

BEFORE THE DELAWARE BOARD OF FUNERAL SERVICES

IN RE: Deborah E. Harris-Nock) Case No.: 27-01-15
LICENSE NO. K1-000520R) FINAL ORDER

FINAL ORDER

Pursuant to 29 *Del. C.* § 8735 (v)(1)d¹ a properly noticed hearing was conducted before a hearing officer to consider a disciplinary Complaint, filed by the State of Delaware, alleging that Deborah E. Harris-Nock, a Delaware licensed provider of funeral services, violated certain provisions of 24 *Del. C.* Ch. 31. The Complaint alleged that, among other things, Ms. Harris-Nock failed to return pre-need funeral money paid to her for funeral services, resulting in a conviction on one charge of Theft under \$1,500. Such conviction constitutes a violation of 24 *Del. C.* § 3112(a)(2) because such conduct constitutes the illegal practice of funeral services.

Prior Disciplinary Proceedings

¹ Section 8735 (v)(1)d provides that hearing officers have: The power to conduct hearings, including any evidentiary hearings. The testimony or evidence so taken or received shall have the same force and effect as if taken or received by the board or commission. Upon completion of such hearing or the taking of such testimony and evidence, the hearing officer shall submit to the board or commission findings and recommendations thereon. The findings of fact made by a hearing officer on a complaint are binding upon the board or commission. The board or commission may not consider additional evidence. When the proposed order is submitted to the board or commission, a copy shall be delivered to each of the other parties, who shall have 20 days to submit written exceptions, comments and arguments concerning the conclusions of law and recommended penalty. The board or commission shall make its final decision to affirm or modify the hearing officer's recommended conclusions of law and proposed sanctions based upon the written record.

Ms. Harris-Nock failed or refused to attend a January 21, 2014 hearing after receiving good and valid notice of the proceedings. After hearing the matter, the Hearing officer found that Ms. Harris-Nock is an active Funeral Director licensed by the Board of Funeral Services since 1992. The Hearing officer found that a client engaged Ms. Harris-Nock and her funeral home to administer a funeral. The Hearing officer found that Ms. Harris-Nock presented herself at the Sussex County Register of Wills office in Georgetown, DE during the morning of July 24, 2013 where she engaged in a series of deceptions which began when she claimed to be the client's niece on the death certificate. First, Ms. Harris-Nock represented herself as the client's "niece" on an "Information Sheet" which the Register uses to collect data on estates and estate representatives. Additionally, also on July 24, Ms. Harris-Nock signed a Petition to Act as Personal Representative in which she represented that the client "had no will." Within 14 days of the false and sworn misrepresentations the Register of Wills office learned of their falsity. In a letter dated August 7, 2013, the Deputy Register notified Seaford Federal Credit Union that "... Deborah Harris-Nock has been removed as the Administratrix on the estate."

The hearing officer concluded and the Board entered an Order finding that that Ms. Harris-Nock violated Bd. Reg. 8.1.1 which underscores the obligation funeral directors owe to the public and the mutual responsibility of all funeral licensees for "the proper welfare of the funeral services profession." The hearing officer found and the Board entered an Order finding that when Ms. Harris Nock saw fit to lie about the nature of her relationship to her client and to lie about whether the client died intestate in order to gain immediate access to the client's funds she ignored her obligation to ensure the proper welfare of the profession. The hearing officer also found and the Board entered an Order finding that Ms. Harris-Nock violated Bd. Reg. 8.1.2 in that she clearly failed or refused to demonstrate high moral standards and did not act as a

“good citizen.” Lastly, the hearing officer found and the Board entered an Order finding that Ms. Harris-Nock violated Bd. Reg. 8.1.3 by failing to maintain high standards of dignity and make truthful representations of all services. The Board ordered that that Ms. Harris Nock’s Delaware license be suspended for a period of 5 years after which time she could petition the Board for reinstatement contingent on satisfaction of several preconditions.

This Disciplinary Proceeding

In its Complaint the State alleges that in May 2015 Ms. Harris-Nock was arrested and eventually pled guilty to the crime of theft when she failed to return pre-need funeral expenses paid to her. The Complaint further alleges that in July 2015 Ms. Harris-Nock was again arrested and entered a plea of guilty to the crime of theft when she failed to return pre-need expenses paid to her by another individual.

The hearing officer found that “good, valid, reasonable and best effort has been made to provide notice of this hearing to Ms. Harris-Nock.” The hearing officer found that after receiving funds from M.G., Ms. Harris-Nock did not use the money to purchase a burial insurance policy regulated by the Delaware Insurance Department on M.G.’s behalf, instead depositing M.G.’s funds in the bank account of a friend. The hearing officer found that Ms. Harris-Nock has demonstrated a “clear lack of respect for the processes of the Board” and failed to update her address information. The hearing officer concluded and this Board finds that Ms. Harris-Nock’s careless and selfish handling of M.G.’s pre-need funds constitutes the illegal practice of funeral services.

The parties were given 20 days from the date of the hearing officer's March 24, 2016 recommendation to submit written exceptions, comments and arguments concerning the conclusions of law and recommended penalty. No such exceptions were submitted.

The Board deliberated on the hearing officer's recommended conclusions of law and discipline on May 24, 2016. While the Board is bound by the findings of fact made by the hearing officer, the Board may affirm or modify the hearing officer's conclusions of law and recommended penalty. 29 Del. C. § 8735 (v)(1)d. The Board agrees with the hearing officer's recommended conclusions of law and recommended discipline as modified by this Order.

NOW THEREFORE, by the vote of the participating members of the Board, the Board enters the following disciplinary Order:

1. The Delaware Board of Funeral Services hereby terminates the five-year suspension of the Funeral Director license held by Ms. Harris-Nock which was ordered in Case No. 27-02-13;
2. The Board, concurrent with the termination of said license suspension, hereby revokes the Funeral Director license issued to Ms. Harris-Nock;
3. Ms. Harris-Nock pay a monetary penalty in the amount of \$500.00 within 30 days of the date of this Order in the form of a draft made payable to the State of Delaware;
4. Ms. Harris-Nock shall make an accounting to the Board of all pre-need funds paid to her or Deborah E. Harris-Nock Funeral Services ("DHNFS") by any person, or paid to any agent of DHNFS, which funds have not been applied to purchase a qualified burial insurance policy under 5 Del. C. § 3402(d) or not deposited into a trust account

with an insured financial institution pursuant to 5 Del. C. § 3402(a), within 30 days of the date of this Order;

5. The Board reserves the right to take any and all further necessary and proper action with regard to the required accounting;
6. The Board reserves the right to direct the Division of Professional Regulation to issue subpoenas requiring the production of documents and requiring the testimony under oath of witnesses in the event Ms. Harris-Nock does not make a full accounting;
7. That no future application for licensure by Ms. Harris-Nock be considered complete and in proper form until the penalty provided for in paragraph 3 above has been made;
8. This Order constitutes a public disciplinary action of the Board.
9. A copy of this Order shall be served personally or by certified mail, return receipt requested, upon Ms. Harris-Nock. A copy of the hearing officer's Recommendation shall be attached hereto and incorporated herein as modified by this Final Order.

IT IS SO ORDERED this 10th day of June, 2016.

DELAWARE BOARD OF FUNERAL SERVICES



Keith Parsell, President

RIGHT OF APPEAL

§ 10142. Review of case decisions.

(a) Any party against whom a case decision has been decided may appeal such decision to the Court.

(b) The appeal shall be filed within 30 days of the day the notice of the decision was mailed.

(c) The appeal shall be on the record without a trial de novo. If the Court determines that the record is insufficient for its review, it shall remand the case to the agency for further proceedings on the record.

(d) The Court, when factual determinations are at issue, shall take due account of the experience and specialized competence of the agency and of the purposes of the basic law under which the agency has acted. The Court's review, in the absence of actual fraud, shall be limited to a determination of whether the agency's decision was supported by substantial evidence on the record before the agency.

Date Mailed: 6/10/2016

cc: Roger A. Akin, Chief Hearing officer

Deborah E. Harris-Nock

Carla A. K. Jarosz

The State first called Ms. Tracy Wirick, a paralegal employed in the Administrative Hearing Unit of the Division of Professional Regulation. She prepared and mailed the notice to Ms. Harris-Nock on February 18, 2016. A copy of the notice was admitted as State Exhibit 1 ("SX 1"). Ms. Wirick secured Ms. Harris-Nock's address from a licensee data base maintained by the Board and the Division for that purpose. Ms. Wirick mailed the notice to the last and most current address in Bridgeville DE reported by Ms. Harris-Nock to the Board as the place where she would receive official communications regarding her license. Ms. Wirick testified that licensees are expected and required to update their address information with the Board as changes occur.

The hearing notice was mailed to Ms. Harris-Nock by First Class mail, certified mail and by email. The certified mail copy was sent to Ms. Harris-Nock on February 22, 2016. As of the date of the hearing, neither the certified copy of the notice nor the green card attached to the certified copy had been returned to the Hearing Unit. The First Class copy of the hearing notice was returned to the Division on February 26, 2016 with the Postal Service notation, "Return to Sender/Vacant/Unable to Forward." The returned First Class copy was attached to SX 1. The email address which Ms. Harris-Nock had provided to the Board had either not been updated or was incorrect. Evidence of Ms. Wirick's failed attempt to email the hearing notice to Ms. Harris-Nock was also attached to SX 1.

Ms. Wirick testified that the hearing notice provided Ms. Harris-Nock with the date, time, place and subject matter of the proceedings. The notice also described Ms. Harris-Nock's rights at the hearing. Since mailing the hearing notice to Ms. Harris-Nock in February 2016, Ms. Wirick has received no communications from her in any form. Based on this hearing record, a good and valid attempt to provide notice of the hearing to Ms. Harris-Nock has been made by

the Hearing Unit. The Board has the right to rely on current address information provided by licensees. SX 1 was mailed to the most current physical and email addresses provided to the Board by Ms. Harris-Nock. A licensee should not be permitted to avoid the consequences of professional misconduct by simply failing to inform the Board of her whereabouts, whether her license is on suspension or otherwise. If the Board were required to stay its hand until a licensee updated her address information, the public would be endangered thereby.

The State first offered a 33-page collection of seven documents, which were admitted as SX 2. The State called Kathleen Riddell, a licensing investigator employed in the Division. Her duties include the investigation of complaints filed against the licensees of State boards. She was assigned to investigate this case. She identified SX 2 at 3, which is a “screen shot” of Ms. Harris-Nock’s license status. She is a Funeral Director licensee, and at the current time her license is on suspension as ordered by the Board.

SX 2 at 4 is an electronic summary of complaints and past disciplinary action taken against Ms. Harris-Nock’s license. The history reflects that in Board Case No. 27-01-13 it had been finally determined that she had violated a provision of the Funeral Services Act and three Board regulations. In that case the Board had ordered license suspension, remedial education and had imposed a fine. *Id.* Another screen shot of Ms. Harris-Nock’s license status is found at SX 2 at 5. (The screen shot confirms that the correct and most current address and email address were both used in an attempt to provide notice of this hearing to Ms. Harris-Nock.)

Ms. Riddell testified that at the current time Ms. Harris-Nock is serving a five year license suspension resulting from findings in Board Case No. 27-02-13. (The facts of that case will be summarized below, to the extent that they are pertinent to the Board’s final decision in this case.) The five-year suspension was imposed on March 2, 2014.

Ms. Riddell testified that the final order issued by the Board in Case No. 27-02-13 is found at SX 2 at 6. She summarized that the reasons for the suspension in that case were that Ms. Harris-Nock had contracted for pre-need arrangements with a client. When that individual passed away, Ms. Harris-Nock had gone to the Register of Wills claiming falsely to be a niece of the decedent in order to withdraw funds from the decedent's bank account.

The administrative complaint filed with the Division in April 2015 and which resulted in the pending complaint against Ms. Harris-Nock is found at SX 2 at 11. The complainant in the case is Sandra Dean, Esq., the attorney and executrix of the estate of M.G. In her complaint Ms. Dean alleges that in November 2008 M.G. had paid Ms. Harris-Nock \$6,300 for pre-paid funeral arrangements. Ms. Dean had become aware that Ms. Harris-Nock's license had been suspended as a result of the prior proceedings. Ms. Dean had apparently researched the matter with the Office of the Delaware Insurance Commissioner and had determined that Ms. Harris-Nock had not deposited her client's pre-paid funds in a trust account as required by law. Ms. Dean relates in the complaint that "concerned friends" of M.G. had inquired of Ms. Harris-Nock about the funds, and she had refused to return the funds or state whether or where the funds had been deposited. Ms. Dean states that she is, therefore, "very concerned about (M.G.'s) future funeral needs." SX 2 at 12-13.

Ms. Riddell stated that she had secured certain documents from Ms. Dean in conjunction with her investigation. They are found at SX 2 at 14-19. SX 2 at 14 is a letter from Ms. Dean to Delaware State Police Troop 3. In that April 10, 2015 letter Ms. Dean asks that a "theft of \$6,300" be investigated. She encloses documents which she contends are relevant.

SX 2 at 15 provides particulars about the alleged "theft". In the document Ms. Dean identifies herself as the attorney and executrix of M.G., then 80 years of age. In the document

Ms. Dean refers to Ms. Harris-Nock's acceptance of \$6,300 in pre-need funds from M.G. in 2008. Because of Ms. Harris-Nock's "felony convictions" and her license suspension, a substitute funeral director had been contacted. At that point it had been learned that Ms. Harris-Nock had "appropriated the funds and did not place them in trust." *Id.*

A letter to M.G. from Ms. Harris-Nock dated November 14, 2008 acknowledges receipt of \$6,300 "for a funeral package" in that amount. SX 2 at 16. The letter lists the goods and services covered by the advance payment and is signed by Ms. Harris-Nock on behalf of Deborah E. Harris-Nock Funeral Services of Bridgeville DE. The letter was mailed to M.G. in care of Gloria Jones, who had previously held M.G.'s power of attorney. The document at SX 2 at 17 is the front and back of a PNC Bank cashier's check payable to "Debbie Harris Nocks" (sic) in the amount of \$5,300 and dated November 13, 2008. The memo line on the front of the check is typewritten and states "Gloria Jones: Funeral Exp. Paid in Full". Under that line is the handwritten notation "For M.G."

Ms. Dean also police investigators a copy of an article in the November 26, 2013 issue of the *Sussex Countian*. The article is a story about the crimes and unprofessional conduct of Ms. Harris-Nock in 2013 which led to her arrest and conviction and the five-year suspension of her license. SX 2 at 18.

Ms. Dean also provided to police a copy of 5 *Del. C. Sec.* 3401 and 3402. Chapter 34 of Title 5 of the State banking laws deals with "preneed funeral contracts". Paraphrasing, a "preneed burial contract" is defined as a contract to furnish funeral goods and services for future use at a time determined by the death of the purchaser. 5 *Del. C. Sec.* 3401(3). Funds collected under such agreements or contracts are to be held in trust by the recipient and are to be deposited

in a trust account with an insured financial institution. 5 *Del. C. Sec. 3402(a)*. Interest and other accretions earned by the funds deposited in trust are to remain with the principal.

The funds held in trust are not to be paid over to the trustee Funeral Director until a certified statement is received that all terms of the pre-need agreement have been met. Any excess funds not encumbered by legitimate funeral expenses are to be paid over to the estate of the decedent. 5 *Del. C. Sec. 3402(c)*. The only exception to the requirement that funds be deposited in trust by the licensee arises when a burial insurance policy regulated by the Delaware Insurance Department is purchased. 5 *Del. C. Sec. 3402(d)*. Ms. Harris-Nock did not attend the hearing and did not produce such an insurance policy purchased on behalf of M.G. Her evasiveness with respect to the location of the \$6,300 leads to a clear inference that such a policy was not purchased. Her letter to M.G. only refers to his purchase of a “funeral package” and not a policy. SX 2 at 16. Ms. Riddell testified that her investigation did not disclose the existence of any such policy. In fact, Ms. Harris-Nock testified the funds had been deposited in the bank account of a “friend”.

Ms. Riddell testified that M.G. paid for the “funeral package” on October 22 and November 13, 2008 by making payments of \$1,000 and \$5,300, respectively. She added that the funds paid by M.G. were placed by Ms. Harris-Nock in the bank account of Mr. Fred Roberts, a “friend”. Ms. Harris-Nock disclosed that arrangement when Ms. Riddell interviewed her in May 2015. During that conversation Ms. Harris-Nock admitted that she should not have done so. Ms. Riddell stated that Mr. Roberts has recently passed away. She further testified that Ms. Harris-Nock could have returned the \$6,300 to M.G. at any time.

A criminal investigation in this case was performed by Det. Sgt. Jeremy Lloyd of the Delaware State Police. A copy of his investigative report is found at SX 2 at 20-23. Pertinent

information from that report is summarized here. Det. Lloyd was unable to interview M.G. He later learned that M.G. was not ambulatory and had suffered two strokes. Ms. Harris-Nock informed Det. Lloyd that she had been advised by her attorney not to make a statement. Ms. Harris-Nock did inform Det. Lloyd that she intended to have her attorney contact Ms. Dean in order to make arrangements for repayment of the \$6,300. (There is no evidence that such arrangements were made. In fact, a subsequent sentencing order entered by the Court of Common Pleas directed restitution of the full \$6,300.)

Det. Lloyd interviewed Ms. Dean. She informed him of the \$6,300 payment by M.G. for the “funeral package”. Det. Lloyd also contacted Ms. Sharron Dunford, the individual who held M.G.’s power of attorney in April 2015. Ms. Dunford confirmed that she had repeatedly demanded repayment of the \$6,300 from Ms. Harris-Nock on M.G.’s behalf, but that Ms. Harris-Nock had failed or refused to do so. Ms. Dunford also informed Det. Lloyd that one Gloria Jones was M.G.’s “caretaker” at the time when he purchased the funeral “package”. Ms. Jones and Ms. Harris-Nock are cousins, according to Ms. Dunford. Ms. Dunford had cared for M.G. for 4-5 years.

Det. Lloyd contacted Ms. Jones. She acknowledged that she was M.G.’s caretaker when the “package” was purchased in 2008. She acknowledged that she is Ms. Harris-Nock’s cousin. Ms. Jones wrote “one of M.G.’s personal checks” in 2008 to make the initial \$1,000 payment toward the “funeral package”. A bank cashier check was used to pay the remainder (SX 2 at 17). Ms. Jones informed Det. Lloyd that she had “repeatedly asked Deborah Harris-Nock to pay back M.G. his money”. SX 2 at 22.

Ms. Riddell testified that the criminal investigation led to a charge of theft in violation of 11 *Del. C. Sec. 841(b)(2)*. That section of the general Delaware theft statute states that the theft

of in excess of \$1,500 from a victim who is 62 years of age or older is a Class F felony.

(According to Det. Lloyd's police report, M.G. was born on July 27, 1926.)

Certified records maintained by the Kent County Court of Common Pleas and relating to the criminal charge are found at SX 2 at 24-33. Apparently as a result of plea negotiations with the State, on May 22, 2015 Ms. Harris-Nock was permitted to enter a plea of guilty to a reduced charge of misdemeanor theft of property with a value of less than \$1,500 in violation of 11 *Del. C. Sec. 841*. SX 2 at 25. Her signed plea is found at SX 2 at 30. A Court of Common Pleas Judge imposed sentence as a result of the plea on June 12, 2015. A prison sentence of one year was suspended in favor of probation of the same duration. Ms. Harris-Nock was ordered to pay restitution to M.G. in the amount of \$6,300, and to have no contact with him. She was also ordered to pay certain costs of prosecution. SX 2 at 27.

The State's documents also include court records regarding another theft charge lodged against Ms. Harris-Nock. SX 2 at 24, 31-33. Those records apparently relate to a charge of theft by Ms. Harris-Nock from victim N.C. However, in her closing Ms. Jarosz withdrew the allegations in para. 3 of the State's complaint which appear to relate to those records. SX 2 at 1.

Ms. Riddell testified that after she completed her investigation, she concluded that Ms. Harris-Nock had engaged in unprofessional conduct in that she had committed a crime substantially related to the practice of funeral services. She had also committed an act of consumer fraud or deception in retaining the \$6,300 paid to her by M.G. for a "funeral package" after demands had been made to return the funds to M.G.

Ms. Riddell testified that she had secured court records with regard to Ms. Harris-Nock's convictions for theft from both M.G. and N.C. They are included in SX 2. At this point the

State's attorney withdrew para. 3 of the complaint which pertained to Ms. Harris-Nock's theft or alleged theft from N.C.

In response to the hearing officer, Ms. Riddell stated that she had not substantiated a charge against Ms. Harris-Nock of practicing funeral services while under license suspension. In response to Ms. Jarosz, Ms. Riddell testified that she is unaware of whether M.G. is still living. At this point the State rested.

In her closing argument Ms. Jarosz contended that the State has proven that Ms. Harris-Nock received \$6,300 in funds from M.G. to pay for a pre-need "funeral package". Subsequently, she failed to place those funds in trust with a financial institution, and failed to return the funds to M.G. or his representatives after repeated demands that she do so. Ms. Harris-Nock was criminally charged with theft as a result of her conduct, and she entered a plea of guilty on that charge.

In her closing Ms. Jarosz also withdrew para. 5 of the State's complaint. SX 2 at 1. That paragraph alleges that, by her conduct in this case, Ms. Harris-Nock had committed a crime substantially related to the provision of funeral services under Bd. Reg. 11.2. She stated that while the crime of felony theft is listed as "substantially related" (Bd. Reg. 11.1.46), nonetheless Ms. Harris-Nock entered a plea of guilty to misdemeanor theft.

Ms. Harris-Nock's admitted theft occurred while she was providing funeral services, and while her license was on suspension. The State contends that the refusal to return \$6,300 paid under a pre-need agreement is the practice of funeral services. Ms. Harris-Nock continues to harm the public. M.G. has had to fight her to have his funds returned. The State contends that when the Board considers the facts of this case in the context of the prior case (No. 27-01-13), the proper discipline here is revocation of license.

Findings of Fact

The notice of this hearing provided Ms. Harris-Nock with the date, time, place and subject matter of the proceedings. SX 1. The notice was prepared and posted to Ms. Harris-Nock in the normal course of the business of the Division of Professional Regulation on February 18, 2016. The notice was sent to Ms. Harris-Nock on February 18 by First Class mail and by email. The First Class copy was mailed to the last and most current address reported by Ms. Harris-Nock as the place where she would receive official communications regarding her funeral license. The Hearing Unit paralegal secured that address from a licensee data base maintained by the Board and the Division for that purpose. Licensees of the Board are expected to continually update their address information as changes occur.

The First Class copy of the hearing notice was returned to the Division by the Postal Service on February 26, 2016 as undeliverable. (Ms. Wirick had erroneously testified during the hearing on March 9, 2016 that the First Class copy had not been returned as undeliverable. In fact, that copy had been returned on February 26, 2016, but had not made its way to the hearing file in this case until after the hearing.) The Postal Service notation on the returned First Class copy stated that the address was "vacant" and that the mailing should be returned to sender because there was no forwarding address. Since Ms. Harris-Nock had only provided a Post Office box number as her address, it is possible that the box had been vacated by her and that she was no longer paying for its use.

On February 18, 2016, the hearing notice was also emailed to Ms. Harris-Nock at the most current email address reported to her. The paralegal also secured that email address from the same Board data base. An attempt at emailing the hearing notice was made on February 19, 2016. That attempt was unsuccessful, as the email was returned to the Hearing Unit with a note

that it could not be delivered. Documents recording the attempt and return electronic notice are attached to AHU X1. When the Hearing Unit paralegal was unsuccessful in emailing the hearing notice to Ms. Harris-Nock, the notice was then sent to her reported address by certified mail on February 22, 2016. As of the date of the hearing, neither the certified mail envelope nor the green card affixed to it has been returned to the Hearing Unit.

Based on this hearing record, I have found that a good, valid, reasonable and best effort has been made to provide notice of this hearing to Ms. Harris-Nock. Based on the failure of some, or all, of the hearing notices to be successfully delivered, it is evident that Ms. Harris-Nock has ignored her obligation to inform the Board as to a current physical address where she may receive official communications regarding her funeral license. If she has in fact closed down the Post Office box in Bridgeville DE which she once reported as a valid and current address, she has also failed to provide the Postal Service with a forwarding address. Her failure to provide a current physical address to either the Board or to the Postal Service is concerning if others in the community have advanced pre-need payments to her and now find it necessary to have those funds returned. Even if her Funeral Director license is on long-term suspension, that does not excuse her failure to provide the Board with her current whereabouts.

The following facts have been proven by a preponderance of the evidence. Deborah Harris-Nock is a licensed Delaware Funeral Director. Her license is currently on suspension for a period of five years commencing on March 2, 2014 as a result of previous disciplinary proceedings which will be described below.

In November 2008, Ms. Harris-Nock entered into an agreement whereby M.G. would pay \$6,300 to her or to her funeral services business under a "pre-need" arrangement. The payment by M.G. to Ms. Harris-Nock for the pre-payment of certain funeral services would presumably

lessen the burden on his heirs or family or on his estate to make such payments after his demise. The goods and services which would be purchased in advance for the stated amount are listed in Ms. Harris-Nock's letter to M.G. dated November 14, 2008. SX 2 at 16. Thereafter, M.G. made two payments totaling \$6,300 to Ms. Harris-Nock, the final payment being a bank cashier's check in the amount of \$5,300 payable personally to "Debbie Harris Nocks" (sic). SX 2 at 16. In the memo portion of the cashier's check, the payment was for "Funeral Exp. Paid in Full for M.G." Though the memo section was typed in by a bank employee, the words "for M.G." were handwritten on the check.

After receiving the funds from M.G., Ms. Harris-Nock did not use the money to purchase a burial insurance policy regulated by the Delaware Insurance Department on M.G.'s behalf. Rather, according to a statement which she made to a Division of Professional Regulation investigator, she deposited M.G.'s funds in the bank account of a friend. She admitted to the investigator that her decision to do that was wrong. In short, she neither deposited the funds in trust for M.G. with an insured financial institution, nor into any escrow or trust account which she may have maintained for that purpose.

The State placed into evidence the final order of the Board of Funeral Services dated March 2, 2014. SX 2 at 6-10. That order finally resolved Board Case No. 27-02-13. The undersigned hearing officer convened the hearing in that case and forwarded a disciplinary recommendation to the Board. The Board may and should take notice of the prior disciplinary history of a licensee, especially when that history may be pertinent to the disposition of a subsequent case.

Based on the allegations in Case No. 27-02-13, Ms. Harris-Nock's funeral license was suspended on an emergency basis as the Board concluded that Ms. Harris-Nock presented a

“clear and immediate danger to the health, safety and welfare of the public.” A hearing on the merits of the State’s complaint was then convened in January 2014. Ms. Harris-Nock failed or refused to attend the hearing.

After the hearing the undersigned found that Ms. Harris-Nock had presented herself at the Sussex County Register of Wills and engaged in material deceptions by falsely representing herself as the niece of a decedent and that the decedent had died intestate. When the deceptions were discovered, she was promptly removed as the decedent’s administratrix. This hearing officer found that such actions by Ms. Harris-Nock violated three regulations of the Board having to do with professional ethics.

After considering and deliberating upon the recommendation, the Board determined to suspend Ms. Harris-Nock’s funeral services license for a period of five years commencing in March 2014, and to permit her to petition the Board at the end of that suspension for restoration of practice privileges only on a showing that she had completed 12 additional continuing education hours in ethics, negotiation and documentation of prepaid funeral arrangements, and legal aspects of the profession. The Board further ordered that if the facts of the case resulted in criminal charges against her and a subsequent conviction, Ms. Harris-Nock would not be restored to practice until and unless she had satisfied all terms and conditions of any judicial sentencing order. Finally, the Board ordered that Ms. Harris-Nock pay a monetary fine in the amount of \$1,500 within 30 days of the date of the Board’s order. (A review of the Board’s data base at the time of the preparation of this recommendation indicates that Ms. Harris-Nock has paid none of that assessment.)

In or about April 2015, Sandra Dean, Esq. filed an administrative complaint with the Division of Professional Regulation regarding this matter. SX 2 at 11-13. At the time Ms. Dean

had been named in M.G.'s will as his executrix. She was also apparently providing certain legal services to M.G. and/or his heirs. Ms. Dean was informed by friends or family members of M.G. that they had learned of criminal proceedings initiated against Ms. Harris-Nock as well as the emergency suspension or long-term suspension of her funeral license. Those individuals had made numerous requests or demands that Ms. Harris-Nock refund the \$6,300 pre-need funds which had been paid to her by M.G. in 2008. Ms. Harris-Nock had refused to return any of the funds, and had refused to identify where the funds had been secured or deposited. As a result of receiving this information, Ms. Dean had filed a professional licensure complaint with the Division and had requested that the Delaware State Police initiate a criminal investigation.

During the criminal investigation, police confirmed with M.G.'s power of attorney and caretaker (Ms. Dunford) that Ms. Harris-Nock had failed or refused to return M.G.'s funds. Ms. Jones (M.G.'s caretaker in 2008) confirmed that Ms. Harris-Nock had been repeatedly requested to return the funds to M.G., but had not done so.

As a result of the police investigation, a charge of violation of 11 *Del. C. Sec. 841(b)(2)* was lodged against Ms. Harris-Nock. The charge alleged a felony level of theft from M.G. on the basis that the value of the theft exceeded \$1,500, and the victim was over 62 years of age. After engaging in plea negotiations, the charge was reduced to misdemeanor theft under Sec. 841 in that the value of the theft was reduced to an amount below \$1,500. When that concession was made by the State, Ms. Harris-Nock then entered a plea of guilty on the reduced charge. Her certified plea is conclusive evidence of her admission of the theft from M.G. and is a declaration against her interest in this case.

As a final factual finding, I have concluded that Ms. Harris-Nock has demonstrated a clear lack of respect for the processes of the Board. She has apparently not seen fit to update her

address information, making it difficult to contact her regarding disciplinary proceedings or other matters pertaining to her license. She has failed or refused to attend both of the disciplinary hearings.

Conclusions of Law

The notice of this hearing provided Ms. Harris-Nock with the date, time, place and subject matter of the proceedings. The notice otherwise comported with legal requirements for notices of hearings before the Board.

The hearing notice was properly prepared and posted to Ms. Harris-Nock in the normal course of Division business. The notice was mailed to her at the last and most current address which she had reported to the Board as the place where she would receive official communications regarding her license. Licensees are expected to continually update their address information with the Board and the Division as changes occur.

The First Class mailing of the notice (SX 1) was sent to a Post Office box in Bridgeville DE. That address was secured by the Hearing Unit from a licensee data base maintained by the Board and the Division for that purpose. The First Class copy was returned by the Postal Service to the Division eight days after it was mailed to Ms. Harris-Nock. On the returned copy the Postal Service had made a notation that the address was "vacant" and that the Postal Service had no forwarding address for Ms. Harris-Nock. While it is possible that Ms. Harris-Nock no longer rented the Post Office box in Bridgeville, she had not provided more current address information either to the Postal Service or to the Board. (It is noted that the P. O. box number in Bridgeville which was represented as valid and current by Ms. Harris-Nock is the same box number as recorded on her business letterhead in 2008. SX 2 at 16)

The hearing notice was also emailed to Ms. Harris-Nock. That address had also been secured from the Board's current licensee data base. A return message resulted from the mailing indicating that the email was undeliverable to the email address provided by Ms. Harris-Nock to the Board. When the email failed, the Hearing Unit sent the hearing notice to Ms. Harris-Nock by certified mail. As of the date of the hearing, neither that mailing nor the green card affixed to it had been returned to the Hearing Unit.

Based on this record of multiple attempts at notice of the hearing to Ms. Harris-Nock, I find that the Hearing Unit has made good faith and valid attempts at notice of this hearing to Ms. Harris-Nock as a matter of law. As noted above, it is possible that Ms. Harris-Nock has breached her duty to update the Board with current address information as is required of Board licensees. The Delaware Supreme Court has held in a case involving the Unemployment Insurance Appeals Board that "...there is a presumption that mailed matter, correctly addressed, stamped and mailed, was received by the party to whom it was addressed....There is a denial of due process only if the Board is at fault for the misdelivery. If notice is properly addressed by the agency and not received because of some fault of the party to whom it was addressed, the notice is still deemed sufficient." *Straley v. Advance Staffing, Inc.*, 984 A.2d 124, 2009 Del. LEXIS 557 at 3 (Del. 2009).

The primary purpose of the Board of Funeral Services is to protect the general public, and specifically those persons who are the direct recipients of regulated services, from unsafe funeral practices. 24 *Del. C.* §3100. In furtherance of that end, the Board is authorized to monitor complaints brought against licensees. *Id.* The Board is also authorized to adopt regulations which clarify sections of the Board of Funeral Services Act. 24 *Del. C.* §3105(a)(1). The Board is vested with the authority to conduct hearings and to impose professional discipline against its

licensees when the Board deems such action just and proper. 24 *Del. C.* §3105(a)(13), (14). These are all valid means and ends rationally related to the legitimate State purpose of protecting the public from those who would practice funeral services incompetently or unprofessionally.

Since the State has dismissed the legal claim alleged in para. 5 of its professional complaint, there remains one legal claim in the case. The State contends in para. 4 of the complaint that, by her actions, Ms. Harris-Nock has violated 24 *Del. C.* §3112(a)(2). That section of the Act provides for professional discipline if a licensee is found to have “(i)llegally, incompetently or negligently practiced funeral services.”

In the above factual findings, I have determined that the State has proven by a preponderance of the evidence that Ms. Harris-Nock failed or refused to deposit in trust the \$6,300 in pre-arrangement funds paid by M.G. with an insured financial institution. Nor were those funds used to purchase a qualified burial insurance policy. Rather, Ms. Harris-Nock exercised dominion and control over M.G.’s funds by depositing them, presumably without restriction, in the bank account of a “friend”. Ms. Harris-Nock did not attend the hearing and did not explain that choice, which she admitted was a mistake.

I conclude as a matter of law that Ms. Harris-Nock’s careless and selfish handling of M.G.’s pre-need funds constitutes the illegal practice of funeral services. In 2008 she was a licensed funeral director at the time when she mishandled and appropriated the \$6,300. Entering into a pre-need arrangement with M.G. falls under the definition of “funeral services” at 24 *Del. C.* §3101(7). The arrangement or contract with M.G. clearly involved the “sale of goods and services usual to arranging and directing funeral services.” *Id.* Further, a violation of the Delaware Preneed Funeral Contracts Act, 5 *Del. C.* Ch. 34, is punishable by a fine of not less than \$500 nor more than \$1,000. 5 *Del. C.* Sec. 3410.

I further conclude that Ms. Harris-Nock's misappropriation of M.G.'s pre-need funeral expenses constitutes the illegal practice of funeral services in another respect. The record in this case shows that Ms. Harris-Nock entered a plea of guilty to the crime of the theft of M.G.'s pre-need funds. A clear inference from this record is that Ms. Harris-Nock intended to misappropriate M.G.'s funds from the outset as she undertook to deposit those funds in the bank account of a friend rather than to properly deposit the funds in trust for M.G.'s future needs. During all or most of the period of time from November 2008 until her suspension by the Board in March 2014, she was an active Funeral Director licensee. Her theft of those funds was occurring at times when she stood in a fiduciary relationship with M.G. as trustee of the funds. I have found above that the handling by a licensee of pre-need funds on behalf of a client constitutes the practice of "funeral services" as a matter of law.

The record in this case does not state the specific dates on which individuals requested or demanded that Ms. Harris-Nock return the pre-need funds to M.G. or to his representatives. The record suggests that those demands occurred over an extended period prior to Ms. Dean's filing of the professional complaint in this case in April 2015. SX 2 at 11. Hence, she was exercising ownership over those funds to the exclusion of M.G. while she was an active licensee of the Board.

But even if her refusals to identify the location of M.G.'s pre-need funds or her refusals to return the funds to M.G. occurred after the Board had imposed a five-year suspension on her funeral license, in my opinion her continuing theft of the funds during that latter period still constituted the illegal practice of funeral services. That a licensee is under suspension does not excuse her from acting as a responsible Funeral Director if she undertakes to provide (or to continue to provide) funeral services during the period of her suspension. Such an exception

would lead to absurd results which would endanger the public safety and welfare. Based on this analysis, Ms. Harris-Nock's guilty plea and conviction for the theft of pre-need funds (regardless of when she refused to return the funds) constitutes the illegal practice of funeral services.

Since I have found that Ms. Harris-Nock's continuing exercise of personal control over pre-need funds paid to her in trust constituted the practice of funeral services, and assuming that her refusals to cooperate continued after the date of her long-term suspension, her actions in this case constitute a final form of illegal practice. In Delaware one may only engage in the practice of funeral services if qualified and duly licensed to do so. 24 *Del. C.* §3106(a). Further, if a licensee continues to practice funeral services while her license is suspended, such conduct is unlawful. 24 *Del. C.* §3106(c). If she continued to deal illegally in funds intended for the sale of goods and services usual to arranging and directing funeral services, then she was in clear violation of the prohibition in Sec. 3106(c).

I should add a final note on the withdrawal by the State of its legal claim in para. 5 of the complaint. Since the State withdrew that claim, I cannot recommend to the Board that the claim provide an additional basis for discipline in this case. In my view, however, a fair argument can be made that the claim had been proven by the State. Para. 5 of the complaint (now withdrawn) alleges that Ms. Harris-Nock has violated 24 *Del. C.* §3112(a)(3). That section of the Act provides for professional discipline if a licensee has been "convicted of a crime that is substantially related to the provision of funeral services or any offense which would limit the ability of the practitioner to carry out the practitioner's duties with due regard for the health and safety of the public...." *Id.*

The Board has listed those crimes which, in its sole discretion, the Board has deemed "substantially related to the provision of Funeral Services in the State of Delaware". Bd. Reg.

11.0 *et seq.* In para 5 the State alleged that Ms. Harris-Nock had violated Bd. Reg. 11.2. That regulation holds that license discipline may be imposed for the conviction of crimes not specifically listed in Bd. Reg. 11.1 *et seq.* but which are “substantially similar to the crimes identified in (Bd. Reg. 11.1).” The crime of “felony theft” in violation of 11 *Del. C. Sec.* 841 is specifically listed in the regulation. Bd. Reg. 11.1.46. The record in this case shows that Ms. Harris-Nock eventually entered a plea of guilty to “misdemeanor theft” under Sec. 841. That plea was the result of negotiations between Ms. Harris-Nock and the State which apparently reduced the value of Ms. Harris-Nock’s theft below \$1,500 and also eliminated the “age of victim” enhancement found in 11 *Del. C. Sec.* 841(c)(2).

In my opinion a fair argument could have been made that Ms. Harris-Nock had been convicted of a crime “substantially similar” to felony theft as listed at Bd. Reg. 11.1.46. But for the plea negotiation, the facts underlying the actual crime of theft committed in regard to M.G.’s pre-need funds would have clearly supported the original, enhanced charge of “felony theft” lodged against her. In fact, Ms. Harris-Nock’s guilty plea and conviction resulted in an order that she pay full restitution to M.G. in the amount of \$6,300. SX 2 at 27.

The level of discipline recommended below is significant but justified, in my view. This case and the prior disciplinary case filed against Ms. Harris-Nock demonstrate a pattern of conduct which involves dishonesty at the expense of members of the public who have entrusted important end-of-life matters to her. Ms. Harris-Nock apparently places her own selfish financial interests over those of the public whom she has pledged to serve. Board regulations concerning licensee ethics are pertinent here. A Funeral Director is charged with the obligation to support “legal regulations” and to employ “high moral and service standards” and “honesty” in all dealings with the public. Bd. Reg. 8.1.2. Licensees pledge support for “proper licensing

law". Bd. Reg. 8.1.4. In this case Ms. Harris-Nock has ignored those important ethical obligations. If she is permitted to return to practice at the end of her current suspension, there is a great likelihood that she will again place her selfish interests over the interests of the public. The Board's first obligation is to protect the general public. 24 *Del. C.* §3100.

Due process has been afforded in this case.

Recommendation

Based on the relevant evidence in this case and the findings of fact and conclusions of law set forth above, the following is recommended to the Board:

1. That the Delaware Board of Funeral Services order the termination of the five-year suspension of the Funeral Director license held by Ms. Deborah E. Harris-Nock which was ordered by the Board on March 2, 2014 in Board Case No.27-02-13;
2. That concurrent with the termination of said license suspension, the Board enter an order revoking the Funeral Director license issued to Ms. Harris-Nock;
3. That the Board impose a monetary penalty against Ms. Harris-Nock in the amount of \$500, with such penalty to be paid by her within 30 days of the date of the final order in this case in the form of a draft made payable to the "State of Delaware" and submitted to the Board;
4. That Ms. Harris-Nock be ordered to make an accounting to a person or persons designated by the Board within 30 days of the date of the final order of the Board of all pre-need funds paid to her or to Deborah E. Harris-Nock Funeral Services ("DHNFS") by any person, or paid to any other employee or agent of DHNFS, and which funds have not been applied to purchase a qualified burial insurance policy under 5 *Del. C.* Sec. 3402(d), or have not been deposited into a trust account with an insured financial institution pursuant to 5 *Del. C.* Sec. 3402(a);
5. That the Board reserve the right to take further necessary and proper action with regard to any such accounting submitted by Ms. Harris-Nock as circumstances may warrant;
6. That if the Board orders such accounting and Ms. Harris-Nock fails to make a proper and full accounting to the Board according to its order in this case, the Board reserve the right to direct the Division of Professional Regulation to issue subpoenas requiring the production of documents and requiring the testimony under oath of certain witnesses, including Ms. Harris-Nock;
7. That the final order in this case constitute public disciplinary action of the Board.

Dated: March 24, 2016



Roger A. Akin
Chief Hearing Officer