

BEFORE THE IOWA INSURANCE COMMISSIONER

IN THE MATTER OF)	Division Case No. 98580
)	
LARRY TEJRAL,)	DEFAULT ORDER, FINDINGS OF
)	FACT, CONCLUSIONS OF LAW
Respondent)	AND ORDER
)	
)	

The Commissioner has taken up for consideration the Division’s motion for default order, filed by John Leonhart as the attorney representing the Iowa Insurance Division (“Division”). A hearing on the Division’s motion for default order was held on October 29, 2019. Evidence was received.

NOW THEREFORE, the Commissioner, being fully informed of the matter, sustains the motion for default order, and issues the following findings of facts, conclusions of law, and orders:

I. PARTIES AND JURISDICTION

1. Commissioner Douglas Ommen, directly and through his designees, administers and enforces Iowa Code Chapter 523A—Cemetery and Funeral Merchandise and Funeral Services and Iowa Administrative Code Chapter 100 pursuant to Iowa Code § 505.8.
2. Larry Tejral (“Tejral”) is an individual with a known residence address of 716 Coffie Farm Rd., Sergeant Bluff, IA 51-54-3504.
3. Tejral is not licensed as a preneed seller or as a sales agent in the state of Iowa.
4. Pursuant to Iowa Code § 505.28, Tejral has consented to the jurisdiction of the Commissioner by committing acts governed by Iowa Code Chapter 523A and Iowa Administrative Code Chapter 100.

5. From on or about October 17, 2014 to present, Tejral has engaged in acts and practices within the state of Iowa constituting cause for civil penalties; restitution; and an order prohibiting certain conduct or other relief under Iowa Code Chapters 505, 523A and rules adopted pursuant to these chapters.

II. FINDINGS OF FACT

6. On October 17, 2014, Tejral sold a mini columbarium to Consumer M.K. but did not provide a written purchase agreement to Consumer M.K.

7. Consumer M.K. gave Tejral a check in the amount of \$8,424.18 to purchase the mini columbarium.

8. Tejral desposited \$8,000.00 of M.K.'s check into his personal checking account and took the remaining \$424.18 in cash on October 24, 2014. At no time was there a personal check drafted from Tejral's account to order or purchase a mini columbarium.

9. A review of Tejral's banking records shows that Consumer M.K.'s funds were commingled with Tejral's personal funds and were used by Tejral and his wife for personal use.

10. At no time did Tejral place the funds from Consumer M.K. in trust.

11. Consumer M.K. and other family members traveled to the cemetery where Tejral agreed to place the mini columbarium on May 25, 2015, and found that the mini columbarium was not there.

12. Consumer M.K. contacted Tejral after the cemetery visit and was informed by Tejral that the original mini columbarium had arrived damaged and needed to be re-ordered.

13. On November 1, 2016, Tejral informed Consumer M.K.'s family that the replacement mini columbarium was in his warehouse but he failed to send any pictures or paperwork to confirm this as requested by Consumer M.K.'s family.

14. On January 31, 2017, Tejral agreed by text message to send Consumer M.K. the paperwork regarding the mini columbarium but again failed to do so. All additional attempts by Consumer M.K.'s family to contact Tejral have gone unanswered.
15. Consumer K.K. filed a complaint with the Division on June 21, 2017, based on Tejral's actions.
16. On July 10, 2017, the Division sent Tejral a letter regarding Consumer K.K.'s complaint. Tejral never responded to the Division's correspondence.
17. On August 9, 2017, the Division sent Tejral an administrative subpoena by certified mail requesting details regarding the transaction involving Consumer M.K. and her family.
18. On August 14, 2017, the subpoena was delivered to Tejral's residence. Tejral failed to respond to the subpoena.
19. Consumer K.K. was contacted on March 13, 2019, and she informed the Division that Tejral has never provided her family with a mini columbarium nor has he refunded any of the funds that they paid him.

Respondent's Default

20. The Division filed a statement of charges against Larry Tejral ("Tejral") on August 22, 2019 alleging violations of law and grounds for discipline under Iowa Code Chapter 523A and Iowa Administrative Code chapter 100.
21. A notice of hearing was issued by the Commissioner on August 27, 2019.
22. In accordance with Iowa Administrative Code 191—3.5, the statement of charges and notice of hearing were sent via certified restricted mail to Tejral at his address.
23. The Division received confirmation from USPS that the statement of charges and notice of hearing were delivered on August 30, 2019 and Tejral signed for them.

24. Tejral did not request, nor did the Division consent to, Tejral filing an answer beyond the 20 days of the service of the notice of hearing and statement of charges.

25. The Division filed a motion for default order on October 16, 2019. The motion for default order was sent via restricted certified mail to Tejral's last known residence mailing address of 716 Coffie Farm Rd., Sergeant Bluff, IA 51054-3504.

26. Tejral failed to appear at the prehearing conference held on October 21, 2019.

27. Tejral has not filed an answer to the statement of charges, nor has Tejral communicated with the Division after receiving notice of the statement of charges, and he failed to participate in the prehearing conference held October 21, 2019.

28. The Division gave notice of its intent to take up its motion for default order before the Commissioner on October 29, 2019. Tejral failed to respond to the Division's motion for default order within ten days as required by Iowa Administrative Code rule 191—3.15(2) and did not appear to contest the motion on October 29, 2019.

29. Tejral has failed to participate in a contested case proceeding as required by Iowa Administrative Code rule 191—3.5(3).

III. CONCLUSIONS OF LAW

30. A motion may be considered unresisted if no response is timely filed. 191 IAC 3.15(2). Tejral has not filed a timely written response to the Division's motion for default order. The motion is unresisted.

31. A party to a contested case action may move for default against a party when the party fails to file a required pleading or has failed to appear after proper service. 191 IAC 3.22(2). Tejral has not filed an answer to the statement of charges, has not timely filed a response to the Division's motion for default order, and has not appeared at a scheduled prehearing conference.

32. Under Tejral's consent to service of process and his receipt of the notice of hearing and a copy of the statement of charges by restricted certified mail, we conclude Tejral was properly served as required by Iowa Administrative Code rule 191—3.5(1).

33. The Division's motion for default order should be granted.

COUNT ONE

Selling Cemetery Merchandise without the Requisite Licenses

34. Iowa Code § 523A.501(1) states that 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."

35. Under Iowa Code § 523A.502(1), 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 initial payment of the account unless the person has a sales license and is a sales agent of a person holding a preneed seller's license."

36. A mini columbarium constitutes cemetery merchandise under Iowa Code § 523A.102(5).

37. Delivery of the mini columbarium sold by Tejral to Consumer M.K. was not accomplished within one hundred twenty days after the initial payment by Consumer M.K. and, in fact, has not been accomplished as of the date of this default order.

38. Tejral did not have a preneed seller's license or a sales agent license when he sold the mini columbarium to a consumer.

39. Tejral failed to comply with the annual reporting requirements as a preneed seller pursuant to Iowa Code § 523A.204 and as a sales agent pursuant to Iowa Code § 523A.502A.

40. Tejral's acts and practices have been in violation of Iowa Code §§ 523A.501(1) and 523A.502(1) subjecting Tejral to imposition of a civil penalty, a prohibition order, restitution, imposition of costs of the investigation and prosecution of the matter, and any other corrective action the Commissioner deems necessary and appropriate pursuant to Iowa Code §§ 523A.805, 523A.807 and 505.8.

COUNT TWO
Failure to Place Funds in a Trust

41. Iowa Code § 523A.201 states that “a seller must establish a trust fund prior to advertising, selling, promoting, or offering cemetery merchandise, funeral merchandise, funeral services, or a combination thereof in this state.”

42. Iowa Code § 523A.202(1) states that “all funds held in trust pursuant to section 523A.201 shall be deposited in a financial institution within fifteen days following receipt of the funds.

43. Tejral placed a consumer's funds used to purchase cemetery merchandise directly into his personal banking account and failed to establish a trust fund or place these funds in a trust.

44. Tejral's acts and practices have been in violation of Iowa Code §§ 523A.201 and 202(1) subjecting Tejral to the imposition of a civil penalty, a prohibition order, restitution, the imposition of costs of the investigation and prosecution of the matter, and any other corrective action the Commissioner deems necessary and appropriate pursuant to Iowa Code §§ 523A.805, 523A.807 and 505.8.

COUNT THREE
Prohibited Warehousing

45. Iowa Administrative Code rule 191—100.25(2) states that warehousing is not permitted and “warehousing shall not be used as an alternative to the trust requirement of Iowa Code Chapter 523A.”

46. Tejral told a consumer that their cemetery merchandise was in his warehouse.

47. Tejral's acts and practices have been in violation of Iowa Administrative Code rule 191—100.25(2) subjecting Tejral to the imposition of a civil penalty, a prohibition order, restitution, the imposition of costs of the investigation and prosecution of the matter, and any other corrective action the Commissioner deems necessary and appropriate pursuant to Iowa Code §§ 523A.805, 523A.807 and 505.8.

COUNT FOUR
Commingling Not Permitted

48. Iowa Code § 523A.201(7) states that “commingling of trust funds with other funds of the seller is prohibited.”

49. Tejral commingled a consumer's funds that should have been placed in trust with his own personal funds.

50. Tejral's acts and practices have been in violation of Iowa Code § 523A.201(7) subjecting Tejral to the imposition of a civil penalty, a prohibition order, restitution, the imposition of costs of the investigation and prosecution of the matter, and any other corrective action the Commissioner deems necessary and appropriate pursuant to Iowa Code §§ 523A.805, 523A.807 and 505.8.

VI. ORDERS

IT IS HEREBY ORDERED that Larry Tejral is in default pursuant to Iowa Administrative Code rule 191—3.22.

IT IS FURTHER ORDERED that Larry Tejral pursuant to §§ 523A.805, 523A.807 and 505.8 is prohibited from selling funeral merchandise, cemetery merchandise, funeral services, or a combination thereof, the delivery of which might occur more than one hundred twenty days

after the first payment is made by a consumer for such merchandise and/or services, and from managing, operating, or otherwise exercising control over any business entity that is subject to regulation under Iowa Code Chapter 523A.

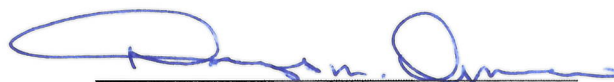
IT IS FURTHER ORDERED that pursuant to Iowa Code § 523A.807 Larry Tejral shall pay \$7,000.00 to the state of Iowa in civil penalties for the violations of law.

IT IS FURTHER ORDERED that pursuant to Iowa Code § 505.8 Larry Tejral shall pay \$8,424.18 plus calculated interest for the total amount of \$9,687.81 as of the date of this order to the state of Iowa to be distributed to Consumer M.K. as restitution.

IT IS FURTHER ORDERED that pursuant to Iowa Code § 505.8 Larry Tejral shall pay \$2,559.75 to the state of Iowa for costs of investigation and prosecution. Payment shall be made payable to the Iowa Insurance Division, to be credited to the Iowa Enforcement Fund to provide funds for insurance enforcement and education.

IT IS FURTHER ORDERED that this order may be enforced under Iowa Code chapter 523A, and additionally, by any collection remedies available to the State of Iowa Department of Revenue for unpaid penalties and other ordered monetary amounts.

SO ORDERED on this 29th day of October, 2019.



Douglas Ommen
Iowa Insurance Commissioner

Copy to:
Larry Tejral
716 Coffie Farm Rd.
Sergeant Bluff, IA 51054-3504

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 10/30, 2019.

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

Signature: Hilary Foster
Hilary Foster

NOTICE OF FINAL ORDER

A default decision becomes final agency action 15 days from the date of the decision was mailed unless a motion to vacate the default decision is filed within that time period. 191 IAC 3.22(3). A motion to vacate must state all the facts upon which the moving party relies to establish good cause for failure to appear or participate at the contested case proceeding. Each fact must be substantiated by at least one affidavit by a person with personal knowledge of the fact, and the affidavit must be attached to the motion.

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 REISSUANCE

When this Order becomes final, your insurance producer license will become inactive due to revocation. While your license is inactive, you are prohibited from conducting the business of insurance. Your license will not be active until the Division makes the determination to reissue your insurance producer license by order pursuant to Iowa Administrative Code 191—10.10.

Reissuance of your insurance producer license is subject to the discretion of the Commissioner. Additionally, it will not be granted unless and until you have complied with the terms of this Order, made the appropriate Application for Reissuance with the Division, and paid all applicable fees. If applicable, you may also be required to apply for licensure through the National Insurance Producer Registry (NIPR) and pay all applicable fees.

NOTICE OF FINAL ORDER IMPACT

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

A final order in an administrative action does not resolve any potential criminal or civil violations or causes of action that might arise from the same or similar conduct that is the subject of this order. It may result in criminal law enforcement authorities, including the fraud bureau of the Iowa Insurance Division, pursuing a criminal investigation or prosecution of potential criminal law violations.