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FILED  
DOUGLAS COUNTY  
DISTRICT COURT

2008 MAR -6 P 4:28

BY \_\_\_\_\_

**IN THE DISTRICT COURT OF DOUGLAS COUNTY, KANSAS  
SEVENTH JUDICIAL DISTRICT  
Division 1**

STATE OF KANSAS, ex rel. )  
STEPHEN N. SIX Attorney General, )

Plaintiff, )

vs. )

Case No. 2005 CV 275

MIKE W. GRAHAM & ASSOCIATES, LLC.; )  
LAWRENCE MEMORIAL PARK )  
CEMETERY LLC., )  
MIKE W. GRAHAM, an individual; )

Defendants, )

and )

CHARLES HEINSOHN, an individual )

Intervener. )

Petition Pursuant to K.S.A. Chapter 60

**JOURNAL ENTRY OF CONSENT JUDGMENT**

NOW on this 6<sup>th</sup> day of March, 2008 Plaintiff's Journal Entry of Consent Judgment comes before this Court pursuant to K.S.A. 50-632(b). Plaintiff State of Kansas ex rel., Attorney General Stephen N. Six, appears by and through counsel, Assistant Attorney General Joseph N. Molina. Defendants Mike W. Graham & Associates, LLC; Mike W. Graham, and Lawrence Memorial Park Cemetery, LLC, appear by and through counsel, Bernard Weinand of Blackwood, Langworthy & Tyson, LC.

Whereupon the parties advise the Court that they have stipulated and agreed to the following matters:

**PARTIES, JURISDICTION & VENUE**

1. Stephen N. Six is the Attorney General of the State of Kansas.
2. The Attorney General's authority to bring this action is derived from the statutory laws of the state of Kansas, specifically the Cemetery Corporation Act, K.S.A. 17-1366, -1367; the Funeral and Cemetery Merchandise Agreements, Contracts, and Plans Act ("Cemetery Merchandise Act"), K.S.A. 16-323, -330, -331; and the Kansas Consumer Protection Act ("KCPA"), K.S.A. 50-623, *et seq.*
3. Defendant Mike W. Graham & Associates, LLC, ("Graham & Associates") is a foreign company located in the State of Texas. Graham & Associates was wholly owned by Mike W. Graham, an individual, until his death on December 31, 2007.
4. Defendant Lawrence Memorial Park Cemetery, LLC, ("Lawrence Memorial") is a domestic corporation as defined by K.S.A. 17-1312(f).
5. Defendants stipulate that this Court has subject matter jurisdiction over this case pursuant to K.S.A. 50-623, *et seq.*, K.S.A. 17-1301, *et seq.*, and K.S.A. 16-320, *et seq.*
6. Defendants stipulate and admit that venue is proper in the Seventh Judicial District of Kansas, Douglas County, pursuant to K.S.A. 50-638(b).

**ALLEGATIONS**

7. Defendant Lawrence Memorial is a supplier within the definition of K.S.A. 50-624(j)(2005) and engaged in consumer transactions in Kansas within the definition of K.S.A. 50-624(c) (2005).

8. Beginning on or about November 15, 2000 and ending on or about May 17, 2005 Lawrence Memorial marketed, solicited, and sold burial plots along with other burial merchandise to Kansas consumers.

9. These contracts varied from consumer to consumer, but primarily focused on the sale of internment rights, burial plots, memorials, headstones, grave markers, the opening and closing of graves, and the placement of vaults.

10. Kansas consumers entered into contracts with Lawrence Memorial for pre-need funeral arrangements that allowed them to make periodic payments for the cost of internment rights, opening and closing of graves, placement of vaults, and other funeral arrangements.

11. On December 30, 2004 Lawrence Memorial was notified by the Kansas Secretary of State that it was in non-compliance with several mandatory reporting and accounting statutes.

12. On May 17, 2005 the Kansas Secretary of State requested that Plaintiff initiate an appointment of receiver action against Lawrence Memorial for failure to file annual reports.

13. On May 18, 2005 Kathy Sachs, Deputy Assistant Secretary of State, issued an affidavit asserting that Lawrence Memorial failed to file annual reports for 2004, failed to fully fund its Kansas trust accounts, failed to cure within 90 days, and forfeited its cemetery franchise.

14. On July 15, 2005 Lawrence Memorial was notified by the Kansas Secretary of State that its incorporated status was no longer in good standing for failure to file annual reports.

15. On April 25, 2006 the Kansas Secretary of State certified that Lawrence Memorial's Articles of Incorporation were forfeited on July 15, 2005 for failure to file annual reports and pay dues owed to that office for the year ending December 31, 2004, in accordance with K.S.A. 17-7647.

16. On April 24, 2007 Special Agent Natalie Hogan issued an affidavit asserting that Lawrence Memorial failed to properly maintain the cemetery and that Graham & Associates failed to maintain records, remove debris from the cemetery, set headstones, return consumer phone calls, and keep the cemetery grounds groomed in a manner keeping with industry standards.

17. Between June 1, 2005 and August 14, 2007 one-hundred and fifty four (154) consumer complaints were filed with the Office of the Attorney General Consumer Protection Division. The Attorney General's investigation determined that Defendants:

- a. Did not file annual reports;
- b. Failed to properly maintain the cemetery;
- c. Failed to allow an audit of the cemetery by the Kansas Secretary of State;
- d. Forfeited its corporate charter;
- e. Failed to properly maintain the cemetery's Merchandise Fund;
- f. Failed to provide Kansas consumers with products ordered.

18. Plaintiff alleges that the acts and practices described in paragraph nineteen (19) violate the KCPA, K.S.A. 50-626(b)(2), -627(b)(3); the Cemetery Corporations Act, 17-1312a(a), -1367; and the Cemetery Merchandise Act, 16-331, in that the Defendants, their agents, or representatives:

- a. Failed to provide purchased products to Kansas consumers, in violation of K.S.A. 50-627(b)(3). The Kansas consumers were unable to receive a material benefit from the subject of the transaction;

- b. Failed to properly fund the cemetery corporation within the 90 day time period, as required by K.S.A. 16-331;
- c. Failed to file annual reports;
- d. Failed to properly maintain the cemetery. Defendants did not mow the cemetery, remove diseased trees, maintain roads for a period of more than one year, or file an annual report for 2004;

19. Defendants deny the acts and practices described in Paragraph 20(a-b) above but admit to the acts and practices described in Paragraph 20(c-d).

20. Defendants agree to this Consent Judgment without trial or adjudication of any issue of fact or law.

#### INJUNCTIVE RELIEF

21. Defendants agree to refrain from, and be permanently enjoined from, engaging in those acts and practices set forth in paragraph 23. Defendants agree that engaging in any such acts or similar acts after the date of this Consent Judgment shall constitute a violation of this Consent Judgment.

22. Defendants shall be enjoined from operating any cemetery corporation within the State of Kansas or owning any real property subject to the Kansas Cemetery Corporation Act;

23. Defendants and their officers, directors, employees, shareholders, and agents shall be enjoined from removing, transferring, or liquidating any assets, accounts, funds, or other property of any kind that is subject to proper vesting according to K.S.A. 17-1368.

24. Defendants and their officers, directors, employees, shareholders, and agents shall be enjoined from engaging in business in the State of Kansas, including but not limited to the

advertisement or sale of any merchandise or services related to prearranged funeral and burial needs.

25. Defendants agree to be permanently enjoined from entering into, forming, organizing, or reorganizing into any partnership, corporation, sole proprietorship, or any other legal structures for the purpose of avoiding compliance with the terms of this Consent Judgment.

26. Defendants agree to make available and/or disclose the provisions of this Consent Judgment to each officer, director, and management level employee in Defendants' Kansas operations within 10 days of signing the Consent Judgment.

### **TRANSFER OF CEMETERY PROPERTY**

27. Defendants agree that Lawrence Memorial Park Cemetery should be declared abandoned pursuant to K.S.A. 17-1367, and that the City of Lawrence, Kansas be named as permanent receiver of all property, both real and personal, all assets, and the Permanent Maintenance Fund.

28. Defendants agree that Lawrence Memorial is dissolved and its cemetery corporation is forfeited.

29. The parties agree that all mortgages, liens, judgments, and any other encumbrances against Lawrence Memorial Park Cemetery are void, thereby quieting title, allowing the City of Lawrence, Kansas to take free and clear ownership of Lawrence Memorial's cemetery property.

30. The parties agree to grant the City of Lawrence, Kansas authority to liquidate Lawrence Memorial's Permanent Maintenance Fund, to be used to care for and maintain Lawrence Memorial Park Cemetery, pursuant to K.S.A. 17-1368.

31. Defendants agree to transfer Lawrence Memorial's Merchandise Fund to the Office of the Kansas Attorney General's Office, to be used to satisfy all outstanding burial contracts as the Attorney General's Office deems appropriate. The Kansas Attorney General's Office has agreed to take responsibility for the Lawrence Memorial's Merchandise Fund at the request of the City of Lawrence. The Kansas Attorney General's Office understands that it is not required to assume this responsibility but has agreed to accept this obligation at the behest of the City of Lawrence, Kansas.

32. The provisions of this Consent Judgment will be applicable to Defendants and every employee, agent, or representative of Defendants.

33. Jurisdiction is retained by this Court to enable any of the parties to this Consent Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the enforcement of compliance herewith, and for the punishment of violations thereof.

34. If any portion, provision, or part of this Consent Judgment is held to be invalid, unenforceable, or void, for any reason whatsoever, that portion shall be severed from the remainder and shall not affect the validity or enforceability of the remaining provisions, portions, or parts.

35. Compliance with this Consent Judgment does not relieve Defendants of any obligation imposed by applicable federal, state, or local law, nor shall the Attorney General be precluded from taking appropriate legal action to enforce civil or criminal statutes under his jurisdiction.

36. The parties understand that this Consent Judgment shall not be construed as an approval or sanction by the Office of the Kansas Attorney General of the business practices of Defendants, nor shall Defendants represent the decree as such an approval. The parties further understand that any failure by the State of Kansas or by the Attorney General to take any action in response to any information submitted pursuant to the Consent Judgment shall not be construed as an approval or sanction of any representations, acts, or practices indicated by such information, nor shall it preclude action thereon at a later date.

37. Each of Defendants' representatives signing this Journal Entry of Consent Judgment warrant that they have been duly authorized by the defendant whom they represent to enter and execute this Journal Entry of Consent Judgment on behalf of that defendant. Defendants further represent that they have each had an opportunity to consult with and obtain the advice of private legal counsel prior to entering into this Consent Judgment.

**THEREFORE IT IS ORDERED, ADJUDGED, AND DECREED** that the stipulations and agreements of the parties contained herein are adopted and approved as the findings of fact and conclusions of law of the Court, and any monies owed hereunder by Defendants immediately become a judgment upon filing.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendants are permanently enjoined from operating any cemetery corporation within the state of Kansas or owning any real property subject to the Kansas Cemetery Corporation Act.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendants are permanently enjoined from removing, transferring, or liquidating any assets, accounts, funds, or other property of any kind that is subject to proper vesting according to K.S.A. 17-1368.



**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Lawrence Memorial Park Cemetery is abandoned pursuant to K.S.A. 17-1367 and that the City of Lawrence, Kansas is named as permanent receiver of all property, both real and personal, all assets, and the Permanent Maintenance Fund.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendants agree that Lawrence Memorial Park Cemetery is dissolved and its cemetery corporation shall be forfeited.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the parties agree that all mortgages, liens, judgments, and any other encumbrances against Lawrence Memorial Park Cemetery are void, thereby quieting title and allowing the City of Lawrence, Kansas to take free and clear ownership of Lawrence Memorial Park Cemetery's cemetery property.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the parties agree to grant the City of Lawrence, Kansas authority to liquidate Lawrence Memorial Park Cemetery's Permanent Maintenance Fund to be used to care for and maintain Lawrence Memorial Park Cemetery, pursuant to K.S.A. 17-1368.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Defendants agree to transfer Lawrence Memorial Park Cemetery's Merchandise Fund to the Kansas Attorney General's Office to be used to satisfy all outstanding burial contracts as the Attorney General deems appropriate.

**IT IS FURTHER ORDERED ADJUDGED AND DECREED** that Defendants Midwest Services, LLC, Stephanie Graham 1995 Trust, Regional MMC, LLC, L&P, Inc., Mike W. Graham, Linda Graham, Stephanie M. Graham, S. James Slay, Jr., A.W. Brewer, Don

Hughes, Pat Poole, Linda Poole, Randy Davis, Donna Davis, Nancy Berends, Janis Tubbs and Janet Carapaci, are here by dismissed from this lawsuit without prejudice.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that pursuant to the Kansas Consumer Protection Act, and the provisions of K.S.A. 50-632(b), the court hereby approves the terms of the Consent Judgment and adopts the same as the Order of the Court.

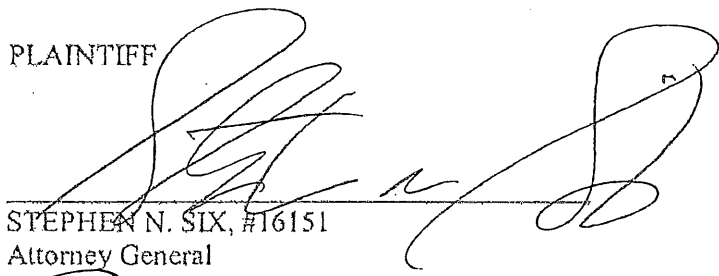
**IT IS SO ORDERED.**



The Honorable Robert Fairchild  
District Court Judge

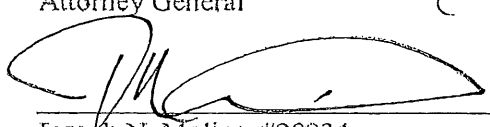
Approved by:

PLAINTIFF



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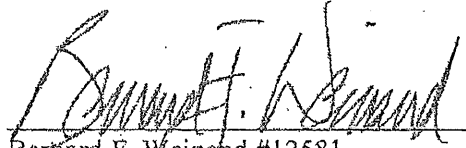
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