

**BEFORE THE BOARD OF MORTUARY SCIENCE EXAMINERS
OF THE STATE OF IOWA**

IN THE MATTER OF:)	
)	CASE NO. MS-04-007 and
)	 MS-04-016
)	
ALBERT FENZLOFF d/b/a)	
SUNNYSIDE MEMORY GARDENS, INC.,)	
a dissolved Iowa corporation, Lic. # 151-00759)	STATEMENT OF CHARGES
)	

COMES NOW the Complainant, Ella Mae Baird, and states:

1. The Complainant is the Administrator of the Iowa Board of Mortuary Science Examiners (Board) and files these charges on behalf of the Board solely in her official capacity.
2. The Board has jurisdiction of this matter pursuant to Iowa Code chapters 17A, 147, 156, and 272C (2003, 2005).
3. Sunnyside Memory Gardens, Inc. a/k/a Sunnyside Memory Gardens and Funeral Home (“Sunnyside”) is an Iowa corporation with offices in Charles City, Floyd County, Iowa. The principal business operated by the company is a cemetery and funeral home located at 2267 Old Highway Road, Box 532, Charles City, Iowa 50616. The Secretary of State administratively dissolved the corporation on August 2, 2004, for failure to file its 2004 Biennial Report. The corporation remains dissolved as of the date of these charges.
4. Sunnyside was incorporated in 1956. From April 2, 1982, until November 6, 2003, Sunnyside was owned and managed by David J. Lorsung. On or about November 6, 2003, Mr. Lorsung sold all of his stock to Mitzi Behne n/k/a/ Mitzi Fenzloff. Mr. Lorsung also ceased all actions on behalf of Sunnyside in November 2003.
5. The wholesale change in ownership and management of Sunnyside in November, 2003, required it to secure a new funeral establishment license, pursuant to Iowa Code sections 156.14 and 156.15 (2003), and 645 Iowa Admin. Code 101.7(1).
6. Sunnyside did not apply for a funeral establishment license in November 2003, but Sunnyside consistently and routinely held itself out to the public as a funeral establishment. Sunnyside did not apply for a funeral establishment license until August 30, 2004.
7. Consistent with the November 2003, sales contract, Mitzi Fenzloff was reflected as Sunnyside’s registered agent and president in documents filed with the Secretary of State in April 2004. Because the corporation is now dissolved, the records of the Secretary of State do not reflect any change to the persons holding management positions in the company.
8. At the time Sunnyside submitted its application for a funeral establishment license in August 2004, Sunnyside asserted that all stock was transferred by Mitzi Fenzloff to Albert Fenzloff, Mitzi’s husband.
9. Sunnyside’s August 2004, application identifies Albert Fenzloff as the sole owner, director, and officer of Sunnyside.

10. Neither Mitzi Fenzloff nor Albert Fenzloff has ever been licensed as a funeral director in Iowa or any other state.

11. Sunnyside identifies on its application as its employed funeral director, Dennis Huisman. Mr. Huisman is a licensed funeral director in Iowa, although he was not employed by Sunnyside. He provided some funeral services upon Sunnyside's request.

12. For the period of time between November 2003, and August 30, 2004, Sunnyside operated as an unlicensed funeral establishment.

13. The Board received a complaint in October 2004, alleging among other concerns that on or about July 19, 2004, Mitzi Fenzloff met with the family of a decedent to make funeral arrangements.

14. The Board's subsequent investigation provides support for the allegations of the complaint, and also revealed that Mitzi Fenzloff prepared a death certificate, using a blank death certificate Sunnyside had on file signed by a licensed funeral director. She did so without the knowledge of the funeral director, in an apparent attempt to rectify the loss of an earlier death certificate that had been properly executed by a different licensed funeral director.

15. On January 3, 2005, the Iowa Attorney General filed a Petition for Appointment of Receiver, Temporary and Permanent Injunctive Relief, and Other Equitable Remedies, alleging a broad range of violations of Iowa Code chapters 523A (Iowa Cemetery and Funeral Merchandise and Funeral Services Act), and 566A (Cemetery Regulation), and the Iowa Consumer Fraud Act, Iowa Code section 714.16. Sunnyside and the Fenzloffs are alleged to have sold funeral services and funeral and cemetery merchandise on a pre-need basis without proper permission from the Iowa Insurance Division, and without proper trusting of consumer funds.

16. The case described in paragraph 15 remains pending. However, the district court issued a temporary order on January 18, 2005, prohibiting Sunnyside and the Fenzloffs from receiving any funds from consumers, from receiving any mail, and from otherwise taking any steps to interfere with the receivership duties granted to the Iowa Insurance Division.

17. Mitzi Fenzloff is currently incarcerated as a result of an order revoking probation entered March 7, 2005, stemming from one of two felony convictions.

18. During the period of time in which Ms. Fenzloff was the sole owner of Sunnyside, and operating an unlicensed funeral establishment, she could not have successfully applied for a funeral establishment license for Sunnyside, in view of her lengthy criminal history, pursuant to Iowa Code section 156.15(2)(a).

19. Criminal charges and convictions against Mitzi Fenzloff a/k/a Mitzi Klemp a/k/a/ Mitzi Behne, in addition to the probation revocation described in paragraph 17, include:

- a. Conviction of two felony counts of theft in October 2004, in Polk County, Case No. FECR177560.
- b. Conviction of felony theft in 2000, in Cerro Gordo County, Case. FECR006796.
- c. Conviction of misdemeanor theft in 2002, in Cerro Gordo County, Case. No. FECR008777.
- d. Probation violation in 2002, in Cerro Gordo County, Case No. FECR006796.

- e. Contempt of court in 2001, in Cerro Gordo County, Case No. FECR006796.
- f. Conviction of misdemeanor theft in 2000, in Hancock County, Case No. SRCR006306.
- g. Conviction of misdemeanor theft in 2000, in Story County, Case No. AGCR028299.
- h. Conviction of misdemeanor theft in 1999, in Cerro Gordo County, Case No. FECR006393.

20. The fact that Sunnyside operated as an unlicensed funeral establishment for many months is itself harmful and detrimental to the public, but the additional fact that Sunnyside could not have been licensed during Mitzi Fenzloff's ownership given her criminal history, raises even more serious concerns.

21. At the time Albert Fenzloff applied for Sunnyside's licensure as a funeral establishment, he did not have a criminal record. He now faces two felony charges in Floyd County.

22. The Board found probable cause to charge Sunnyside, as follows:

a. Sunnyside operated as a funeral establishment without proper licensure between November 2003, and August 2004, in violation of Iowa Code sections 156.14(1) and 156.15(1).

b. Given the criminal history of Sunnyside's owner during the period between November 2003, and August 2004, Sunnyside could not have secured a funeral establishment license had it submitted a truthful application, pursuant to Iowa Code section 156.15(2)(a).

c. Sunnyside's now disclosed history of law violations warrants discipline pursuant to Iowa Code section 156.15(2)(b).

d. Sunnyside has knowingly aided, assisted, procured, advised, or allowed both its own unlicensed practice and the unlicensed practice of Mitzi Fenzloff, in violation of Iowa Code section 156.15(2)(c).

e. In light of the appointment of the Iowa Insurance Division as receiver for certain purposes and the injunctive relief ordered against Sunnyside on January 18, 2005, Sunnyside has ceased to engage in the business described in its August 2004, application to the Board. Even prior to the adjudication of the serious law violations alleged in the Attorney General's Petition, the nature of the temporary relief entered provides grounds for discipline pursuant to Iowa Code sections 156.15(2)(b) and 156.15(2)(d).

f. Sunnyside has engaged in misleading, deceptive, or fraudulent practices which are harmful or detrimental to the public by falsely holding out and operating as a licensed funeral establishment, in violation of Iowa Code sections 156.14(1), 156.15(1), 156.15(2)(b), and 272C.10(3), and 645 Iowa Admin. Code 103.3(2)(g).

g. Sunnyside has engaged in unethical business practices by falsely advertising as a properly licensed funeral establishment, pursuant to Iowa Code section 156.15(2)(b), and 645 Iowa Admin. Code 103.3(2)(h).

h. Sunnyside has failed to comply with Iowa Code chapter 523A, as reflected in the Attorney General's verified Petition filed in Floyd County District Court on January 3, 2005, in violation of Iowa Code section 156.15(2)(b) and 645 Iowa Admin. Code 103.3(2)(i).

WHEREFORE, the Complainant prays that a hearing be held in this matter and that the Board take such action as it deems appropriate under the law, including but not limited to, the revocation of Sunnyside's funeral establishment license and the imposition of a civil penalty not to exceed \$10,000.

FINDING OF PROBABLE CAUSE

On March 10, 2005, the Iowa Board of Mortuary Science Examiners found probable cause to file this Statement of Charges and to order hearing be set in this case.

This Statement of Charges is approved by the board on March 10, 2005.