

City Cremations, Inc.

269 Chenango Street, Binghamton, New York 13901-2312

(607) 724-3023 Fax: (607) 773-1635

citycremations@aol.com

Cemetery ID 04-045

New York State Department of State
Division of Cemeteries
One Commerce Plaza, 5th Floor
99 Washington Avenue
Albany, NY 12231

RECEIVED
DIV. OF CEMETERIES

AUG 19 2021

ALBANY OFFICE
DEPARTMENT OF STATE

Regarding the letter of July 21, 2021:

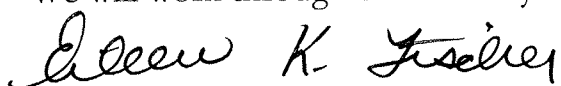
Substantive responses were sent to Brendon Stanton, Investigator in a timely fashion. The enclosed letters are the responses for Notices of Non-Compliance 1 and 2. In regards to Notices 3 and 4, responses were sent to the Division of Cemeteries but I am unable to recover them from my computer at this time.

It has been our understanding since we began operations, that our accountant, a C.P.A., was filing the necessary reports, audits and payments. As previously stated, we are engaging a new accounting firm and are in the process of retaining an attorney regarding these oversights.

It certainly isn't that we don't want to be compliant because we have always tried to follow all rules and regulations regarding the crematory's operations. We are disputing the penalties and fines for 2013, 2014, 2015, 2016, 2017, 2018 and 2019 regarding Annual Reports and Audit Reports. Additionally, we are disputing the penalties for the Non-Compliance Notices 1, 2 and 3a, b and c.

The penalties for Audit Reports and Annual Reports as currently detailed, would be insurmountable. There was never an intentional flouting of the laws and we are working to become compliant.

We will work through our attorney and accountant to resolve these issues.



Eileen K. Fischer, President

DIVISION OF CEMETERIES

STATE OF NEW YORK
DEPARTMENT OF STATE
123 WILLIAM STREET
NEW YORK, NY 10038
TELEPHONE: (212) 417-5708
FAX: (212) 417-2322
WWW.DOS.NY.GOV

ANDREW M. CUOMO
GOVERNOR

CEMETERY BOARD

ROSSANA ROSADO
SECRETARY OF STATE
CHAIR

LETITIA JAMES
ATTORNEY GENERAL

DR. HOWARD A. ZUCKER
COMMISSIONER OF HEALTH

July 21, 2021

Mr. Edward Fischer, Jr.
Ms. Eileen Fischer
City Cremations
269 Chenango Street
Binghamton, New York 13901

Ms. Delia Watkins
[REDACTED]

Re: City Cremations, No. 04-045
Notice of Proposed Penalty

Dear Officers and Directors:

The New York State Department of State, Division of Cemeteries (the Division) has issued three notices of non-compliance to City Cremations (the crematory), as described in greater detail below and in the accompanying notices of non-compliance.

To date, the Crematory has not remedied any of these instances of non-compliance or provided a substantive response indicating how it will come into compliance.

Notices of Non-Compliance

The Division has issued three notices of non-compliance to the Crematory (and an additional letter noting the Crematory's non-compliance):

1. Notice of Non-Compliance BNG-2020-0003 (August 10, 2020) (failure to obtain and retain signatures on cremation authorizations as required by Not-for-Profit Corporation Law (N-PCL) section 1502(o) and 19 NYCRR section 203.13(d);
2. Notice of Non-Compliance BNG-2021-0008 (April 8, 2021) (failure to make records available for inspection as required by 19 NYCRR section 203.13(e); and
3. Notice of Non-Compliance BNG-2021-0009 (April 15, 2021) (failure to file annual reports as required by N-PCL section 1508(a); failure to remit payments to the vandalism fund as required by N-PCL section 1507(h); failure to remit payments for administration as required by N-PCL section 1508(c); and failure to file a CPA audit report as required by 19 NYCRR Section 200.4).
4. Letter concerning non-compliance with filing and audit requirements (August 5, 2020)

Responses

The Crematory's responses have been inadequate and have not been verified, as directed by the Division in each notice of non-compliance.



Department
of State

Proposed Penalties

The Division proposes the following penalties:

1. \$1,000 for the violations detailed in Notice of Non-Compliance BNG-2020-0003, pursuant to N-PCL section 1504(d);
2. \$1,000 for the violations detailed in Notice of Non-Compliance BNG-2021-0008, pursuant to N-PCL section 1504(e);
3. \$20,000 pursuant to N-PCL section 1504(c) for the violations detailed in Notice of Non-Compliance BNG-2021-0009, as follows:
 - a. \$8,000 for failure to file annual reports; the Crematory has not filed annual reports for the years 2013-20 (eight years) and the proposed penalty represents \$1,000 per year;
 - b. \$6,000 for failure to pay vandalism fees required by N-PCL section 1507(h); the Crematory has not paid these fees for 2012 and from 2016-20 (six years) and the proposed penalty represents \$1,000 per year; and
 - c. \$6,000 for failure to pay the statutory assessment required by N-PCL section 1508(c); the Crematory has not paid these fees for 2012 and from 2016-20 (six years) and the proposed penalty represents \$1,000 per year.

In addition, by operation of N-PCL 1508(d), a fine of \$100 per day accrues for each day City Cremations has failed to file any required report. As of June 10, 2021, these penalties are as follows:

1. 2013 annual report: 2,644 days late, for a total penalty of \$264,400;
2. 2014 annual report: 2,279 days late, for a total penalty of \$227,900;
3. 2015 annual report: 1,914 days late, for a total penalty of \$191,400;
4. 2016 annual report: 1,532 days late, for a total penalty of \$153,200;
5. 2016 audit report: 1,532 days late, for a total penalty of \$153,200;
6. 2017 annual report: 1,167 days late, for a total penalty of \$116,700;
7. 2017 audit report: 1,167 days late, for a total penalty of \$116,700;
8. 2018 annual report: 802 days late, for a total penalty of \$80,200;
9. 2018 audit report: 802 days late, for a total penalty of \$80,200;
10. 2019 annual report: 437 days late, for a total penalty of \$43,700;
11. 2019 audit report: 437 days late, for a total penalty of \$43,700;
12. 2020 annual report: 71 days late, for a total penalty of \$7,100; and
13. 2020 audit report: 71 days late, for a total penalty of \$7,100.

You have a right under N-PCL section 1504(c)(4) to an adjudicatory hearing on these determinations and proposed penalties. In order to exercise that right, you are required to file a protest with the Cemetery Board within thirty days from the date of this letter. Please note the following procedures for challenging these determinations and proposed penalties:

19 NYCRR section 200.2 Applications for orders or determinations.

(a) All applications required to be made to the Cemetery Board for orders or determinations, except applications for approval of rates and charges or for authority to issue certificates of indebtedness, pursuant to sections 1509(a) - (e) and 1511(a) of the Not-for-Profit Corporation Law, shall be determined and the orders made by the director in the first instance.

(b) A party aggrieved, by an order or determination so made by the director, may file a protest with the Cemetery Board within 30 days after the effective date of such order or determination.

(c) If a protest be not filed with the Cemetery Board within 30 days after the effective date of the order or determination made by the director, said order or determination shall be considered the final order or determination of the Cemetery Board unless (1) the time to file a protest is, for good cause, extended by the Cemetery Board, or (2) the Cemetery Board, within 60 days after the effective date of the order or determination made by the director, shall upon its own action make an order or determination modifying, amending, supplementing or rescinding the order or determination of the director.

(d) The protest shall specify the objections to the subject order or determination. The board, in passing upon the protest, will consider only those objections so specified and may afford a hearing or limit the protestant to the filing of affidavits or memoranda.


(e) The filing and determination of a protest to the Cemetery Board shall be a prerequisite to obtaining judicial review of any order or determination made by the director under section 200.1 of this Part.

(f) Any protest not acted upon by the Cemetery Board within 60 days after the filing thereof shall be deemed to be denied in all respects.

This letter is sent without prejudice to the imposition of additional sanctions, including penalties, for violation of N-PCL Article 15 and the regulations promulgated thereunder. Your protest to the Cemetery Board, if any, should be sent to

New York State Department of State, Division of Cemeteries
One Commerce Plaza, 5th Floor
99 Washington Avenue
Albany, New York 12231

Very truly yours,



Lewis A. Polishook
Director

CITY CREMATIONS, INC.

273 Chenango Street
Binghamton, New York 13901-2312
Phone (607) 724-3023 Fax (607) 773-1635
citycremations@aol.com
Cemetery Id: 0-4045

To: Brendon Stanton
Division of Cemeteries
44 Hawley Street
Binghamton, NY 13901

September 16, 2020

Re: Non-Compliance Number: BNG-2020-00003

Action has been taken regarding the non-compliance complaint. I have advised my staff that they must carefully review all cremation authorizations to ensure that they are correctly and fully completed.

In regards to the docu-signed authorizations, I am advising my funeral home clients that they must provide the so-called "wet ink" copy in addition to the photocopied or docu-signed authorizations.

The most glaring issue that was not addressed during the inspection is how to make the funeral homes compliant. I rely on their cooperation but I have no reasonable means of enforcing this rule. My options seem to be limited to nagging the funeral director, thereby antagonizing him; refusing to cremate any further cremations if he fails to produce an original signature from a previous cremation; or I can simply shut my doors and mail you the key.

I am agitated, to say the least. It's easy to enact rules and laws without any further governance. If inspectors think they will be able to accomplish this task in my stead, I welcome their assistance. The fact remains that I have already lost fifty per cent of my business to a low-budget Pennsylvania crematory without New York's exacting standards.. I don't see how I can comply without antagonizing my funeral homes by pushing this issue.

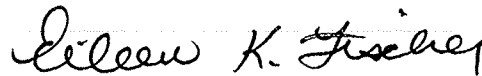
I can request their good-will and compliance but I cannot enforce it.

My funeral directors already think I'm very picky with the authorizations and I certainly try. I believe everyone certified through City Cremations, Inc. wants to uphold our high standards.

I know the Division of Cemeteries had an issue with a funeral director that refused to identify her alternative containers as cardboard. The Division of Cemeteries didn't prevail because she still will not put "cardboard" on her authorizations. The other funeral directors in that firm amend the authorizations before I accept them.

So, some additional guidance would be welcome. Regrettably, until then, I am sure this issue will be repeated.

With all due respect,
Eileen K. Fischer, President

A handwritten signature in cursive script that reads "Eileen K. Fischer". The signature is written in black ink and is positioned to the right of the typed name.

CITY CREMATIONS, INC.
273 Chenango Street
Binghamton, New York 13901-2312
Phone (607) 724-3023 Fax (607) 773-1635
citycremations@aol.com
Cemetery Id: 0-4045

Brendon Stanton
Investigator
Division of Cemeteries

Re: Non-compliance number BNG-2021-00008

May 3, 2021

Brendon:

Regarding your notice of non-compliance, what you heard was not a cremation actually taking place but the sound of the unit in cool-down mode. The actual cremation itself had been completed when I was called away for an urgent matter. I do not sit in the crematory watching the temperature drop and believed it was safe to leave at that time.

I had to meet with a plumber at my daughter's house since there had been a broken pipe in an upstairs bathroom. The subsequent day long leak totally saturated the kitchen ceiling and was leaking into a light fixture. This was an actual emergency and required my attention since my daughter was unable to respond. Someone had to shut off the water and let the plumber in.

However, much of the problem you contributed to that day. Yes, you called the funeral home number and reached the answering service. You identified yourself but did not express a need for an immediate call back and you did not call a second time to say that you needed to speak to me right away.

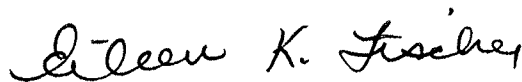
I had forwarded the phone to the answering service and instructed them to hold calls and to call my cell with emergencies only. Simply identifying yourself was not sufficient for the answering service to believe there was an emergency, especially since you didn't call back expressing a need to have me call you right away.

As far as a trained operator being on the premises, Edward Fischer, Jr., a duly certified operator was at the funeral home. Unfortunately, if you rang the doorbell, he did not hear it or he would have come downstairs.

It is not my practice to abandon my responsibilities but sometimes circumstances demand I am not always on the premises. Since you saw it necessary to notify the DEC before talking to me, I will forward this message to them also.

When you call and end up talking to the answering service, please state the nature of the call and how urgently you need a call back. They can then contact me and I will return the call.

Eileen K. Fischer
President, City Cremations, Inc.

A handwritten signature in cursive script that reads "Eileen K. Fischer".