

Final Order by Default

State Mortuary and Cemetery Board

In the Matter of the Cemetery Authority
Change of Principal Application of

**CIVIL BEND PIONEER CEMETERY
ASSOCIATION,**
Licensee

Case No.: 09-1022

Final Order

On March 17, 2010, the Oregon Mortuary & Cemetery Board (Board) properly served a Notice of Proposed Denial of Application (Notice) on Licensee that it intended to deny the application for change of principal naming Ben C. Agee as manager pursuant to OAR 830-011-0050(2) and ORS 692.180(1)(g). Notice offered Licensee an opportunity for a hearing if requested within 60 days from the date the Notice was mailed. Licensee did not request a hearing within this 60-day period or otherwise. The Notice designated the Board's file on this matter as the prima facie record for purposes of default.

NOW THEREFORE, after considering the Board's file relating to this matter, the Board enters the following:

FINDINGS OF FACT

1. Applications for change of principal for manager of licensed facilities are subject to background investigation pursuant to ORS 692.025(6), ORS 692.160(1), and ORS 692.275.
2. On April 14, 2009, Licensee provided a Background Information Questionnaire to the Board for a change of principal application, naming Ben C. Agee (Agee) as manager of the cemetery authority, Civil Bend Pioneer Cemetery Association, OMCB License No. CE-0481. The completed application for change of principal was received August 23, 2009.
3. Applicants for change of principal are informed, by means of written notice on the Background Information Questionnaire, that any misrepresentation or omission is cause for refusal to issue a license.
4. Application question number three of the Background Information Questionnaire asks if Agee has been arrested, charged or cited for anything other than traffic violations. If the answer is "yes", Agee was required to list all of the arrests, including dismissals, and provide a detailed, complete and accurate written account of the facts and circumstances of each arrest. Agee wrote "No."

5. Application question number four of the Background Information Questionnaire asks Agee if he has ever been convicted of a felony or misdemeanor crime. If the answer is “yes”, Agee was required to list all of the convictions and provide a detailed, complete and accurate written account of the facts and circumstances of each crime which led to the conviction. Agee wrote “No.”
6. Application question number five of the Background Information Questionnaire, asks Agee, “Have you ever entered into a diversion agreement?” Agee wrote “No.”
7. On or about February 10, 1984, Agee was arrested by the Roseburg Police Department in Oregon for Driving Under the Influence of Intoxicants. In Roseburg Municipal Court, adjudication was withheld under terms of a diversion agreement and dismissed on March 12, 1985. On or about October 16, 1991, Agee was arrested by the Springfield Police Department for Driving Under the Influence of Intoxicants. On or about September 1, 2003, Agee was arrested, cited and lodged by the Winston Police Department in Douglas County, Oregon, for Disorderly Conduct; he was convicted on or about October 21, 2003 in Winston Municipal Court.
8. Agee, therefore, misrepresented his criminal history on an application and failed to answer truthfully and completely in violation of OAR 830-050-0050(2), OAR 830-050-0050(9), OAR 830-030-0090(2)(c)(D), and OAR 830-030-0090(2)(d)(B), ORS 692.180(1)(g), ORS 692.180(1)(a) and ORS 692.180(1)(b).
9. Pursuant to OAR 830-011-0050(1), on or about June 2, 2009, the Board asked Agee to provide written documentation confirming his participation in a rehabilitation program with the Department of Veterans Affairs. Agee did not submit the requested documentation to the Board.
10. Agee, therefore, failed to provide the Board with requested documents within the Board’s jurisdiction and failed to cooperate or answer truthfully and completely in violation of OAR 830-011-0050(1), OAR 830-030-0090(2)(d)(A), OAR 830-030-0090(2)(d)(B) and ORS 692.180(1)(g).
11. OAR 830-011-0050(2) provides that the Board may deny or refuse to issue a license when conditions exist in relation to any principal of a licensed facility, which constitutes grounds for refusing to issue or renew a license or certificate or for suspension of a license. See ORS 692.180(1)(g).

ULTIMATE FINDINGS

1. Ben C. Agee, Licensee’s intended principal (manager), misrepresented his criminal history by making false and misleading statements on the background questionnaire for Licensee’s change of principal application which is grounds for license denial pursuant OAR 830-050-0050(2), OAR 830-050-0050(9), OAR 830-030-0090(2)(c)(D), OAR 830-030-0090(2)(d)(B), ORS 692.180(1)(g), ORS 692.180(1)(a) and ORS 692.180(1)(b). Agee also failed to provide the Board with a requested document which is grounds for denial of an application pursuant to OAR 830-011-0050(1), OAR 830-030-0090(2)(d)(A), OAR 830-030-0090(2)(d)(B) and ORS 692.180(1)(g).
2. The Board may deny or refuse to issue a license when conditions exist in relation to any

principal of a licensed facility which constitutes grounds for refusing to issue or renew a license or certificate. OAR 830-011-0050(2); ORS 692.180(1)(g).

CONCLUSION OF LAW

In applying to the Board for change of principal for manager, the intended manager misrepresented his criminal history by making false and misleading statements, and the intended manager failed to provide a requested document to the Board in violation of OAR 830-011-0050(1), OAR 830-050-0050(2), OAR 830-050-0050(9), OAR 830-030-0090(2)(c)(D), OAR 830-030-0090(2)(d)(A), OAR 830-030-0090(2)(d)(B), ORS 692.180(1)(g), ORS 692.180(1)(a) and ORS 692.180(1)(b) which are grounds to deny Licensee's application for change of principal pursuant to OAR 830-011-0050(2) and ORS 692.180(1)(g).

ORDER

1. Licensee's change of principal application is hereby denied pursuant to OAR 830-011-0050(2) and ORS 692.180(1)(g).
2. This Final Order shall become effective when signed by the Executive Director of the Board.

DATED and ENTERED this ___19th_ day of October, 2010.

____<s> Michelle Gaines_____
Michelle Gaines, Executive Director
Oregon Mortuary & Cemetery Board

Date of Service: _____October 19, 2010_____

Appeal Rights: You are entitled to judicial review of this order in accordance with ORS Chapter 183.482. You may request judicial review by filing a petition with the Court of Appeals in Salem, Oregon within 60 days from the date of this order.