

BEFORE THE ARKANSAS CEMETERY BOARD

IN THE MATTER OF:

ORDER NO. S-05-031-05-OR01

**CYPRESS MEMORIAL GARDENS;
COMPLAINT BY SANDRA STEWART**

ORDER

A hearing was held before the Arkansas Cemetery Board during its Second Quarterly Meeting of 2005 on June 10, 2005 in Little Rock, Arkansas. Cypress Memorial Gardens appeared by and through its president, Dewitt Hill, Jr. Ms. Sandra Stewart appeared on her own behalf. Upon consideration of the testimony of the witnesses, the exhibits, and all other matters presented, the Board, being well and sufficiently advised as to all matters of fact and law, hereby finds, concludes and rules as follows.

FINDINGS OF FACT

1. Sandra Stewart is the daughter of the late Monnie and Bessie Dixon, who purchased a double-crypt in an above ground mausoleum at Cypress Memorial Gardens on October 21, 1982.
2. Cypress Memorial Gardens is an Arkansas licensed perpetual care cemetery located in Pine Bluff. Dewitt Hill, Jr. is the president of the company, whose offices are located in Pine Bluff, Arkansas.

3. The evidence reflects that the double crypt purchased by Monnie and Bessie Dixon is in a state of deterioration, that the crypt is no longer sealed properly, and that the front of the crypt has fallen, exposing the interior of the crypt.

4. Ms. Stewart contends that it is the responsibility of Cypress Memorial Gardens to repair the crypt. Ms. Stewart states that twenty percent (20%) of the purchase price of the crypt was intended for perpetual care.

5. Mr. Hill contends that it is the responsibility of the family of Monnie and Bessie Dixon to repair the crypt.

6. The Purchase Agreement executed between Cypress Memorial Gardens and the Dixon's in 1982 established that the crypt was purchased directly from Cypress. The agreement states in pertinent part that:

“Cypress agrees that it will set aside and cause to be paid forever to the Perpetual Care and Maintenance Trust Fund an amount equal to that established by Arkansas law for perpetual care and maintenance.”

7. The reverse side of the Purchase Agreement on file with the Securities Department that was used by the former Cypress permit holder reads:

Crypts, described in this agreement, will be constructed not later than 60 months from this date. Should the need for entombment arise before construction is completed, Cypress will provide temporary entombment in an area where crypts have been constructed, at its expense, and the remains will be transferred to the permanent crypts, upon completion of the designated crypts. The Purchasers hereby consent to such procedure, and to such transfer, should the need arise at no expense to purchaser for such temporary arrangement.

8. The Purchaser's Agreement contemplates the sale of crypts at the facility, and that these crypts will be perpetually maintained. The facts establish that

Cypress sold the crypt, constructed the crypt, and warranted that it would be perpetually cared for and maintained.

CONCLUSIONS OF LAW

9. Each cemetery company doing business in Arkansas is required to deposit not less than ten percent (10%) of the gross proceeds of each sale into a permanent maintenance fund in the time and manner as set forth in **Ark. Code Ann. Section 20-17-1016**.
10. The Arkansas Cemetery Act for Perpetually Maintained Cemeteries, applies to crypts sold as well as burial plots. **Ark. Code Ann. 20-17-1001, et seq.**
11. The income from the permanent maintenance fund is to be applied toward the administration, care, and maintenance of the cemetery, which includes lots, graves, spaces, crypts, niches, and burial rights. **Ark. Code Ann. 20-17-1013(a)(1) and (2)**.

OPINION

12. The double crypt purchased by the late Monnie and Bessie Dixon is in a state of deterioration, the crypt is no longer sealed properly, and the front of the crypt has fallen, thus exposing the interior of the crypt.
13. Cypress Memorial Gardens, the licensee, is responsible for the costs of appropriate repairs to the crypt as contemplated by the Arkansas Cemetery Act for Perpetually Maintained Cemeteries.

ORDER

IT IS HEREBY ORDERED that Mr. Dewitt Hill, Jr., president of Cypress Memorial Gardens, the licensee, shall make arrangements with Ms. Stewart to meet with a contractor within one week of the date of this meeting for the purpose of obtaining an estimate for the cost of repairs to the double crypt purchased by the late Monnie and Bessie Dixon. It is further ordered that said repairs shall be completed within thirty (30) days of today's meeting, and that it shall be the responsibility of Dewitt Hill, Jr. to notify the Cemetery Board that said repairs have been completed.

This order is subject to review by the Circuit Court of Pulaski County, Arkansas, or in the county wherein any part of the cemetery lies, provided that an application for review of said order is made within thirty (30) days of the date of this order. **Ark. Code Ann. 20-17-1005(e)**. This order is not intended to prejudice any other legal rights or remedies available to the persons affected.

IT IS SO ORDERED, this 25 day of July, 2005.



Betty Finley, Chairperson



Michael B. Johnson, Secretary