

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

Case No. 2:13-cv-851-RBD-CSC

ROSS-CLAYTON FUNERAL H4(N FNDC 05p,L)-4()TJ-0.002 Tc 2 Tw 3.76 -1.15 Td [IOND(D)4 CN

DEFINITIONS

For the purpose of this Decree, the following definitions apply:

1. **“Ross-Clayton”** means Ross-Clayton Funeral Home, Inc. and its

h) When the representation or sales practice targets a specific audience, such as children, the elderly, or the terminally ill, “ordinary consumers” includes reasonable members of that group.

3. “**Funeral goods**” means the goods which are sold or offered for sale directly to the public for use in connection with funeral services, as defined in 16 C.F.R. § 453.1(h).

4. “**Funeral Rule**” or “**Rule**” means the Trade Regulation Rule Concerning Funeral Industry Practices issued by the FTC, 16 C.F.R. Part 453. Copies of the Funeral Rule and the FTC publication “Complying with the Funeral Rule” are attached to this Decree as Exhibits A and B, respectively.

5. “**Funeral services**” means any services which may be used to: (1) care for and prepare deceased human bodies for burial, cremation or other final disposition; and (2) arrange, supervise or conduct the funeral ceremony or the final disposition of deceased human bodies, as defined in 16 C.F.R. § 453.1(j).

FINDINGS

1. This Court has jurisdiction over this matter.

2. The Complaint charges that Ross-Clayton participated in unfair or deceptive acts or practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45, and the Funeral Rule.

3. Ross-Clayton neither admits nor denies any of the allegations in the Complaint, except as specifically stated in this Decree. Only for purposes of this action, Ross-Clayton admits the facts necessary to establish jurisdiction.

4. Ross-Clayton waives any claim that it may have under the Equal Access to Justice Act, 28 U.S.C. § 2412, concerning the prosecution of this action through the date of this Decree, and agrees to bear its own costs and attorney fees.

5. Ross-Clayton waives and releases any other claims that it may have against the FTC or its agents that relate to this action, including those asserted in its First Amended Counterclaim.

6. FTC and Ross-Clayton waive all rights to appeal or otherwise challenge or contest the validity of this Decree.

DECREE

I. MONETARY JUDGMENT FOR CIVIL PENALTY

IT IS ORDERED AND ADJUDGED that:

- A.** Judgment in the amount of Sixteen Thousand Dollars (**\$16,000.00**) is entered in favor of the FTC and against Ross-Clayton as a civil penalty.
- B.** Ross-Clayton is ordered to pay to the FTC Sixteen Thousand Dollars (**\$16,000.00**) which, as Ross-Clayton stipulates, its undersigned counsel holds in escrow for no purpose other than payment to the FTC. Such payment must be made within seven (7) calendar days of entry of this Decree by electronic fund transfer in accordance with instructions provided by a representative of the FTC.
- C.** Ross-Clayton relinquishes dominion and all legal and equitable right, title, and interest in all funds transferred pursuant to this Decree and may not seek the return of any such funds.
- D.** The facts alleged in the Complaint will be taken as true, without further proof, in any subsequent civil litigation filed by or on behalf of the FTC, including in a proceeding to enforce its rights to any payment or monetary judgment pursuant to this Decree.
- E.** Ross-Clayton acknowledges that its Taxpayer Identification Number, which it must submit to the FTC, may be used for collecting and reporting on any delinquent amount arising out of this Decree, in accordance with 31 U.S.C. § 7701.

Provided however, that if the basic service fee cannot be declined by the purchaser, the disclosure must include the sentence: “However, any funeral arrangements you select will include a charge for our basic services.” This sentence must appear between the second and third sentences of the disclosure above. Provided further, that this sentence may include the phrase “and overhead” after the word “services” if the fee includes a charge for the recovery of unallocated funeral provider overhead;

- D.** Failing to show consumers, who inquire in person about offerings or prices of outer burial containers, a printed or typewritten outer burial container price list upon beginning discussion of, but in any event before showing, any outer burial containers, vaults, grave liners, or models or pictures of such items;
- E.** Failing to tell any person who asks by telephone about Ross-Clayton’s offerings or prices any accurate information from Ross-Clayton’s price lists and other readily available information that reasonably answers the person’s question;
- F.** Failing to give for retention to each person who arranges a funeral or other disposition of human remains an itemized written statement of all funeral goods and services selected by that person and the prices to be paid for each good or service;
- G.** Requiring the purchase of any funeral good or funeral service as a condition of furnishing any other funeral good or funeral service, or refusing to provide funeral services to a person seeking to arrange a funeral who wants to use third-party funeral goods, except as required by law or as otherwise permitted by the Funeral Rule;
- H.** Requiring payment of any fee as a condition to furnishing any funeral good or service to a person arranging a funeral, other than fees for:
(1) Services of funeral director and staff (the “basic services fee”);

IV. **COMPLIANCE REPORTING**

IT IS FURTHER ORDERED that Ross-Clayton shall make timely submissions to the FTC, as follows:

- A. One year after entry of this Decree, Ross-Clayton must submit a compliance report (“**Report**”), sworn under penalty of perjury. In the Report, Ross-Clayton must: (1) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the FTC may use to communicate;

(2) i l -, ;.06(43.92 Tm [-t)26)6(lh0.26((os)eslaD))]6(o.28Tf oe)1

or against Ross-Clayton within fourteen (14) calendar days of its filing.

- D.** Any submission to the FTC required by this Decree to be sworn under penalty of perjury must be true and accurate and comply with 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____” and supplying the date, signatory’s full name, title (if applicable), and signature.
- E.** Unless otherwise directed by a representative of the FTC in writing, all submissions to the FTC pursuant to this Decree: (1) must provide a subject line that begins: “FTC v. Ross-Clayton Funeral Home, Inc., No. X140007”; and (2) must either be emailed to DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to:

Associate Director for Enforcement Bureau of
Consumer Protection, Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580

V. RECORDKEEPING

IT IS FURTHER ORDERED that Ross-Clayton must create certain records for three (3) years after entry of this Decree and must retain each such created record for five (5) years. Specifically, Ross-Clayton, for any business that has sold or offered to sell funeral goods or funeral services, must create and retain the following records:

- A.** accounting records showing the revenues from all goods or services sold;
- B.** personnel records showing, for each person providing services, whether as an employee or otherwise, that person’s: name,

addresses, telephone numbers, job title or position, dates of service,

- C. For matters concerning this Decree, the FTC may communicate directly with Ross-Clayton.
- D. The FTC also may obtain discovery, without further leave of Court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69.
- E. The FTC may use all other lawful means, including posing, through its representatives as consumers, suppliers, or other individuals or entities, to Ross-Clayton or any individual or entity affiliated with Ross-Clayton, without the necessity of identification or prior notice. Nothing in this Decree limits the FTC's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.

VII. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Decree.

DONE AND ORDERED in Chambers in Orlando, Florida, on June 22, 2016.




ROY B. DALTON JR.
United States District Judge

Copies:

Counsel of Record

U.S. Magistrate Judge