



BEFORE THE IOWA INSURANCE COMMISSIONER

IN THE MATTER OF)	Division Case No. 93003
)	
MICHAEL D. KIRSCH,)	ORDER AND CONSENT TO ORDER
NPN 6889400,)	
Sales Agent # SA-000145)	
DOB 06/08/XXXX;)	
and)	
KIRSCH FUNERAL SERVICE, INC.)	
Preneed Seller # PS-000064)	
)	
Respondents)	

COMES NOW the Iowa Insurance Division (“Division”) pursuant to the provisions of Iowa Code Chapter 522B—Licensing of Insurance Producers, Iowa Code Chapter 523A—Iowa Cemetery and Funeral Merchandise and Funeral Services Act, and 191 Iowa Administrative Code Chapter 100—Sales of Cemetery Merchandise, Funeral Merchandise and Funeral Services, and states and alleges the following:

I. PARTIES AND JURISDICTION

1. The Commissioner of Insurance, Doug Ommen, directly and through his designees, administers and enforces Iowa Code Chapter 522B—Licensing of Insurance Producers, Iowa Code Chapter 523A—Iowa Cemetery and Funeral Merchandise and Funeral Services Act, and 191 Iowa Administrative Code Chapter 100—Sales of Cemetery Merchandise, Funeral Merchandise and Funeral Services pursuant to Iowa Code §§ 505.8 and 523A.801.

Michael D. Kirsch

2. Michael D. Kirsch (“Kirsch”) is an individual with a last-known address of 401 E. Pioneer Ave, Shenandoah, Iowa 51601.

3. Kirsch was licensed in the state of Iowa as a resident insurance producer on July 30, 1999. Though Kirsch's insurance producer license was periodically inactive, most recently, his license expired on June 30, 2016. He was licensed under National Producer Number 6889400.

4. Kirsch was first licensed in the state of Iowa as a sales agent on November 26, 2007. Though his sales agent license was periodically restricted or inactive, most recently, it was placed on restricted status on April 16, 2016 for failure to file his 2015 sales agent annual report with the Division. Kirsch is licensed under Sales Agent number SA-000145.

5. From on or about January 18, 2007 to present, Kirsch has engaged in acts and practices within the state of Iowa constituting cause for suspension or revocation of his sales agent license; probation, suspension, or revocation of his insurance producer license; cease and desist orders; orders for restitution; and civil penalties or other relief under Iowa Code Chapters 505, 522B, 523A and rules adopted pursuant to these chapters.

Kirsch Funeral Service

6. Kirsch Funeral Service, Inc. ("Kirsch Funeral Service"), also known as "Kirsch Funeral Services, Inc." and formerly doing business as "Selby-Kirsch Funeral Chapel" and "Kirsch Funeral Chapel", is an Iowa corporation with a last known address of P.O. Box 277, Shenandoah, IA 51601. Kirsch is the listed president of Kirsch Funeral Service. Though it was periodically inactive or restricted, Kirsch Funeral Service, Inc. was licensed in Iowa as a preneed seller under Preneed Seller number PS-00064 on or about November 26, 2007 until, most recently, it expired on April 15, 2016.

7. From on or about August 30, 2011 to present, Kirsch Funeral Service has engaged in acts and practices within the state of Iowa constituting cause for suspension or revocation of its

preneed seller license, cease and desist orders, and other disciplinary action related to its preneed seller license under Iowa Code Chapter 523A and rules adopted pursuant to this chapter.

II. FINDINGS OF FACT

8. Kirsch applied for a resident insurance producer license with the Division by submitting through the National Insurance Producer Registry a Uniform Application for Individual Producer License (“Uniform Application”) on or about July 30, 1999. In submitting the Uniform Application, Kirsch designated the Commissioner as an agent for service of process. Kirsch’s insurance producer license expired on June 30, 2016.

9. Kirsch applied for a sales agent license with the Division on or about November 26, 2007.

10. Kirsch Funeral Service applied for a preneed seller license on or about November 26, 2007.

11. A purchase agreement is defined by Iowa Code §523A.102(22) as “...an agreement 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.”

Consumer EB

12. On January 18, 2007, Kirsch entered into a purchase agreement with Consumer EB for cemetery merchandise, funeral merchandise, funeral services, or a combination thereof. The precise good and services selected are unclear and no application for life insurance was made.

13. Consumer EB paid Kirsch \$274.00 for such goods and/or services and the performance or delivery of such could have taken place more than 120 days following the payment.

14. The funds were paid by check and were not placed into a trust fund, life insurance policy, or annuity; and no surety bond was filed with the Commissioner.

15. Kirsch and Kirsch Funeral Service did not submit the application for the life insurance policy or the premium to the insurance company.

16. Had Consumer EB's payment been placed in a trust fund earning one percent interest, its value would have grown to \$302.50 as of July 6, 2017.

Consumer JN

17. On August 30, 2011, Kirsch and Kirsch Funeral Service entered into a purchase agreement with Consumer JN with a total purchase price of \$3,975.00, which was to be funded by an insurance policy.

18. The purchase agreement irrevocably assigned ownership of the life insurance proceeds to Kirsch Funeral Service.

19. Consumer JN made an application for a life insurance policy and paid the premium to Kirsch, who deposited the check into the business account of Kirsch Funeral Service.

20. Kirsch and Kirsch Funeral Service did not submit the application for the life insurance policy or the premium to the insurance company.

21. Had Consumer JN's payment been placed in a trust fund earning one percent interest, its value would have grown to \$4,243.79 as of July 6, 2017.

Consumer RO

22. On August 30, 2013, Kirsch and Kirsch Funeral Service entered into a purchase agreement with Consumer RO with a total purchase price \$1,957.65, which was to be funded by an insurance policy.

23. The purchase agreement irrevocably assigned ownership of the life insurance proceeds to Kirsch Funeral Chapel.

24. Consumer RO paid the premium by credit card and the funds were then transferred to the business account of Kirsch Funeral Service.

25. No application for a life insurance policy was ever made and Kirsch and Kirsch Funeral Service did not submit any application or the premium to the insurance company whose form was used for the purchase agreement.

26. Had Consumer RO's payment been placed in a trust fund earning one percent interest, its value would have grown to \$2,057.98 as of July 6, 2017.

Consumer AJS

27. On October 15, 2013, Kirsch and Kirsch Funeral Service entered into a purchase agreement with Consumer AJS with a total purchase price of \$8,970.25, which was to be funded by an insurance policy.

28. The purchase agreement irrevocably assigned ownership of the life insurance policy to Kirsch Funeral Service.

29. Receipts for cash payments indicate that Consumer AJS made cash payments for the insurance premium to Kirsch and Kirsch Funeral Service totaling at least \$3,500.00.

30. Had \$8,970.25 been placed in a trust fund earning one percent interest, its value would have grown to \$10,376.09 as of July 6, 2017.

Consumer JH

31. On May 8, 2014, Kirsch and Kirsch Funeral Service entered into a purchase agreement covering the final expenses of Consumer JH with a total purchase price of \$10,191.38, which was to be funded by an insurance policy.

32. The purchase agreement irrevocably assigned ownership of the life insurance proceeds to Kirsch Funeral Service.

33. Consumer JH's attorney-in-fact paid the premium to Kirsch, who deposited the check into the business account of Kirsch Funeral Service.

34. No application for a life insurance policy was ever made and Kirsch and Kirsch Funeral Service did not submit any application or the premium to the insurance company whose form was used for the purchase agreement.

35. Had Consumer JH's payment been placed in a trust fund earning one percent interest, its value would have grown to \$10,607.12 as of July 6, 2017.

Consumer PB

36. On March 8, 2015, Kirsch and Kirsch Funeral Service entered into a purchase agreement covering the final expenses of Consumer PB with a total purchase price of \$857.00, which was to be funded by an insurance policy.

37. The purchase agreement irrevocably assigned ownership of the life insurance proceeds to Kirsch Funeral Service.

38. Consumer PB's representative paid the premium to Kirsch, who deposited the check into the business account of Kirsch Funeral Service.

39. No application for a life insurance policy was ever made and Kirsch and Kirsch Funeral Service did not submit any application or the premium to the insurance company whose form was used for the purchase agreement.

40. Had Consumer PB's payment been placed in a trust fund earning one percent interest, its value would have grown to \$883.09 as of July 6, 2017.

Consumer CH

41. On September 4, 2015, Kirsch and Kirsch Funeral Service entered into a purchase agreement to Consumer CH with a total purchase price of \$2,100.00, which was to be funded by an insurance policy.
42. The purchase agreement irrevocably assigned ownership of the life insurance proceeds to Kirsch Funeral Service.
43. Consumer CH made an application for a life insurance policy and paid the premium to Kirsch, who deposited the check into the business account of Kirsch Funeral Service.
44. Kirsch and Kirsch Funeral Service did not submit the application for the life insurance policy or the premium to the insurance company.
45. Had Consumer CH's payment been placed in a trust fund earning one percent interest, its value would have grown to \$2,163.93 as of July 6, 2017.

Consumer LA

46. On September 10, 2015, Kirsch and Kirsch Funeral Service entered into a purchase agreement with Consumer LA totaling \$2,115.00, which was to be funded by an insurance policy.
47. The purchase agreement irrevocably assigned ownership of the life insurance proceeds to Kirsch Funeral Service.
48. Consumer LA made an application for a life insurance policy and paid the premium to Kirsch, who deposited the check into the business account of Kirsch Funeral Service.
49. Kirsch and Kirsch Funeral Service did not submit the application for the life insurance policy or the premium to the insurance company.

50. Had Consumer LA's payment been placed in a trust fund earning one percent interest, its value would have grown to \$2,179.38 as of July 6, 2017.

The Sale of Kirsch Funeral Service
and Kirsch's Employment by the Successor

51. On November 1, 2015, Kirsch, as the sole owner of Kirsch Funeral Service, sold several of Kirsch Funeral Services' assets, including purchase agreements, to SWI Memorial Group, LLC ("SWI").

52. From November 1, 2015 to October 28, 2016, Kirsch was employed by SWI as a funeral director and manager of the SWI-owned Shenandoah, Iowa location (D/B/A Kirsch Funeral Chapel) and as a manager of the SWI-owned Clarinda, Iowa location. Kirsch was terminated from SWI effective October 28, 2016.

53. On or about November 1, 2016, SWI contacted the Division to report funds missing in some accounts managed by Kirsch.

Additional Facts

54. As a registered preneed seller, Kirsch Funeral Service filed annual reports with the Commissioner as required by Iowa Code § 523A.204 for years 2007, 2011, 2013, and 2014, but failed to file an annual report for year 2015. In such filings, Kirsch failed to include the purchase agreements detailed in paragraphs 11-50.

55. As a registered sales agent, Kirsch filed annual reports with the Commissioner as required by Iowa Code § 523A.502A for years 2007, 2011, 2013, and 2014, but failed to file an annual statement for year 2015. In such filings, Kirsch failed to include the purchase agreements detailed in paragraphs 11-50.

56. Kirsch and Kirsch Funeral Services admit the above findings of fact as true and do not dispute the conclusions of law that follow.

III. CONCLUSIONS OF LAW

COUNT 1

(As to Kirsch)

Improperly Withholding, Misappropriating, or Converting Moneys

57. Under Iowa Code § 522B.11(5), any penalty or remedy authorized by Chapter 522B may be imposed even if the person's license has lapsed by operation of law.
58. Iowa Code § 522B.11(1)(d) prohibits improperly withholding, misappropriating, or converting moneys or properties received in the course of doing insurance business.
59. Kirsch improperly withheld, misappropriated, or converted premium funds as described in paragraphs 17-50.
60. Kirsch's acts and practices have been in violation of Iowa Code § 522B.11(1) subjecting him to probation, suspension, or revocation of his insurance producer license, the imposition of a civil penalty, and an order requiring him to cease and desist from engaging in such acts or practices pursuant to Iowa Code §§ 522B.11 and 522B.17.

COUNT 2

(As to Kirsch and Kirsch Funeral Service)

Failure to Pay Premiums Within Thirty Days of Execution of the Purchase Agreements

61. Under Iowa Code Administrative Code 191—100.41(4)(d), a person with a restricted or expired license is subject to disciplinary action for violations of Iowa Code Chapter 523A.
62. Iowa Code § 523A.401(4) provides that if a preneed purchase agreement is to be funded by a new, single premium insurance policy, the premiums shall be paid to the insurance company within thirty days of execution of the purchase agreement.
63. Kirsch and Kirsch Funeral Service failed to pay the collected premiums to the insurance companies within thirty days of the execution of the purchase agreements described in paragraphs 17-50.

64. Kirsch and Kirsch Funeral Service's acts and practices have been in violation of Iowa Code § 523A.401(4), subjecting each to suspension, revocation, or the imposition of other disciplinary action related to their preneed seller and sales agent licenses; civil penalties; orders to pay consumer restitution; orders imposing costs associated with the investigation and enforcement activities; and orders prohibiting each from selling funeral merchandise, cemetery merchandise, funeral services, or a combination thereof, and from managing, operating, or otherwise exercising control over any business entity that is subject to regulation under Iowa Code Chapters 523A and 523I pursuant to Iowa Code §§ 523A.503, and 523A.807 and Iowa Administrative Code rule 191—100.41.

COUNT 3

(As to Kirsch and Kirsch Funeral Service)

Failure to Establish a Trust Fund or Fund a Purchase Agreement with Insurance Proceeds, Annuity Proceeds, or a Certificates of Deposit; and Failure to File a Surety Bond

65. Under Iowa Code § 191—100.41(4)(d), a person with a restricted or expired license is subject to disciplinary action for violations of Iowa Code Chapter 523A.

66. Iowa Code § 523A.201 provides that preneed sellers offering preneed purchase agreements must establish trust funds at a financial institution, or in the alternative, Iowa Code §§ 523A.401, 523A.402, 523A.403, and 523A.405 provide that preneed purchase agreements may be funded with insurance proceeds, annuity proceeds, a certificate of deposit, or may be secured by a surety bond filed with the Commissioner.

67. Kirsch and Kirsch Funeral Service failed to establish a trust fund; fund the purchase agreements with an insurance policy, annuity, or certificate of deposit; or failed to file a surety bond with the Commissioner for the sale to Consumer EB described in paragraphs 12-16.

68. Kirsch and Kirsch Funeral Service's acts and practices have been in violation of Iowa Code §§ 523A.201, or 523A.405, subjecting each to suspension, revocation, or the imposition of

other disciplinary action related to their preneed seller and sales agent licenses; civil penalties; orders to pay consumer restitution; orders imposing costs associated with the investigation and enforcement activities; and orders prohibiting them from selling funeral merchandise, cemetery merchandise, funeral services, or a combination thereof, and from managing, operating, or otherwise exercising control over any business entity that is subject to regulation under Iowa Code Chapters 523A and 523I pursuant to Iowa Code §§ 523A.503, 523A.807, and Iowa Administrative Code rule 191—100.41.

COUNT 4
(As to Kirsch and Kirsch Funeral Service)
Commingling of Trust Funds

69. Under Iowa Administrative Code 191—100.41(4)(d), a person with a restricted or expired license is subject to disciplinary action for violations of Iowa Code Chapter 523A.

70. Iowa Code §523A.201(7) provides that trust funds may not be commingled with other funds.

71. Kirsch and Kirsch Funeral Service commingled the funds described in paragraphs 17-50 with other funds.

72. Kirsch and Kirsch Funeral Service's acts and practices have been in violation of Iowa Code §§ 523A.201, subjecting each to suspension, revocation, or the imposition of other disciplinary action related to their preneed seller and sales agent licenses; civil penalties; orders to pay consumer restitution; orders imposing costs associated with the investigation and enforcement activities; and orders prohibiting them from selling funeral merchandise, cemetery merchandise, funeral services, or a combination thereof, and from managing, operating, or otherwise exercising control over any business entity that is subject to regulation under Iowa

Code Chapters 523A and 523I pursuant to Iowa Code §§ 523A.503, 523A.807, and Iowa Administrative Code rule 191—100.41.

COUNT 5
(As to Kirsch and Kirsch Funeral Service)
Failure to Report Purchase Agreements on Annual Reports,
Misleading Filings with the Commissioner

73. Under Iowa Administrative Code 191—100.41(4)(d), a person with a restricted or expired license is subject to disciplinary action for violations of Iowa Code Chapter 523A.

74. Iowa Code § 523A.204 provides that a preneed seller must file an annual report with the Commissioner on a form prescribed by the Commissioner. The form requires the preneed seller to report all new, cancelled, serviced, and existing purchase agreements for the year along with the sales agent that sold the purchase agreement.

75. Iowa Code § 523A.502A provides that a sales agent must file an annual report with the Commissioner each year detailing each new preneed purchase agreement sold during the calendar year.

76. Kirsch and Kirsch Funeral Service failed to report the purchase agreements described in paragraphs 11-50 on 2007, 2011, 2013, or 2014 annual reports to the Commissioner and failed to file annual reports for 2015.

77. Iowa Code § 523A.701 makes it unlawful to omit to state any material fact necessary in order to make the statements made not misleading in any document filed with the Commissioner.

78. Kirsch and Kirsch Funeral Service omitted material facts in the annual reports by failing to include the purchase agreements described in paragraphs 11-50 in annual reports filed with the Commissioner.

79. Kirsch and Kirsch Funeral Service's acts and practices have been in violation of Iowa Code §§ 523A.204, 523A.502A and 523A.701 subjecting them to suspension, revocation, or the

imposition of other disciplinary action related to their preneed seller and sales agent licenses; civil penalties; orders to pay consumer restitution; orders imposing costs associated with the investigation and enforcement activities; and orders prohibiting Respondents from selling funeral merchandise, cemetery merchandise, funeral services, or a combination thereof, and from managing, operating, or otherwise exercising control over any business entity that is subject to regulation under Iowa Code Chapters 523A and 523I pursuant to Iowa Code §§ 523A.503, 523A.807, and Iowa Administrative Code rule 191—100.41.

IV. ORDER

WHEREFORE, IT IS ORDERED pursuant to the powers granted the Commissioner of Insurance by Iowa Code Chapters 522B, and 523A:

- A. Michael D. Kirsch's Iowa resident insurance producer license is revoked and Michael D. Kirsch is permanently barred from being licensed in the state of Iowa as an insurance producer pursuant to Iowa Code § 522B.11;
- B. Michael D. Kirsch is prohibited from selling, soliciting, or negotiating insurance in the state of Iowa for any line of insurance for which licensure is required in the state of Iowa pursuant to Iowa Code § 522B.17;
- C. Michael D. Kirsch's sales agent license is revoked and Michael D. Kirsch is permanently barred from being licensed in the state of Iowa as a sales agent pursuant to Iowa Code § 523A.503;
- D. Kirsch Funeral Service, Inc.'s preneed seller license is revoked and Kirsch Funeral Service Inc. and any other entity of which Kirsch Funeral Service, Inc. has any ownership or control, now or at any time, are permanently barred from being licensed in the state of Iowa as a preneed seller pursuant to Iowa Code § 523A.503;

E. Kirsch Funeral Service, Inc. and Michael D. Kirsch are prohibited from preneed purchase agreements, including selling funeral merchandise, cemetery merchandise, funeral services, or a combination thereof, the performance or delivery of which may occur more than 120 days after the initial payment on the account; and from managing, operating, or otherwise exercising control over any business entity that is subject to regulation under Iowa Code Chapters 523A and 523I pursuant to Iowa Code §§ 523A.503 and 523A.807;

F. Michael D. Kirsch, shall pay, contemporaneous with his consent to this order, restitution in the amount of \$32,813.88 pursuant to Iowa Code §§ 505.8 and Iowa Administrative Code 191—100.41, payable to the Iowa Insurance Division, to be credited to the Settlement Fund, which will be distributed according to the following terms:

1. The Division shall wait up to at least 90 days before distributing restitution to allow time to identify any other purchase agreements for which payment was made to Kirsch or Kirsch Funeral Service, Inc. but funds were not appropriately placed, however, the Division may, in light of the claims received, exercise discretion to make restitution payments prior to the expiration of 90 days;
2. Should the total amount of restitution paid by Michael D. Kirsch not meet or exceed the cost of the purchase agreement plus one percent interest accrued to July 6, 2017, restitution will be paid on a pro rata basis. The Division may also elect to forego including accrued interest while distributing restitution funds if adequate funds are not available;

3. The Division may make restitution payments directly to persons for whose benefit purchase agreements were executed;
4. For purchase agreements identified in this Order or pursuant to subsection F(1) above, the Division may make restitution payments directly to the following:
 - a. Insurance companies to place a life insurance policy on the lives of persons for whose benefit purchase agreements were executed; or
 - b. Funeral providers for persons for final expenses were covered by a purchase agreement, to be placed into a trust fund for those who are living at the time of distribution; or for persons who passed away prior to distribution of restitution, to pay or reimburse for cemetery merchandise, funeral merchandise, funeral services, or a combination thereof; and

G. Michael D. Kirsch shall within 60 days of this Order pay the amount of \$500.00 for costs of investigation and enforcement, made payable to the Iowa Insurance Division, to be credited to the Iowa Enforcement Fund provide funds for insurance enforcement and education.

SO ORDERED on the 9th day of November, 2017.



DOUGLAS M. OMMEN

Iowa Insurance Commissioner

Respectfully submitted,

Vincent Ledlow
Iowa Insurance Division
Two Ruan Center
601 Locust St. – 4th Floor
Des Moines, Iowa 50309-3738
Phone: (515) 281-4409

Attorney for the Iowa Insurance Division

Copy to:

Michael D. Kirsch
1406 S. Elm Street
Shenandoah, IA 51601

RESPONDENT

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause, or their attorney, at their respective addresses disclosed on the pleadings on November 13, 2017.

By: First Class Mail Personal Service
 Restricted certified mail, return receipt Email, by consent
 Certified mail, return receipt _____

Signature: Tammi L Green
Tammi L. Green

NOTICE OF PENALTIES FOR WILLFUL VIOLATION OF THIS ORDER

YOU ARE NOTIFIED that acting as an insurance producer, as defined in Iowa Code Chapter 522B, in violation of this Order, is a felony under Iowa Code § 507A.10, subjecting you to punishment of imprisonment, jail, fines, or any combination of custody and fines.

YOU ARE ALSO NOTIFIED that if you violate this order, you may be subject to administrative and civil penalties pursuant to Iowa Code § 522B.17(3). 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 you in an amount not less than three thousand dollars but not greater than ten thousand dollars for each violation, and may issue further orders as it deems appropriate.

NOTICE REGARDING IMPACT OF ORDER ON EXISTING LICENSES

A final order of license revocation or a cease and desist order may adversely affect other existing business or professional licenses and result in license revocation or disciplinary action.

NOTICE REGARDING ADDITIONAL VIOLATIONS

Nothing contained herein precludes the Iowa Insurance Division from taking other administrative or legal action for violations not contemplated by this Order.

CONSENT TO ORDER AND AGREEMENT

I, Michael D. Kirsch, as an individual and in my capacity as an authorized agent of Kirsch Funeral Service, Inc., have read, understood, and do knowingly consent to this Order in its entirety. By executing this consent, I understand that I am waiving both Kirsch Funeral Service, Inc's and my 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 a 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, which may be disclosed to other state regulatory authorities pursuant to Iowa Code §§ 505.8(8)(d) 523A.808, and 523A.813. I also understand that this Order will be posted to the Division's website and a notation will be made to the publicly available website record that administrative action has been taken against me and Kirsch Funeral Service, Inc.

Dated: 11/6/2017

Michael D. Kirsch 401 E. Pioneer Shenandoah, IA 51601
Michael D. Kirsch, Respondent Address of Signatory

Subscribed and sworn before me by Michael D. Kirsch on this 6 day of Nov, 2017.

Jean Stribling
Notary Public for the State of Iowa



Dated: 11/6/2017

Michael D. Kirsch 401 E. Pioneer Shenandoah, IA 51601
Michael D. Kirsch, as President of Kirsch Funeral Service, Inc. Address of Signatory

Subscribed and sworn before me by Michael D. Kirsch on this 6 day of Nov, 2017.

Jean Stribling
Notary Public for the State of Iowa

