

BEFORE THE IOWA INSURANCE COMMISSIONER

IN THE MATTER OF)	
DANIEL W. CIHA,)	CEASE AND DESIST
COLETTE CIHA SOULTS, AND)	ORDER AND
GAY & GAY, INC.)	ORDER OF SUSPENSION
DBA GAY & CIHA FUNERAL AND)	AND NOTICE OF RIGHT TO
CREMATION SERVICE)	HEARING
)	Docket No. 82538

Comes now the Iowa Insurance Division ("Division") and alleges the following:

I. PARTIES AND JURISDICTION

1. The Commissioner of Insurance, Nick Gerhart, (the Commissioner) administers and enforces Iowa Code chapter 522B (Licensing of Insurance Producers), Iowa Code chapter 523A (Cemetery and Funeral Merchandise and Funeral Services) and the related Iowa Administrative Code chapters 191 – 10, 100, 101, 103, 105 and 106.
2. Daniel W. Ciha, (Ciha) is an individual with a last-known mailing address of 3131 12th Avenue, Coralville, Iowa 52241.
3. Colette Ciha Soult (Soult) is an individual with a last-known mailing address of 3131 12th Avenue, Coralville, Iowa 52241.
4. Ciha and Soult are the directors, officers, principals, agents and stockholders of Gay & Gay, Inc.
5. Gay & Gay, Inc. is an Iowa corporation with its principal offices in Iowa City, Iowa. Gay & Gay, Inc, does business as Gay & Ciha Funeral and Cremation

Service (GCFCS) and was a licensed preneed seller of funeral or cemetery services and merchandise under Iowa Code section 523A.501.

6. Ciha was a licensed preneed sales agent under Iowa Code section 523A.502, and is appointed as such by GCFCS.
7. Ciha was a licensed insurance producer under Iowa Code section 522B.6 and was appointed to represent Homesteaders Life Company.
8. The Division commenced a routine examination under Chapter 523A of GCFCS in October 2013.
9. GCFCS and Ciha (collectively referred to as Respondents) cooperated with the examination and investigation.
10. Soultis did not actively participate in the activities described in this Order, but, as an officer of GCFCS, Soultis is subject to liability for its actions.
11. On October 23, 2013 Ciha met with Division staff and requested that the Division place both licenses on inactive status. See Attached Exhibit "A"
12. Ciha's licenses were both placed on inactive status and Ciha was informed that no preneed sales activity could occur while the licenses were inactive.
13. On Friday February 28, 2014 Division staff visited the business location of GCFCS to perform a compliance examination.
14. Division staff determined that Ciha had engaged in pre-need sales of funeral plans after October 23, 2013. Staff located six purchase agreements covering eight lives executed by Ciha for the period of November 2013 through February 2014.

II. FINDINGS OF FACT

SALES ACTIVITY

15. For the period of September 2008 through March 2012 Respondents received payments from 18 consumers for preneed funeral services or funeral or cemetery

merchandise and executed purchase agreements as follows:

- a. The sum of \$10,996.00 was received from AD in September of 2008.¹
- b. The sum of \$10,996.00 was received from JD in September of 2008.
- c. The sum of \$11,321.00 was received from JP in November of 2009.
- d. The sum of \$11,321.00 was received from MP in November of 2009.
- e. The sum of \$5,214.00 was received from KS in July of 2010.
- f. The sum of \$5,214.00 was received from LS in July of 2010.
- g. The sum of \$2,925.00 was received from DP in August of 2010.
- h. The sum of \$11,413.25 was received from AS in August of 2010.
- i. The sum of \$4,595.00 was received from CC in November of 2010.
- j. The sum of \$4,345.00 was received from JC in November of 2010.
- k. The sum of \$8,885.75 was received from GW in November of 2010.
- l. The sum of \$3,500.00 was received from TS in May of 2011.
- m. The sum of \$3,556.78 was received from BZ in May of 2011.
- n. The sum of \$4,935.00 was received from MM in July of 2011.
- o. The sum of \$13,487.50 was received from ES in July of 2011.
- p. The sum of \$11,000.00 was received from HS in July of 2011.
- q. The sum of \$13,070.75 was received from AF in November of 2011.
- r. The sum of \$11,347.80 was received from TH in March of 2012.

¹ AD and DP (letters 'a' and 'g' above) are deceased and GCFCS provided the merchandise and services listed in the purchase agreement without any additional charges.

The total of items 'a' through 'r' is \$148,123.83.

16. Respondents represented to these customers that these preneed purchase agreements would be funded with insurance proceeds and during the sales presentation Ciha assisted each customer in completing insurance applications.
17. Respondents did not submit monies received from customers or insurance applications to Homesteaders Life Company.
18. Respondents deposited the funds in GCFCS's checking account and spent the consumers' funds in the ordinary course of its business.
19. Respondents kept records of these transactions and disclosed the transactions to Division examiners during the on-site examination.
20. For the period of November 2013 through February 2014 Respondents received payments from 6 consumers for 8 preneed funeral services or funeral or cemetery merchandise and executed purchase agreements as follows:
 - a. The sum of \$1,500.00 was received from PC in February of 2014.
 - b. The sum of \$2,190.00 was received from KK in February of 2014.
 - c. The sum of \$2,270.40 was received from SK in February of 2014.
 - d. The sum of \$2,270.40 was received from NK in February of 2014.
 - e. The sum of \$10,473.28 was received from CY in February of 2014.
 - f. The sum of \$8,305.50 was received from LL in February of 2014.
 - g. The sum of \$2,214.50 was received from SL in January of 2014.
 - h. The sum of \$3,000.00 was received from BB in November of 2013.

The total amount of items 'a' through 'h' is \$32,224.48.

REPORTS FILED WITH THE DIVISION

21. Preneed Sellers and Preneed Sales Agents are required to file annual reports with the Division and to accurately report sales for the prior calendar year.
22. Respondents filed the required reports with the Division for calendar years 2008, 2009, 2010, 2011 and 2012 and the reports did not include the purchase agreements listed in Paragraph 15.

REMEDATION BY RESPONDENTS

23. Ciha has remitted all necessary funds to Homesteader Life Company to fund the 18 previously purchased pre-need services.
24. Homesteader Life Company has issued the insurance policies to the surviving customers listed in paragraph 15.

III. VIOLATIONS OF IOWA CODE CHAPTER 522B

25. Over a five-year period Respondents improperly withheld, misappropriated, or converted monies received in the course of doing insurance business in violation of Iowa Code section 522B.11(1)(d)(2013).
26. Respondents used fraudulent, coercive, or dishonest practices and demonstrated incompetence, untrustworthiness or financial irresponsibility in the course of doing insurance business in violation of Iowa Code section 522B.11(h)(2013).

IV. VIOLATIONS OF IOWA CODE CHAPTER 523A

27. Over a five-year period, Respondents accepted payments in connection with preneed purchase agreements or otherwise representing the prepayment of goods and services and failed to place the funds in trust as required by Iowa Code section 523A.201(2)(2013).
28. Over a five-year period, Respondents commingled trust funds with other funds of the preneed seller and spent consumer trust funds for personal business purposes in violation of Iowa Code chapter 523A(2013).
29. Respondents filed false and misleading filings with the Division in violation of Iowa Code section 523A.701(2013).
30. Respondents' false statements to customers about the purchase of insurance constitute a misrepresentation of a material fact regarding the sale of cemetery merchandise, funeral merchandise, funeral services, or a combination thereof in violation of Iowa Code section 523A.503(1)(e) (2013) and Iowa Administrative Code 101-105(6)(3).

31. Respondents' false statements to customers about the purchase of insurance constitutes numerous fraudulent and dishonest business practices in violation of Iowa Code section 522B.11(1)(h).
32. After October 23, 2013, Respondents knowingly continued to conduct preneed sales activity after their licenses were inactive and Ciha was specifically cautioned to cease any preneed activity
33. Ciha knowingly conducted activity as a seller and a sales agent as defined under Iowa Code Sections 523A.102 (26) & (27) after October 23, 2013 and while he had no license or authority to do so.

V. CONCLUSIONS OF LAW

34. Respondents' actions constitute sufficient grounds to demonstrate violations of Iowa Code chapters 522B and 523A and for immediate suspension of GCFCS' preneed seller license and Ciha's sales agent license.
35. Iowa Code section 523A.805 and section 522B.11 grant the Commissioner authority to suspend a license if it appears that a person is engaging or about to engage in an act which constitutes a violation of Iowa Code chapter 522B or 523A.
36. Iowa Code section 523A.807 grants the Commissioner authority to impose a civil penalty for violations of Iowa Code chapter 523A.
37. Respondents have engaged in conduct which violates Iowa Code Chapter 522B and 523A and have shown a propensity to continue to engage in similar activity which violates Iowa Code chapter 523A.
38. It is appropriate to issue this summary Order under Iowa Code Section 523A.805. Respondent is notified that this Summary Order will become final by operation of law within thirty days of the date of this Order unless a Respondent requests a hearing within that time period. A request for hearing may be made by writing to Commissioner Nick Gerhart at the Iowa Insurance Division, 601 Locust, 4th Floor, Des Moines, IA 50309,

IT IS THEREFORE ORDERED THAT:


- A. The Iowa preneed seller license of Gay & Gay, Inc. doing business as Gay & Ciha Funeral and Cremation Service is immediately suspended.
- B. The Iowa preneed sales agent license of Daniel W. Ciha is immediately suspended.
- C. The Iowa insurance agent license of Daniel W. Ciha is immediately suspended.
- D. Respondents shall Cease and Desist from any actions that violate Iowa Code chapter 522B or 523A.
- E. Respondents shall Cease and Desist from any actions that fall within the definition of a sales agent or a preneed seller under Iowa Code section 523A.102(26) & (27).
- F. Respondents shall comply with all provisions of Iowa Code chapter 523A to service the existing preneed purchase agreements and to file all reports required by preneed sellers. Respondents remain subject to oversight by the Division in regard to servicing of the preneed accounts. Respondents shall provide the Division with reasonable, ongoing access to all books and records necessary to conduct compliance examinations and associated investigations of Respondents under Iowa Code chapter 523A.
- G. Respondents are ordered to Cease and Desist from advertising or providing information about preneed sales and to remove all existing information about pre-need sales from their reception areas and websites.
- H. Within 30 days of the date this Order, Respondents shall take all steps necessary to remove GCFCS as the owner of all life insurance contracts that which predate this Order and which fund preneed contracts. GCFCS may only be listed as a beneficiary under any insurance contract that funds a preneed contract that predates this Order.
- I. Within 30 days of the date this Order, Respondents shall take all steps necessary to remove its business names as the title holder or signatory of all

certificates of deposit or other type of account at a financial institution that which predate this Order and which fund preneed contracts. Financial accounts and certificates of deposit may only be made payable to GCFCS only upon the owner's death.

- J. GCFCS is assessed a civil penalty of \$5,000.00 with \$2,500 assessed for the activities that occurred prior to October 23, 2013 and \$2,500 assessed for the activities that occurred after October 23, 2013. The penalty will be allocated 50% to the Iowa General Fund and 50% to the RIU Regulatory fund (authorized by Iowa Code section 523A.812) as a recoupment of examination expenses. Payment is due to the Division within ten business days of the date of this Order.
- K. Respondent shall notify Dennis Britson at the Iowa Insurance Division when the tasks outlined in paragraphs 'H' and 'I' are completed.
- L. The Division shall provide a copy of this Order to the Iowa Board of Mortuary Science, the Attorney General, and the appropriate county attorney.

Dated this 4th day of March, 2014

NICK GERHART
Commissioner of Insurance



BY ROSANNE MEAD, Securities Administrator &
Assistant Insurance Commissioner