

Gilligan Law Offices

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December 19, 2008

Mark Duffey
President
Everest Funeral Planning and Concierge Service
1300 Post Oak Blvd., Suite 1210
Houston, TX 77056

Dear Mr. Duffey:

Please be advised that I serve as General Counsel to the National Funeral Directors Association (NFDA). As you may be aware, NFDA is the largest funeral service organization in the United States and represents approximately 12,000 funeral homes.

Over the past weeks, we have heard from members in Wisconsin, Illinois, New York, Minnesota, Texas, New Jersey, and other states who have received form letters from Everest Funeral Planning and Concierge Service ("Everest"). A copy of that form letter is enclosed. As you can see from the first paragraph of the form letter, Everest is accusing the funeral homes receiving the form letter of violations of the Funeral Rule for failing to provide price information over the telephone. Specifically, the letter alleges that the funeral home refused to comply "notwithstanding our repeated attempts to obtain pricing information".

Most of the members who have contacted NFDA over the past weeks cannot recall receiving any price inquires from Everest. Because of the number of calls we have received, on December 17, 2008, NFDA published an article in its online bulletin requesting members to contact my office if they had received the letter but had never been contacted by Everest.

The day after the article ran I received nearly 50 phone calls and emails from members who had received the form letter and had never received a call from Everest. I have enclosed for your review three representative samples of those emails.

Given the volume of calls and emails I have received, it is readily apparent that Everest is indiscriminately sending the letter to funeral homes in a deceptive effort to scare the funeral homes into faxing or mailing price information to Everest. Obviously, this saves Everest time and money since it obtains all the price information without having to hire representatives to contact funeral homes by phone.

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While this scheme is deceptive and potentially actionable, of even greater concern are the claims contained in the letters that copies are being mailed to Regional Offices of the Federal Trade Commission and/or state funeral licensing boards. If these letters are truly being sent to the FTC and state licensing boards, Everest is involved in filing false claims alleging violations of federal law. If the letters are not being sent to the FTC and state licensing boards, then Everest is involved in further deception and manipulation.

I am sending a copy of this letter to Craig Tregillius, the Funeral Rule Coordinator for the Federal Trade Commission. Copies of the letter are also being sent to the seven FTC Regional Offices and the state licensing boards of Wisconsin, Illinois, New York, New Jersey, Texas, and Minnesota.

We need to alert the FTC Regional Offices and the state licensing boards that Everest has been involved in these deceptive practices and that funeral homes receiving these form letters have not violated the Funeral Rule. We will also be requesting the FTC Regional Offices and the state licensing boards to report back to us as to whether they have actually received copies of the Everest form letter. Finally, NFDA, on behalf of its 12,000 members is requesting that the FTC investigate these unfair and deceptive acts and practices of Everest.

If you have any questions regarding this matter, please contact me.

Sincerely yours,



T. Scott Gilligan

Cc: Carolyn D. Johnson, Vice President, Everest Client Services
Christine Pepper, NFDA CEO
Craig Tregillius, FTC Funeral Rule Coordinator
C. Steven Baker, FTC Midwest Region
John M. Mendenhall, FTC East Central Region
Leonard L. Gordon, FTC Northeast Region
Bradley Elbein, FTC Southeast Region
Deanya T. Kueckelhan, FTC Southwest Region
Jeffrey A. Klurfeld, FTC Western Region
Charles A. Harwood, FTC Northwest Region

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Wisconsin Funeral Directors Examining Board
Illinois Department of Professional Regulation
Minnesota Mortuary Science Section
New York Bureau of Funeral Directing
New Jersey State Board of Mortuary Science
Texas Funeral Service Commission



December 10, 2008

[REDACTED] Funeral Chapel

Re: Compliance with FTC Funeral Rule

Dear: Funeral Home Owner/Manager:

We are writing to you because our records reflect that your firm has been unwilling to comply with its legal obligations under the Funeral Rule of the Federal Trade Commission (FTC), 16 C.F.R. Part 453, notwithstanding our repeated attempts to obtain pricing information which your firm is legally obligated to provide.

As you may know, Everest is the first nationwide funeral planning and concierge service, providing personalized service and unbiased advice to our clients and their families. Serving as an advisor, Everest is not associated directly or indirectly with any company that sells or distributes funeral products or services.

A feature of our service is to provide current data on prices charged by funeral homes for their goods and services as reflected in their general price lists (GPL).

You may not be aware that the federal law requires you to make pricing information available to us, even when we ask for it by phone and even though we don't intend to use your services or purchase your merchandise directly. Your obligations under the FTC's Funeral Rule extend to everyone – not just your client families, but anyone who asks about your prices; and that can include competitors, journalists, government agencies, consumer groups as well as Everest. The Funeral Rule is in addition to your firm's obligations under state law and preempts any conflicting state regulations.

Specifically, you **are required** to provide us with accurate information from your GPL (as well as Casket Price List and Outer Burial Container Price List) in response to our questions about your prices. Enclosed you will find some additional information about the FTC's Funeral Rule and Everest's collection of funeral homes prices.

Just to be clear, responding to our questions does not make you affiliated with Everest, enroll you in any program or commit you to anything other than giving us accurate information in compliance with the law.

[REDACTED] Funeral Chapel

December 10, 2008

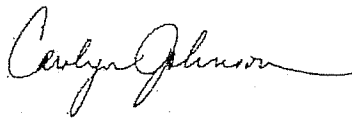
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We understand and appreciate that funeral directors work long, hard hours in serving their families, but being too busy does not excuse your obligations under the Funeral Rule, particularly if that excuse is given more than once from the same firm. An Everest representative will be contacting your office in the next few weeks with another attempt to obtain the required pricing information, and we will look forward to your full cooperation. Unfortunately, if we are not successful in obtaining from your firm the information that the Funeral Rule requires by December 31, 2008 we will have no choice but to refer the matter, along with our detailed records that reflect noncompliance, to the Federal Trade Commission.

If you received this letter in error, and have in fact responded accurately and completely to an Everest Advisor's telephone inquiry, then please accept my apology. In any event, we hope that the next time an Everest Advisor calls, you will furnish the information we request.

Thank you very much for your consideration. Should you wish to contact us concerning this matter, the enclosure includes our contact information. Once we receive the information we need, rest assured that our records on your firm will be updated accordingly.

Regards,



Carolyn D. Johnson
Vice-President, Everest Client Services

Enclosure: Additional information:
 Everest and the FTC Funeral Rule

cc: Illinois Funeral Trade Commission
 55 W. Monroe St., Suite# 1825
 Chicago, IL 60603

Additional Information

The Federal Trade Commission's (FTC) Funeral Rule applies to every funeral home in the United States. If you offer or sell funeral goods or services to the public, the Funeral Rule applies to you. The FTC publishes a pamphlet for funeral homes called "Complying with the Funeral Rule." You can obtain a copy of the Funeral Rule by going to www.ftc.gov or by calling the FTC at 1-877-FTC-HELP.

The FTC vigorously enforces the Funeral Rule and is authorized to impose penalties of up to **\$10,000 per violation**. According to the FTC, its civil penalties in Funeral Rule cases have ranged from \$10,000 to \$100,000, with the average at about \$30,000.

T. Scott Gilligan, General Counsel to the National Funeral Directors Association (NFDA), described the applicability of the Funeral Rule to Everest in a Fall 2006 memo addressed to state funeral directors associations: "*[I]f Everest telephones a funeral home and asks specific questions regarding how much various goods and services costs, the funeral home must provide that information over the telephone. This requirement of the Funeral Rule applies even though Everest is not a consumer.*"

Contacting Everest Regarding Your Prices:

Everest Advisors routinely phone all funeral homes in the U.S. to obtain and update their prices. The FTC Funeral Rule only requires you to provide pricing information when requested in person or by phone.

You are welcome to contact us directly about your prices by calling: 1-866-241-0460 Monday through Friday between the hours of 9:00 AM and 6:00 PM EST.

At the request of some funeral homes and exclusively for your convenience, we now accept GPLs via fax or mail.

Fax: 1-866-915-1543

Mail: Everest Corporate Office
1300 Post Oak Blvd, Suite 1210
Houston, TX 77056

T. Scott Gilligan

From: smithfuneral@aol.com
Sent: Thursday, December 18, 2008 2:13 PM
To: T. Scott Gilligan
Subject: Everest

Scott,

I, too, have received correspondence from Everest claiming I was not in compliance with the FTC rule regarding disclosure of prices. In the letter they stated that they have tried to contact me various times and also reported me to my state bureau of funeral directing and health department. I then contacted my state association to inform them of this problem and they informed me that they were aware of the situation and had spoken to the bureau of funeral directing.

Shortly after I received a call from Everest. During the conversation I informed them that I received their letter and have never refused pricing information over the phone. They then proceeded to inquire about my general price list, which I graciously complied with.

If you would like copies of the letter, let me know.

Sincerely,

David W. Smith
Smith Funeral Home
Sauquoit, NY

Listen to 350+ music, sports, & news radio stations – including songs for the holidays – FREE while you browse. [Start Listening Now!](#)

T. Scott Gilligan

From: Timothy Jensen [jjensenfh@sbcglobal.net]
Sent: Thursday, December 18, 2008 9:18 AM
To: T. Scott Gilligan
Subject: EVEREST

Scott

My name is Timothy B. Jensen, owner and sole operator of Jones-Jensen Funeral & Cremation in Columbus, Wisconsin. We have requested your services in the past in an effort to make certain our GPL was in full compliance. Thank you for your help for in that matter.

We received a letter yesterday from EVEREST stating their *repeated requests* to obtain prices from our General Price Lists were ignored and that our firm has been unwilling to comply with the FTC rule. As I am the only person who answers our telephone around the clock here everyday, I could stake my life on the fact that I have had no communication with EVERSET. I had no intention of responding to this extortion via email or fax as they have suggested in the letter.

Today I received a bulletin from NFDA stating others in Wisconsin received this same letter. I want you to know I would be happy to substantiate these false accusations on behalf of my firm.

Thank you,
Tim

T. Scott Gilligan

From: Harrigan Parkside Funeral Home [harriganfuneralhome@yahoo.com]
Sent: Friday, December 19, 2008 9:55 AM
To: T. Scott Gilligan
Subject: respnse to Everest letter

Good Morning:

Last week I received this letter of reference from Everest which was dated December 8, 2008. I can say I didn't appreciate receiving such a letter from them with correspondence the our state Department of Regulation and Licensing as we are very conscious about how things are handled in every aspect of our firms operation. The same day I received this letter I then contacted the Wisconsin Department of Regulation and Licensing Funeral Directors Examining Baord and left a message on the voice mail of one of the staff members there by the name of Judy (quite sure that was her name). I never received a reponse from the WDRL but the main consideration was they received my message. I do not remember being contacted by Everest in the past and neither does any of our staff here as well.

I will be looking for any updates as they happen. Best of holiday wishes.

Regards,
Dennis Harrigan
Harrigan Parkside Funeral Home and Crematory