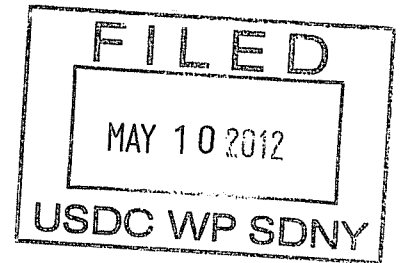


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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA,

Plaintiff,

v.

HARRISON FUNERAL HOME, INC. and
JOHN BALSAMO,

Defendants.
-----X

COMPLAINT

12 Civ. _____

12 CV 3733

JUDGE RAMOS

Plaintiff, United States of America, by its attorney Preet Bharara, United States Attorney for the Southern District of New York, acting upon notification and authorization to the Attorney General by the Federal Trade Commission ("Commission"), alleges for its complaint against Harrison Funeral Home, Inc. and John Balsamo upon information and belief as follows:

1. Plaintiff brings this action under Sections 5(a)(1), 5(m)(1)(A), 13(b), and 16(a) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 45(a)(1), 45(m)(1)(A), 53(b), and 56(a), to obtain monetary civil penalties, a permanent injunction and other equitable relief for Defendants' violations of the Commission's Trade Regulation Rule Concerning Funeral Industry Practices ("Rule" or "Funeral Rule"), 16 C.F.R. Part 453.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over this matter under 28 U.S.C. §§ 1331, 1337(a), 1345, and 1355 and 15 U.S.C. §§ 45(m)(1)(A), 53(b), and 56(a). This action arises under 15 U.S.C. § 45(a)(1).

3. Venue is proper in this district under 15 U.S.C. § 53(b) and 28 U.S.C. §§ 1391(b-c) and 1395(a).

PLAINTIFF

4. This action is brought by the United States of America on behalf of the Federal Trade Commission pursuant to 15 U.S.C. § 56. The Commission is an independent agency of the United States government given statutory authority and responsibility by the FTC Act, as amended, 15 U.S.C. §§ 41-58. The Commission is charged, inter alia, with enforcing Section 5 of the FTC Act, 15 U.S.C. § 45, which prohibits unfair and deceptive acts or practices in or affecting commerce. The Commission also is authorized by 15 U.S.C. § 57a(a)(1)(B) to issue trade regulation rules that “define with specificity acts or practices which are unfair or deceptive acts or practices in or affecting commerce (within the meaning of such section 5(a)(1)),” and may obtain civil penalties for rule violations pursuant to 15 U.S.C. § 45(m)(1)(A).

DEFENDANTS

5. Defendant Harrison Funeral Home, Inc. (“Harrison”) is a New York corporation with its principal place of business located within the Southern District of New York at 329 Halstead Avenue, Harrison, New York 10528. In connection with the matters alleged herein, Harrison is located in or transacts business in this District.

6. Defendant John Balsamo (“Balsamo”) is the President and an owner of Defendant Harrison. His business address is the same as that of the corporate defendant. At all times material to this complaint, acting alone or in concert with others, Defendant Balsamo has formulated, directed, and controlled, had the authority to control, or participated in the acts and practices of Defendant Harrison, including the various acts and practices set forth in this complaint. In connection with the matters alleged herein, Defendant Balsamo transacts or has transacted business in this District.

THE FUNERAL RULE

7. The Funeral Rule, promulgated by the Commission under Section 18 of the FTC Act, 15 U.S.C. § 57a, became effective in its entirety on April 30, 1984, and since that date has remained in full force and effect. Amendments to the Funeral Rule were promulgated by the Commission under Section 18 of the FTC Act, 15 U.S.C. § 57a, and became effective on July 19, 1994. The Funeral Rule is codified at 16 C.F.R. Part 453.

VIOLATIONS OF THE FUNERAL RULE

8. At all times material herein, Defendants have been a “funeral provider” as that term is defined in Section 453.1(i) of the Rule, 16 C.F.R. § 453.1(i), and have sold or offered to sell “funeral goods” and “funeral services,” as those terms are defined in Sections 453.1(h) and 453.1(j) of the Rule, 16 C.F.R. §§ 453.1(h) and 453.1(j).

9. In 2001, in connection with selling or offering to sell funeral goods and funeral services, in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44, Defendants violated the Funeral Rule by failing to provide to each person who inquires in person about funeral goods, funeral services, or prices of funeral goods or services a

printed or typewritten general price list, upon beginning discussion of any of the following: (1) the prices of funeral goods or funeral services; (2) the overall type of funeral service or disposition; or (3) specific funeral goods or funeral services offered by the funeral provider, thereby violating 16 C.F.R. Part 453.2(b)(4).

10. In 2001, in connection with selling or offering to sell funeral goods and funeral services, in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44, Defendants violated the Funeral Rule by failing to provide to each person who inquires in person about the offerings or prices of caskets or alternative containers a printed or typewritten casket price list, upon beginning discussion of, but in any event before showing, caskets or alternative containers, thereby violating 16 C.F.R. § 453.2(b)(2).

11. In conjunction with FTC Funeral Rule enforcement efforts, the National Funeral Directors’ Association (“NFDA”) developed the Funeral Rule Offenders Program (“FROP”). In lieu of formal law enforcement actions, the FTC may offer participation in FROP to funeral industry members identified as failing to comply with the Funeral Rule, 16 C.F.R. Part 453. After a participating funeral home makes a required payment to the United States Treasury, NFDA examines the adequacy of the home's general price list, casket price list and outer burial container price list and trains all employees of the funeral home who are engaged in the offering or selling of funeral goods and services.

12. In 2001, Defendants Harrison and Balsamo agreed to enter FROP and submitted the required payment to the U.S. Treasury. Although Defendants agreed to enter FROP in 2001, they never participated in the FROP training on how to comply with the Funeral Rule.

13. In March and July 2010, in connection with selling or offering to sell funeral goods and funeral services, in or affecting commerce, as “commerce” is defined in Section 4 of

the FTC Act, 15 U.S.C. § 44, Defendants violated the Funeral Rule by failing to provide to each person who inquires in person about funeral goods, funeral services, or prices of funeral goods or services a printed or typewritten general price list, upon beginning discussion of any of the following: (1) the prices of funeral goods or funeral services: (2) the overall type of funeral service or disposition; or (3) specific funeral goods or funeral services offered by the funeral provider, thereby violating 16 C.F.R. Part 453.2(b)(4).

14. In March and July 2010, in connection with selling or offering to sell funeral goods and funeral services, in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44, Defendants violated the Funeral Rule by failing to provide to each person who inquires in person about the offerings or prices of caskets or alternative containers a printed or typewritten casket price list, upon beginning discussion of, but in any event before showing, caskets or alternative containers, thereby violating 16 C.F.R. § 453.2(b)(2).

15. In March 2010, in connection with selling or offering to sell funeral goods and funeral services, in or affecting commerce, as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44, Defendants violated the Funeral Rule by failing to provide to each person who inquires in person about the offerings or prices of outer burial containers a printed or typewritten outer burial container price list, upon beginning discussion of, but in any event before showing, outer burial containers, thereby violating 16 C.F.R. § 453.2(b)(3).

CIVIL PENALTIES AND INJUNCTION

16. Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), authorizes the Court to award monetary civil penalties of not more than \$16,000 for each such violation of the Funeral Rule.

17. Defendants have violated the Funeral Rule as described above with knowledge as set forth in Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A).

18. Pursuant to Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation of the Funeral Rule constitutes an unfair or deceptive act or practice in violation of Section 5(a)(1) of the FTC Act, 15 U.S.C. § 45(a)(1).

19. Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), provides that “unfair or deceptive acts or practices in or affecting commerce are hereby declared unlawful.”

20. Defendants sell and offer to sell funeral goods and funeral services in or affecting commerce as “commerce” is defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

21. Under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), this Court is authorized to issue a permanent injunction enjoining defendants from violating the FTC Act.

PRAYER

WHEREFORE, Plaintiff requests that this Court, pursuant to 15 U.S.C. §§ 45(a)(1), 45(m)(1)(A), and 53(b), and pursuant to its own equitable powers:

(1) Enter judgment against defendants and in favor of Plaintiff for the violations of the Funeral Rule and Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), alleged in this Complaint;

(2) Award Plaintiff monetary civil penalties from Defendants for the violations of the Funeral Rule alleged in this Complaint;

(3) Enjoin Defendants from violating the Funeral Rule and Section 5 of the FTC Act, 15 U.S.C. § 45; and

(4) Award Plaintiff such additional relief as the Court may deem just and proper.

Dated: New York, New York
May 8, 2012

PREET BHARARA
United States Attorney for the
Southern District of New York
Attorney for the United States

By:



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**MEMORANDUM TO CHIEF CLERK
CIVIL CLERKS' UNIT**

U. S. DISTRICT COURT

N.Y.S. _____ COUNTY

U. S. COURT OF APPEALS/2nd CIRCUIT

U.S. COURT OF INTERNATIONAL TRADE

U. S. BANKRUPTCY COURT

_____ (OTHER)

NAME OF CASE: United States v. Harrison Funeral Home, Inc + John Balsano

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☐ Appealed - ☐ Archived
☒ White Plains ☐ _____

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Judge: _____

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