

BEFORE THE IOWA INSURANCE COMMISSIONER

---

IN THE MATTER OF	)	
	)	
MICHAEL D. KIRSCH	)	ORDER FOR SUSPENSION,
	)	ORDER TO CEASE AND DESIST
	)	AND
	)	NOTICE OF
	)	OPPORTUNITY FOR HEARING
Sales Agent # 000145(Inactive)	)	
Preneed Seller # 000064 (Inactive)	)	Division Docket No.: <u>93003</u>

---

Now comes the Iowa Insurance Division ("Division") pursuant to the provisions of the Iowa Code Chapter 523A (Iowa Cemetery and Funeral Merchandise and Funeral Services Act) and Iowa Administrative Code Chapter 191-100 and alleges the following:

**PARTIES AND JURISDICTION**

1. The Commissioner of Insurance, Nick Gerhart, pursuant to Iowa Code § 505.8 (2015), administers and enforces Iowa Code chapter 523A and the related administrative rules.
2. Michael D. Kirsch (Kirsch) is an individual with a last known mailing address of 401 E. Pioneer Ave, Shenandoah, IA 51601.
3. Kirsch's preneed seller license and his sales agent license are currently inactive due to Kirsch' failure to file his 2015 reports.
4. Kirsch was formerly licensed as an insurance producer and his license expired on July 1, 2016.
5. Kirsch has engaged in acts and practices constituting violations of Iowa Code chapters 523A and rules adopted or issued pursuant to Iowa Code chapter 523A. The Commissioner of Insurance is authorized to issue this Order to Cease and Desist and Suspension pursuant to Iowa Code sections 523A.805 and IAC 191.100.40.

## FACTUAL BACKGROUND

Reasonable evidence exists to demonstrate the following:

6. Kirsch has recently been employed with SWI Memorial Group, LLC (SWI). SWI owns and manages three funeral homes in the southwest Iowa region.
7. On or about November 2015, SWI acquired Kirsch Funeral Service, Inc. which is located in Shenandoah, Iowa.
8. After the purchase, Kirsch was employed by SWI as the funeral director and manager of the now SWI-owned Shenandoah location (D/B/A Kirsch Funeral Chapel) and as manager of a Clarinda location. (D/B/A Eickemeyer Funeral Chapel).
9. On or about November 1, 2016, SWI contacted the Division to report apparent funds missing in some accounts managed by Kirsch.
10. On November 4<sup>th</sup>, 7<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> representatives of the Division visited SWI's Glenwood and Clarinda locations to review the records of the Glenwood, Shenandoah, Villisca and Clarinda funeral homes.
11. Division representatives made the following findings:
  - a) Twelve files indicated preneed sales had been made on an application for a life insurance policy for which no actual life insurance policies were ever applied for or issued. The total funds collected for the 12 life insurance policies is \$60,126. (See Affidavit of Paula Fastenau attached as Exhibit A).
  - b) Seven files indicated that at-need, i.e., at time of death, services were rendered in a total cost of \$21,746. The records do not indicate that any funds for these services were deposited to any business funeral home account.

c) Two files indicated that a preneed arrangement was purchased with a life insurance policy and each policy contained a beneficiary designation to Kirsch personally.

d) One file indicated that, in the context of an at-need funeral service, Kirsch was determined to have been listed as a "Power of Attorney" on the deceased's credit card. Kirsch appears to have used the card for purchases other than at-need funeral expenses.

### **CONCLUSIONS OF LAW**

12. Kirsch has violated Iowa code section 523A.202 by failing to deposit funds received for preneed funeral services to the preneed trust fund account.

13. Kirsch has violated Iowa code section 523A.401 by failing to remit funds received for insurance premiums to the insurer within 30 days of receipt.

14. Kirsch has violated Iowa code section 523A.703 as in connection with the sale of cemetery merchandise, he has made untrue statements or material facts or omitted material facts that were necessary to make the statements not misleading.

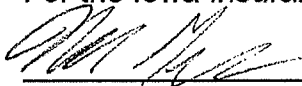
15. Kirsch has violated Iowa Administrative Code 191.100.31(2) by engaging in practices that are harmful to the public and take unfair or unreasonable advantage of the vulnerability of a purchaser.

16. Iowa code section 523A.805 grants the commissioner to order a person to cease and desist from violating chapter 523A and to suspend a license.

THEREFORE, IT IS ORDERED THAT:

- A. The inactive Iowa preneed seller license of Kirsch is now changed to suspended status.
- B. The inactive Iowa preneed sales agent license of Kirsch is now changed to suspended status.
- C. Kirsch shall immediately cease and desist from soliciting or executing preneed sales purchase agreements;
- D. Kirsch shall immediately cease and desist from accepting any funds from customers for preneed funeral services.
- E. Kirsch shall immediately cease and desist from naming himself or accepting a request to be named as a beneficiary or Power of Attorney on any accounts related to the soliciting or executing preneed sales purchase agreements.
- F. The failure of Kirsch to request a hearing within 30 days of the date of this Order of Summary Suspension and Notice of Opportunity for a Hearing shall be deemed to be a waiver of the right to a hearing and shall result in the entry of an Order of Revocation of the preneed sales agent license, preneed seller license and assessment of an administrative penalty.

For the Iowa Insurance Division,



NICK GERHART  
Commissioner of Insurance

12/11/16  
Date

### **NOTICE OF RIGHT TO REQUEST HEARING**

NOTICE IS HEREBY GIVEN that Kirsch or any individual representing Kirsch may request a hearing in this matter. This request must be in writing and must be filed within thirty (30) calendar days of the date of this Order with the Iowa Insurance Commissioner, 601 Locust, 4<sup>th</sup> Floor, Des Moines, IA 50309. A notice of the hearing shall be prepared and shall be given at least fifteen (15) days before the date of the hearing unless the parties agree to an earlier date. The hearing shall be held within forty-five (45) days after the date of the notice of the hearing unless extended by the presiding officer for good cause with at least fifteen days notice to the parties. The resulting hearing will be held in accordance with Iowa Code Chapter 17A (2015).

### **NOTICE REGARDING FAILURE TO REQUEST A HEARING**

If you fail to request a hearing within thirty (30) days of the date of this Order of Suspension, the Order shall be a final Order of the Commissioner of Insurance and shall be enforceable by the Commissioner of Insurance in an administrative or court proceeding.

### **NOTICE REGARDING EXHAUSTION OF ADMINISTRATIVE REMEDIES AND RIGHT TO SEEK JUDICIAL REVIEW**

The failure to request a hearing can constitute a failure to exhaust your administrative remedies and limit the issues subject to judicial review. You may seek judicial review of this Order pursuant to Iowa Code chapter 17A after the Order becomes final. The Order becomes final thirty (30) days after it is issued if you do not timely request a contested case hearing, or following hearing if you do timely request a contested case hearing.

**NOTICE OF PENALTIES FOR WILLFUL VIOLATION OF THIS ORDER**

YOU ARE NOTIFIED that any person who willfully violates this order shall be deemed in contempt of the order pursuant to Iowa Code § 523A.805. The commissioner may petition the district court to hold a hearing to enforce the order as certified by the commissioner. The district court may assess a civil penalty against the person and may issue further orders as it deems appropriate.

SENT BY RESTRICTED CERTIFIED AND FIRST CLASS MAIL TO:

Michael D. Kirsch

401 E. Pioneer Avenue

Shenandoah, IA 51601

BEFORE THE IOWA INSURANCE COMMISSIONER

IN THE MATTER OF )

MICHAEL D. KIRSCH )  
Sales Agent # 000145 )  
Preneed Seller # 000064 )

AFFIDAVIT OF  
PAULA FASTENAU

Division Docket No.: 93003

State of Iowa

County of Polk

1. My name is Paula Fastenau. I am employed by the Iowa Insurance Division, Regulated Industries Bureau as a Compliance Officer 2. As part of my regular duties I conducted an examination of the books and records of the Kirsch Funeral Chapel and the Eickemeyer Funeral Chapel.

2. My examination revealed that there were twelve instances in which Kirsch had collected premium for a life insurance policy and had never remitted the funds to an insurer. Here is the list of twelve persons impacted:

Person A (EB)	274.00
Person B (JN)	3,957.00
Person C (BA)	10,730.20
Person D (RO)	1,957.65
Person E (JS)	8,970.25
Person F (JH)	10,191.38
Person G (PB)	857.00
Person H (DJR)	4,136.00

Person I (RMM)	1,000.00
Person J (JF)	3,657.40
Person K (CH)	2,100.00
Person L (LA)	2,115.00
Total	\$60,126.88

3. In the course of my examination I discovered that there were seven at-need services that were provided and there was no evidence that payment for these services was deposited to the business account. Here is a list of the seven services rendered:

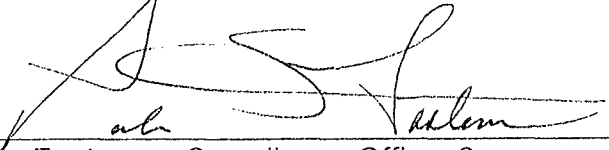
Service 1 (CJ)	1,435.00
Service 2 (JB)	4,400.00
Service 3 (SL)	2,489.00
Service 4 (SH)	3,032.55
Service 5 (GS)	1,000.00
Service 6 (CM)	8,990.00
Service 7 (CM)	400.00
Total	\$21,746.55

4. In the course of my examination I discovered that there were two insurance policies in force that listed Kirsch as the beneficiary. The total of these two items is \$7,500.00.

5. In the course of my examination I discovered that there was a credit card used to pay for one of the services and Kirsch is listed as having a Power of Attorney over the credit card. Charges to the credit card totaled \$1,620.04.



Signed this 2nd day of December 2016.



Paula Fastenau, Compliance Officer 2

Subscribed and sworn to before me this 2nd day of December 2016.



Notary Public in and for the State of Iowa

