order will be posted to the Division's web site and a notation will be made to the publicly available web site record that administrative action has been taken against me.

Dated this 17<sup>th</sup> day of September, 2015.

  
WATERLOO ELMWOOD CEMETERY ASSOCIATION  
By David C. Greene

3720 Village Pl. # 5330 - Waterloo IA, 50702  
Address of Signatory

Subscribed and sworn before me by David Greene on this 17<sup>th</sup> day of September, 2015.

  
Notary Public for the State of Iowa

