

Final Order by Default

State Mortuary and Cemetery Board

**In the Matter of the Funeral
Service Practitioner Application
of:**

Mark L. Tishman,

Applicant

Case No.: 10-1011

FINAL ORDER

On April 23, 2010, the Oregon Mortuary & Cemetery Board (Board) properly served a Notice of Proposed Denial of Application And Opportunity for a Hearing on Mark L. Tishman (Applicant) that it intended to deny his application for a Funeral Service Practitioner license (Application) for violation of OAR 830-050-0050(5) pursuant to ORS 692.180(1)(g).

The Notice offered Applicant an opportunity for a hearing if requested within 60 days from the date the Notice was mailed. Applicant did not request a hearing within this 60-day period or otherwise. The Notice designated the Board's file on this matter as the record for purposes of default.

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

FINDINGS OF FACT

1. Applicants for Funeral Service Practitioner Licenses must apply on a form provided by the Board pursuant to ORS 692.025 and ORS 692.045.
2. In the Application, Applicant disclosed two disciplinary actions taken against him by two state agencies in Florida while he was either licensed as a funeral director and embalmer (License # FE-0003136) or when a corporate shareholder, vice-president and manager of a funeral establishment: Independent Mortuary Services Inc. dba Tishman Funeral Home (FH0001947).
- 2a. In 1999, the Florida Department of Banking and Finance, Board of Funeral and Cemetery Services (BFCS) alleged Applicant failed to produce preneed funeral contract business records when requested and also failed to pay the required records examination fee pursuant to Florida Statute Chapter 497.431. On or about May 26, 1999, the BFCS issued a Final Order against the Applicant. The Order concluded that Applicant, his business partner and their funeral establishment, individually and

collectively, attempted to interfere with the examination of their business records and obfuscated the facts, violating 1993 Florida Statutes 497.433(1)(i) and (m). The Order imposed the following sanctions: revocation of the funeral home's Certificate of Authority to sell pre-need, imposition of the costs of the records examination in the amount of \$4,125, and imposition of an administrative civil penalty of \$10,000. The penalties were to be paid within thirty days, but were not paid.

- 2b. On July 23, 2001, the State of Florida Department of Business and Professional Regulation, Division of Funeral Directors and Embalmers (DFDE), in Case No. 99-08090, revoked Applicant's funeral director and embalmer license for having been disciplined by the Board of Funeral and Cemetery Services, and for advertising goods or services in a manner which is fraudulent, false, deceptive, or misleading in form or content, which were violations of Florida Statutes 470.036(1)(f) and (x) and cause for revocation under Florida Statute 20.165.

CONCLUSIONS OF LAW

1. Prior disciplinary action by another state against a personal, professional or business license where the conduct upon which the disciplinary action was based bears a demonstrable relationship to death care industry practices or operations, is grounds for refusal to grant a Funeral Service Practitioner license under ORS 692.180(1)(g) and OAR 830-050-0050(5).
2. Applicant's prior disciplinary action in Florida was based on his actions while part of the Florida death care industry and it constitutes grounds for refusal to grant a Funeral Service Practitioner license under ORS 692.180(1)(g) and OAR 830-050-0050(5).
3. Denial of Applicant's license application is appropriate under the circumstances.

ORDER

1. Applicant's Funeral Service Practitioner Application is hereby denied.
2. This Final Order shall become effective when signed by the Executive Director of the Board.

DATED and ENTERED this __23rd__ day of November, 2010.

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

Date of Service: ___November 22, 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 service of this order.