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REV. JE/ROYA/SUNSET

IN THE DISTRICT COURT OF LEAVENWORTH COUNTY, KANSAS

STATE OF KANSAS, ex rel. )  
CARLA J. STOVALL, Attorney General, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
LARRY FOX, d/b/a )  
NATIONAL CEMETERY MANAGEMENT )  
GROUP, INC. and SUNSET MEMORY )  
GARDENS )  
 )  
Defendant. )

Case No. 9410 CV 00525

JOURNAL ENTRY

NOW ON this 19th day of June, 1995, the matter comes before the court for trial. The plaintiff, State of Kansas ex rel. Carla J. Stovall, Attorney General, appears by and through counsel Roy T. Artman, Assistant Attorney General. The defendant appears pro se.

The Court being fully advised finds as follows:

1. Plaintiff filed its original petition on October 3, 1994.

2. Defendant was served with process by personal service on October 4, 1994. The Court has jurisdiction over the parties and the subject matter.

3. This action was brought by the Attorney General of the State of Kansas, Robert T. Stephan, as part of his enforcement duties under the Kansas Cemetery Merchandise Act, K.S.A. 16-320 et seq., and the Kansas Cemetery Corporations Act, K.S.A. 17-1301 et seq.

4. Carla J. Stovall is the duly elected, qualified and acting Attorney General of the State of Kansas. Carla J. Stovall succeeded Robert T. Stephan as Attorney General of the State of Kansas on January 9, 1995.

5. Defendant Larry Fox is an individual who did business in Kansas as Sunset Memory Gardens and National Cemetery Management Inc., from on or about January 1992 to approximately November 1993.

6. Robert Myers, a representative of the Kansas Secretary of State, audited the financial records, books and accounts of Sunset Memory Gardens on February 16, 1994, pursuant to the authority granted by K.S.A. 16-325 and K.S.A. 17-1312a. As a result of this audit, Robert Myer's findings were reduced to writing as provided for by K.S.A. 17-1312.

7. The above referenced audit revealed deficiencies in Sunset Memory Garden's trust accounts. Pursuant to K.S.A. 16-327, the Secretary of State requested the Attorney General's assistance in recovering these deficient amounts.

8. Defendant entered into prepaid cemetery merchandise contracts with various Kansas consumers for the sale of mausoleum spaces located at Sunset Memory Gardens Cemetery.

9. Defendant, from on or about February 1992 to approximately November 1993, sold twenty-five (25) mausoleum spaces located at Sunset Memory Gardens Cemetery to various Kansas residents. Each mausoleum space was under construction at the time of sale.

10. Defendant failed to deposit 110% of the wholesale cost of construction of the mausoleum spaces into Sunset Memory Garden's Merchandise trust fund.

11. As a result of the acts described in Paragraphs #8 through #10, above, a deficiency exists in Sunset Memory Garden's Merchandise trust fund in the amount of \$14,259.09.

12. Defendant, from on or about February 1992 to approximately November 1993, entered into agreements and contracts with various Kansas consumers for the sale of burial spaces located at Sunset Memory Gardens Cemetery.

13. Defendant failed to deposit 15% of the purchase price of the above described burial spaces in Sunset Memory Garden's Permanent Maintenance trust fund.

14. As a result of the acts described in Paragraphs #12 and #13, above, a deficiency exists in Sunset Memory Garden's Permanent Maintenance trust fund in the amount of \$1,732.50.

15. Defendant, from on or about February 1992 to November approximately November 1993, entered into pre-need agreements and contracts with various Kansas consumers for the furnishing of personal property, funeral services, and burial merchandise. These agreements and contracts included services for the opening and closing of graves upon need.

16. Defendant failed to deposit those funds received under the agreements and contracts described in Paragraph #15, above, which related to the opening and closing of graves into Sunset Memory Garden's Pre-Need Opening and Closing trust fund.

17. As a result of the acts described in Paragraphs #15 and #16, above, a deficiency exists in Sunset Memory Garden's Pre-need Opening and Closing trust fund in the amount of \$6,862.56.

18. Defendant submitted a letter to Leavenworth National Bank and Trust, the Trustee for Sunset Memory Gardens trust accounts in which it indicated that certain cemetery merchandise had been delivered and that a refund was due to the cemetery corporation. Said letter included an itemized list of merchandise alleged to have been delivered.

19. Leavenworth National Bank, as Trustee, improperly issued a refund to the Defendant in the amount of \$11,182.50 as the cemetery merchandise had not been delivered.

20. As a result of the acts described in Paragraphs #18 and #19, above, a deficiency exists in Sunset Memory Garden's Merchandise trust fund in the amount of \$11,182.50.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

The above acts and practices by the Defendant are declared to be violations of the Kansas Cemetery Merchandise Act, K.S.A. 16-320 et seq., and the Kansas Cemetery Corporations Act, K.S.A. 17-1301 et seq.

Further, Plaintiff is granted judgment against Defendant in the amount of \$34,036.65. Said amount shall be deposited by Plaintiff into trust in the names and amounts as enumerated in Exhibits "A" through "D", attached hereto and incorporated by reference, for cemetery merchandise and services pursuant to K.S.A. 16-306 and K.S.A. 16-327 and the Permanent Maintenance Trust Fund of Sunset Memory Gardens Cemetery as mandated by state law.

The costs of this action are assessed against the defendant.

*Daniel J. Kline*

\_\_\_\_\_  
District Court Judge

Prepared by:

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