

DIVISION OF CEMETERIES

STATE OF NEW YORK
DEPARTMENT OF STATE
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ANDREW M. CUOMO
GOVERNOR

CEMETERY BOARD

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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.

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, 5^h Floor
99 Washington Avenue
Albany, New York 12231

Very truly yours,



Lewis A. Polishook
Director

DIVISION OF CEMETERIES

STATE OF NEW YORK
DEPARTMENT OF STATE
STATE OFFICE BUILDING
44 HAWLEY STREET
BINGHAMTON, NY 13901
TELEPHONE: (607) 721-8756
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DR. HOWARD A. ZUCKER
COMMISSIONER OF HEALTH

TO: New York State Cemetery Board
FROM: Brendon Stanton, Investigator
SUBJECT: City Cremations, #04-045
RE: Continued Non-Compliance
DATE: May 27, 2021

Exhibits

- a) Notice of Non-Compliance BNG-2020-0003 and response
- b) Notice of Non-Compliance BNG-2021-00008 and response
- c) Notice of Non-Compliance BNG-2021-00009 and response
- d) August 5, 2020 Letter of Division Senior Accountant Andrew Hickey

Introduction

City Cremations of the City of Binghamton, Broome County, is grossly out of compliance with several sections of the Not-for-Profit Corporation Law as well 19 NYCRR Parts 200 and 203. In addition, the crematory has continually failed to respond to Notices of Non-Compliance issued by the Division, and when responses have finally been solicited, have failed to remedy the non-compliance identified. We propose to issue a notice of violation proposing penalties of \$1,000.00 per violation, for a total of \$22,000.00. In addition, by operation of law, a fine of \$100 per day accrues for each day City Cremations is out of compliance.

Failure to Pay Vandalism and Assessment Fees: N-PCL sections 1507(h) and 1508(c)

City Cremations has not remitted payment for vandalism and assessment fees for the years 2012, 2016, 2017, 2018, 2019, or 2020. As referenced above, Division Senior Accountant Hickey's letter of August 5, 2020 stated that the crematory needed to come into compliance by remitting payments for 2012, 2016, 2017, 2018, and 2019 "within 30 days from the day of this letter." To date, the crematory has not submitted those payments, and has additionally failed to remit its required payments for 2020.

Failure to File Annual Reports: N-PCL section 1508(a)

City Cremations has not filed its required annual report for the years 2013, 2014, 2015, 2016, 2017, 2018, 2019, or 2020. Division Senior Accountant Andrew Hickey sent a letter to the crematory dated August 5, 2020, stating that the crematory needed to come into compliance by

filing these reports. Ms. Eileen Fischer responded by email that she would reach out to Division Senior Accountant Hickey to discuss the matter but has not done so to date.

Failure to File CPA Financial Report: 19 NYCRR section 200.4

City Cremations is a non-traditional cemetery corporation. 19 NYCRR section 200.4, which went into effect in 2016, requires such cemetery corporations to have its finances audited by a certified public accountant. City Cremations has not submitted the required CPA financial reports for the years 2016, 2017, 2018, 2019, or 2020. As referenced above, Division Senior Accountant Hickey's letter of August 5, 2020, stated that the crematory needed to provide these reports on or before October 5, 2020, or respond stating when they would be available. To date, the crematory has not provided these reports.

Incomplete Cremation Authorization Forms: 19 NYCRR section 203.13(c-d)

As part of the Division's field inspections of crematories, Division investigators review Cremation Authorization Forms received by the crematory to make sure they have been completed properly. City Cremations has been issued Notices of Non-Compliance in both 2017 and 2018 for a large number of incomplete forms. Some improvement was found on the 2020 inspection but there are still instances of non-compliance where forms have been found to be incomplete in one or more ways:

1. A significant number of Cremation Authorization Forms do not properly describe the material of the container in which the remains are delivered. The crematory stated in a 2020 response to a Notice of Non-Compliance, regarding a particular funeral director, that "The Division of Cemeteries didn't prevail because she still will not put 'cardboard' on her authorizations." This speaks to the crematory's abject unwillingness to accept responsibility for its violations and failure to understand that the Division's issues are with the crematory, not the funeral director.
2. The crematory also continued to accept Cremation Authorization Forms that had been signed electronically, despite verbal reminders as well as repeated written communication from the Division that such signatures were not valid.
3. The crematory has accepted a number of cremations in which the authorization was faxed or scanned and emailed, but failed to obtain the original after the fact and add it to the crematory's permanent file as required by regulation.

Availability of Records for Inspection: 19 NYCRR section 203.13(e)

City Cremations has, in recent years, proven difficult to inspect. Division investigators attempt to inspect crematories on an unannounced basis, to provide a better look at the normal state of operations within the crematory. Unfortunately, I have been turned away from City Cremations when I attempted to perform a field inspection on multiple occasions. The crematory is associated with Fischer-Scholder Funeral Home, and appears to have two primary operators, Eileen Fischer and Edward Fischer. I am informed by Division Director Lewis Polishook that in 2014 he and Division Senior Investigator Michael Seelman were denied access to the crematory; they were informed that Edward Fischer had been taken to the hospital and therefore could not go to the crematory.

On April 8, 2021, I attempted to inspect the crematory. When I arrived, I observed what appeared to be emissions associated with an active cremation venting from the crematory's stacks. I called the crematory's contact number and got an answering service for the funeral home. I waited 30 minutes and received no return telephone call, nor did anybody arrive at the crematory. This incident was also reported to the state's Department of Environmental Conservation for investigation into potential violations of 6 NYCRR section 219-4.6, which

requires a certified crematory operator to be present at the time a cremation is taking place.

Failure to Timely Respond to Notices of Non-Compliance

The crematory has failed to respond to the past five Notices of Non-Compliance issued by the Division before the deadline prescribed within the Notice of Non-Compliance. In 2017 (8 days), 2018 (22 days), and 2020 (19 days), the crematory failed to respond until I called to request the response. The crematory additionally failed to respond to a 2021 Notice of Non-Compliance, which was returnable on or before May 3, 2021, until May 17, 2021.

Notice of Non-Compliance BNG-2021-00009 was sent by certified mail on April 15, 2021 for this very reason. The notice was first sent directly to the crematory, the address for which is 273 Chenango Street. This mailing was refused and returned. The notice was subsequently sent on April 21, 2021 to the funeral home address, 269 Chenango Street, where it was accepted. The 273 Chenango Street address continues to appear on the crematory's letterhead.

Unacceptable Responses to Notices of Non-Compliance

The crematory was issued two Notices of Non-Compliance in 2021: BNG-2021-00008 to address the violation of 19 NYCRR section 203.13(e), and BNG-2021-00009 to address the other violations. In its late response to BNG-2021-00008, the crematory failed to take responsibility for its violation, blamed me for not contacting them correctly, and did not include a plan to correct such non-compliance, as requested. The response stated that I was at fault for the violation for failure to "express a need for an immediate call back" and additionally for failing to "call a second time to say that you needed to speak to me right away." Both of these points are irrelevant, because by simply not being available at the crematory during normal business hours for inspection, the crematory had already violated 19 NYCRR section 203.13(e). However, when I called the number associated with the crematory, I stated to the answering service that I was at the crematory presently to perform an inspection. The miscommunication between this individual and the crematory operator has no bearing on the matter. Furthermore, not only did the crematory not call me back then or appear to allow me to perform the inspection, but they have not returned that call to date.

In its response to BNG-2021-00009, the crematory did not individually address the violations listed nor take responsibility for them; instead, it stated that it had been unable to contact its accountant and would be hiring a new one. This response too failed to provide any plan to correct such non-compliance, as requested. It is the responsibility of the cemetery, not its accountant, to comply with the law.

Failure to Have a Certified Operator on Premises

As I stated above, Edward and Eileen Fischer are the crematory's primary certified crematory operators. The crematory has four other operators. However, in its response to Notice of Non-Compliance BNG-2021-00008, the crematory indicated that, "As far as a trained operator being on the premises, Edward Fischer, Jr., a duly certified operator was at the funeral home." As stated above, the funeral home and the crematory are separate buildings, so it is not clear whether a certified operator's presence inside the funeral home would even constitute having a certified operator on site. The requirement that a certified operator be on site finds its source in regulations issued by the Department of Environmental Conservation (DEC) so the Division has not attempted to determine whether having the licensed operator next door would constitute compliance.

Conclusion

Based on the crematory's failure to respond to correspondence from Division staff, and its failure to comply with the above statutes and regulations, it is clear that some further action is necessary. For that reason, I am referring this matter to the Cemetery Board for consideration of a financial penalty. The Cemetery Board may impose a financial penalty following an adjudicatory hearing held pursuant to the provisions of the State Administrative Procedures Act. The Division recommends a penalty pursuant to N-PCL section 1504(c)(4) of \$22,000.00: \$1,000.00 for the 2020 violation of 19 NYCRR sections 203.13(c) and 203.13(d); \$8,000.00 for the eight violations of N-PCL section 1508(a) listed above (combined with the failures to file audited financials); \$6,000.00 for the six violations of N-PCL sections 1507(h) listed above; \$6,000.00 for the six violations of N-PCL section 1508(c) listed above; and \$1,000.00 for the violation of 19 NYCRR section 201.13(e) listed above. Pursuant to N-PCL section 1508(d), the crematory is also liable for a penalty of \$100 per day for each day its reports have remained delinquent and that it has failed to respond to requests for additional reports. As of May 27, 2021, this has accumulated to \$1,065,900.00.

Exhibit A

DIVISION OF CEMETERIES

STATE OF NEW YORK
DEPARTMENT OF STATE
STATE OFFICE BUILDING
44 HAWLEY STREET
BINGHAMTON, NY 13903
TELEPHONE: (607) 721-8756
FAX: (607) 721-8753
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COMMISSIONER OF HEALTH

NOTICE OF NON-COMPLIANCE

Non-Compliance Number: BNG-2021-00008

Crematory Name: **City Cremations**

Crematory Number: #04-045

Served on: **Eileen Fischer, operator**
273 Chenango Street
Binghamton, NY 13901

A written statement of compliance is required by **May 3, 2021**. Failure to respond will result in formal notification to the New York State Cemetery Board.

You are hereby ordered to correct such non-compliance and to show proof that violations have been corrected. Your notice of compliance is to be sent to the district office located at the above address.

The above mentioned crematory was found to be out of compliance with the laws and regulations of New York State as follows:

§ 203.13 Crematory Records

(e) All crematory records, including records required by any federal, state or local government law or agency, as well as price lists, authorizations, crematory rules and regulations and other documents related to the practice of cremation, shall be open and available for inspection and copying during regular business hours by the Division of Cemeteries or its authorized representatives, in the discharge of their official duties.

Specific information: On April 8, 2021, I attempted to perform a field inspection of City Cremations of the city of Binghamton, Broome County. I arrived at 2:30 PM and found nobody to be present. I called the number for the crematory and reached an answering service. I waited on site until 3:00 PM, and had not received a return call as of 4:00 PM. Crematory inspections occur unannounced during regular business hours and the crematory must ensure that someone be reasonably available to allow such inspections to occur. Furthermore, cremation retorts were in operation with no certified operator present, which stands in violation of the Department of Environmental Conservation regulation 6 NYCRR 219-4.6(a).

I affirm that I identified this non-compliance with the Not for Profit Corporation Law on April 8, 2021.



Brendon Stanton
Investigator, NYS Department of State
Division of Cemeteries

By authority of 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

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.

Exhibit B

DIVISION OF CEMETERIES

STATE OF NEW YORK
DEPARTMENT OF STATE
STATE OFFICE BUILDING
44 HAWLEY STREET
BINGHAMTON, NY 13903
TELEPHONE: (607) 721-8756
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COMMISSIONER OF HEALTH

NOTICE OF NON-COMPLIANCE

Non-Compliance Number: BNG-2021-00009

Crematory Name: **City Cremations**

Crematory Number: #04-045

Served on: **Eileen Fischer, operator**

273 Chenango Street

Binghamton, NY 13901

A written statement of compliance is required by **May 3, 2021**. Failure to respond will result in formal notification to the New York State Cemetery Board.

You are hereby ordered to correct such non-compliance and to show proof that violations have been corrected. Your notice of compliance is to be sent to the district office located at the above address.

The above mentioned crematory was found to be out of compliance with the laws and regulations of New York State as follows:

§ 1507. Trust funds

(h) Vandalism, abandonment and monument repair or removal. (1) Cemeteries incorporated under this article shall contribute to a fund created pursuant to section ninety-seven-r of the state finance law for the maintenance of abandoned cemeteries, including the construction of cemetery fences, placement of cemetery lights and replacement of cemetery doors and locks, for the restoration of property damaged by acts of vandalism, and for the repair or removal of monuments or other markers not owned by the cemetery corporation that have fallen into disrepair or dilapidation so as to create a dangerous condition. Such fund shall be administered by a board of trustees comprised of the secretary of state, the attorney general and the commissioner of health, or their designees, who shall serve without additional compensation.

(2) The fund shall be financed by contributions by the cemetery corporations of not more than five dollars (\$5.00) per interment or cremation in a manner to be determined by the New York state cemetery board. No contributions shall be collected upon the interment of the remains of a deceased person where a contribution was collected upon cremations.



Department
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§ 1508. Reports by cemeteries

(a) Annual report. Each cemetery corporation shall, on or before the fifteenth day of March after the end of its calendar year, or if on a fiscal year the seventy-fifth day after the close of such year, file with the cemetery board (1) a statement as to the condition of the permanent maintenance trust fund and a schedule of the assets of such fund. (2) a statement as to the condition of the perpetual care fund and a schedule of the assets of such fund. (3) a statement as to the condition of the moneys and properties received by the cemetery corporation in trust under the provisions of subdivisions (f) and (g) of section fifteen hundred seven of this article. (4) a statement of the gross proceeds of the sale of plots, lots and parts thereof, graves, niches and crypts showing the disposition of such proceeds and (5) a statement of changes in the number and amount of certificates of indebtedness in accordance with the provisions of paragraph three of subdivision (a) of section fifteen hundred eleven of this article. (6) a statement as to the condition of the monument maintenance fund, if any, and a schedule of the assets of such fund.

(b) Additional reports. The cemetery board may address to any cemetery corporations or its officers or any person any inquiry in relation to the transactions or conditions of the cemetery corporation or any matter connected therewith, and may require that a reply be verified. Failure to submit such reply within the time designated by the cemetery board shall subject the corporation, officer or person so addressed to the penalties provided in subdivision (d) hereof.

(c) Cemetery payment for administration. To defray the expenses of examination and administration, each cemetery corporation shall not later than March fifteenth in each calendar year, pay to the cemetery board the sum of three dollars per interment and cremation in excess of fifteen interments or cremations for the preceding calendar year. No contribution shall be collected upon the interment of the remains of a deceased person where a contribution was collected upon cremation.

(d) Failure to file report. Any cemetery corporation or individual failing to file any report or any schedule of rules, regulations and charges required by this article shall forfeit to the people of the state the sum of one hundred dollars for each day that each such report shall be delayed or withheld, except that the cemetery board may extend the time for filing any such report and may waive payment of any penalty or part thereof provided herein.

§ 200.4 CPA financial reports

(a) Every medium cemetery corporation shall file a CPA financial review with the division within 90 days following the close of the cemetery's fiscal year. The review shall be conducted by an independent certified public accountant or an independent enrolled public accountant. It shall be supplemented by the following data:

(1) a description of the extent of the physical examination of the cash and investments;

(2) a statement concerning the internal controls for safeguarding the cash and investments;

(3) a statement concerning compliance with N-PCL section 1507(c) and (d) indicating whether separate accounts are maintained for each perpetual care endowment, reflecting the principal amount, the income apportioned for the year, the cost of care charged for the year, and the excess of income credited to such account to be used in future years;

(4) a statement concerning the accountability for the permanent maintenance fund, indicating whether the cemetery's records separately identify cumulative principal reflecting allocations from the proceeds of the sales of lots and from supplemental sources, cumulative capital gains or losses from investments, and the retained income available for the maintenance and preservation of the cemetery; and

(5) a statement concerning the accountability for the perpetual care fund, indicating whether the cemetery's records separately identify cumulative principal for endowment, cumulative capital gains or losses, and the cumulative income retained for use in future years.



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(b) Every large and non-traditional cemetery corporation shall file a CPA financial audit with the division within 90 days following the close of the cemetery's fiscal year. The audit shall be conducted by an independent certified public accountant or an independent enrolled public accountant expressing an opinion in connection with the financial statement filed with the division. The opinion shall be supplemented by the following data if applicable to the filing cemetery:

(1) a description of the extent of the physical examination of the cash and investments;

(2) a statement concerning the internal controls for safeguarding the cash and investments;

(3) a statement concerning compliance with N-PCL section 1507(c) and (d) indicating whether separate accounts are maintained for each perpetual care endowment, reflecting the principal amount, the income apportioned for the year, the cost of care charged for the year, and the excess of income credited to such account to be used in future years;

(4) a statement concerning the accountability for the permanent maintenance fund, indicating whether the cemetery's records separately identify cumulative principal reflecting allocations from the proceeds of the sales of lots and from supplemental sources, cumulative capital gains or losses from investments, and the retained income available for the maintenance and preservation of the cemetery; and

(5) a statement concerning the accountability for the perpetual care fund, indicating whether the cemetery's records separately identify cumulative principal for endowment, cumulative capital gains or losses, and the cumulative income retained for use in future years.

(c) For any non-traditional cemetery, the opinion shall also be supplemented by the following data if applicable to the filing cemetery:

(1) a statement indicating whether funds, accounts, assets, and liabilities of the cemetery corporation are kept separate and distinct from the funds, accounts, assets, and liabilities of any related for-profit entity;

(2) a statement indicating whether the income and expenses of the cemetery corporation are kept separate and distinct from the income and expenses of any related for-profit entity; and

(3) a statement indicating whether any transaction between the cemetery corporation and any related for-profit entity are arm's length, fair and reasonable.

(d) The division may, upon application by a medium or large cemetery, modify the reporting requirements for such cemetery if the cemetery demonstrates to the satisfaction of the division that the requirements of this section and the cost of compliance are onerous and unreasonable and may, upon evidence of possible financial irregularity or non-compliance, order a small or medium cemetery to comply with the requirements of subdivision (b) of this section.



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of State**

Specific information: It has come to the Division's attention that City Cremations of the city of Binghamton, Broome County, is out of compliance with multiple provisions of both the Not-for Profit Corporation Law (N-PCL) as well as the Rules of Procedure of the State Cemetery Board. Specifically:

- City Cremations has not filed an annual report as required by N-PCL section 1508(a) for the years 2013, 2014, 2015, 2016, 2017, 2018, 2019, and 2020, resulting in a statutory \$1,029,100 fine pursuant to NPL 1508(d).
- City Cremations has not remitted payments to the vandalism fund as required by NPL 1507(h) for the years 2012, 2016, 2017, 2018, 2019, and 2020.
- City Cremations has not remitted payments for administration as required by NPL 1508(c) for the years 2012, 2016, 2017, 2018, 2019, and 2020.
- City Cremations has not submitted the CPA audit required by 19 NYCRR Section 200.4 for the years 2016, 2017, 2018, 2019, or 2020.



Lewis A. Polishook
Director, Division of Cemeteries

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

May 17, 2021

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

Re: Non-compliance Number: BNG-2021-00009

I am in the process of ascertaining what reports are actually missing. Our accountant has been given all the information to prepare Annual Reports and CPA financial reports. He has been paid for them but I have been unable to contact him.

I don't know if he has retired or is simply not doing accounting work for this crematory and the Fischer-Scholder Funeral Home, Inc. I am attempting to hire a new accountant/accounting firm but have had extreme difficulty doing so at this season.

I have sent a written request to our (former) accountant asking him to send to you the past documents that he was already paid to prepare. As soon as a new accountant has been retained and has obtained past records, we will review them and prepare any reports that were not properly filed.

Respectfully,

Eileen K. Fischer

Exhibit C

DIVISION OF CEMETERIES

STATE OF NEW YORK
DEPARTMENT OF STATE
STATE OFFICE BUILDING
44 HAWLEY STREET
BINGHAMTON, NY 13903
TELEPHONE: (607) 721-8756
FAX: (607) 721-8753
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

NOTICE OF NON-COMPLIANCE

Non-Compliance Number: BNG-2020-00003

Cemetery Name: **City Cremations**

Cemetery Number: #04-045

Served on: **Eileen Fischer, operator**
273 Chenango St.
Binghamton, NY 13901

A written statement of compliance is required by **August 28, 2020**. Failure to respond will result in formal notification to the New York State Cemetery Board.

You are hereby ordered to correct such non-compliance and to show proof that violations have been corrected. Your notice of compliance is to be sent to the district office located at the above address.

The above mentioned crematory was found to be out of compliance with the laws and regulations of New York State as follows:

§ 203.13 Crematory Records

(d) The completed cremation authorization form shall be retained in the permanent file of the crematory.

STT § 307. Exceptions

This article shall not apply:

1. To any document providing for the disposition of an individual's person or property upon death or incompetence, or appointing a fiduciary of an individual's person or property, including, without limitation, wills, trusts, decisions consenting to orders not to resuscitate, powers of attorney and health care proxies, with the exception of: (a) contractual beneficiary designations; and (b) the registration of making, amending, or revoking an anatomical gift under section forty-three hundred ten of the public health law .

Specific information: On August 6, 2020, I performed a field inspection of City Cremations of the city of Binghamton, Broome County. During the course of this field inspection, I reviewed the crematory's file of authorization forms. Among the authorization forms I reviewed, I identified four which had been faxed to the crematory but did not have an original form attached at a later date. While the Division allows for cremation to occur upon receipt of a faxed form, the original must be added to the file as soon as practicable. Furthermore, these forms must be notarized if they are not signed in the presence of the funeral director.

Additionally, I discovered five authorization forms which had been submitted using the DocuSign system, and had no original signatures or initials by the authorizing agent. This is explicitly prohibited by the State Technology Law. Cremation authorization forms, and all other paperwork dealing with the disposition of a person, must have an original, "wet ink" signature. The crematory must ensure that all authorization forms have been signed by hand before accepting a body for cremation.

I affirm that I identified this non-compliance with the Not for Profit Corporation Law on August 6, 2020.



Brendon Stanton
Investigator, NYS Department of State
Division of Cemeteries

By authority of Lewis A. Polishook, director

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

Exhibit D

DIVISION OF CEMETERIES

STATE OF NEW YORK
DEPARTMENT OF STATE
123 WILLIAM STREET
NEW YORK, NY 10038
TELEPHONE: (212) 417-5713
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

August 5, 2020

City Cremations, Inc.
269 Chenango Street
Binghamton, NY 13901
Attention: Eileen Fischer

Re: Cemetery # 04-045 Compliance with Rules of Procedure of State Cemetery Board

Dear Mrs. Fischer:

We write concerning the failure of City Cremations (the Crematory) to comply with applicable statutes and regulations.

Vandalism and Assessment Fee

A review of our records indicates we have not received remittance for the year(s): 2012, 2016, 2017, 2018 and 2019.

Vandalism and assessment are required to be remitted according to Article 15, § 1507(h) and § 1508(c), respectively. You must remit within 30 days from the day of this letter, for the year(s) indicated, the total fees. Failure to remit the fees may result in assessment of penalty by the New York state Cemetery Board.

Annual Report Requirement

A review of our records indicates we have not received annual reports for 2017, 2018 and 2019.

Annual reports are required to be filed before the thirtieth day of March after the end of its calendar year, or if on a fiscal year the ninetieth day after the close of such year, according to Article 15, §1508(a).

Audit Requirement

A review of our records also indicates we have not received required CPA financial audit reports for 2016, 2017, 2018 or 2019.

The Rule of Procedure of the State Cemetery Board, 19 NYCRR § 200.4(b), require all cemetery corporations that do not offer and have never offered in ground burial to “file a CPA financial audit with the division within 90 days following the close of the cemetery’s fiscal year. The audit shall be conducted by an independent certified public accountant or an independent enrolled public accountant expressing an opinion in connection with the financial statement filed with the division.”

That regulation and 19 NYCRR § 200.4(c) require that the CPA financial audit be supplemented in various specified ways. For your convenience, we have enclosed copies of the relevant regulatory provisions.

The Not-for-Profit Corporation Law provides that cemetery corporations, including crematories, that fail to file any report, or any schedule of rules, regulations and charges required by” law may be subject to a financial penalty.

Please inform the Division of Cemeteries if trustees feel the 2016 thru 2019 annual reports and related audits cannot be completed and submitted to the Division of Cemeteries by October 5, 2020.

Note, if your records indicate you have already filed annual reports and remitted fees, please notify the Albany office as soon as possible and provide copies of the supporting documentation.

Related Party Transactions

Section 715 of the Not-for-Profit Corporation Law requires imposes various requirements on not-for-profit corporations, including the Crematory, concerning “related party” transactions. Part of this statute requires review and approval of such transactions by trustees who are not affiliated with or related to the “related party.” In cases of transactions between crematories that are “grandfathered standalones” and the associated funeral home and crematories connected with any other for-profit entity, it is impossible to comply with the law unless the not-for-profit corporation has trustees who are independent of the associated funeral home or vault company.

Within 60 days of the date of this letter, please respond in writing providing the Division with a list of trustees, indicating those who are affiliated with the associated funeral home or vault company and those who are independent. Please also indicate which of your officers or trustees are funeral directors. For those officers or trustees, please indicate (1) the funeral home or trade service with which they are affiliated; and (2) their funeral entity affiliation, if any, as of January 1, 1998.

If you do not already have any independent trustees, within 60 days of the date of this letter, please inform the Division how you will, consistent with your articles of incorporation and bylaws, change the composition of your board to allow for the presence of independent directors who can exercise those functions required of them by statute or demonstrate that you already have independent trustees.

Please feel free to call me at 607-721-8759 with any questions.

Very truly yours,

Andrew Hickey
Senior Accountant

Note 1: The opinion shall be supplemented by the following data if applicable to the filing cemetery: (1) a description of the extent of the physical examination of the cash and investments; (2) a statement concerning the internal controls for safeguarding the cash and investments; (3) a statement concerning compliance with N-PCL section 1507(c) and (d) indicating whether separate accounts are maintained for each perpetual care endowment reflecting the principal amount, the income apportioned for the year, the cost of care charged for the year, and the excess of income credited to such account to be used in future years; (4) a statement concerning the accountability for the permanent maintenance fund, indicating whether the cemetery's records separately identify cumulative principal reflecting allocations from the proceeds of the sales of lots and from supplemental sources, cumulative capital gains or losses from investments, and the retained income available for the maintenance and preservation of the cemetery; and (5) a statement concerning the accountability for the perpetual care fund, indicating whether the cemetery's records separately identify cumulative principal for endowment, cumulative capital gains or losses, and the cumulative income retained for use in future years.

(c) For any non-traditional cemetery, the opinion shall also be supplemented by the following data if applicable to the filing cemetery:

(1) a statement indicating whether funds, accounts, assets, and liabilities of the cemetery corporation are kept separate and distinct from the funds, accounts, assets, and liabilities of any related for-profit entity;

(2) a statement indicating whether the income and expenses of the cemetery corporation are kept separate and distinct from the income and expenses of any related for-profit entity; and

(3) a statement indicating whether any transaction between the cemetery corporation and any related for-profit entity are arm's length, fair and reasonable.